

**United States Department of Labor
Employees' Compensation Appeals Board**

V.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
North Reading, MA, Employer)

**Docket No. 06-404
Issued: August 1, 2006**

Appearances:

*John L. Whitehead, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On December 5, 2005 appellant filed a timely appeal from an August 31, 2005 merit decision of the Office of Workers' Compensation Programs which denied her claim for recurrent disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant has established that she sustained a recurrence of disability on or about August 10, 2001 causally related to her accepted employment injury of June 13, 1995.

FACTUAL HISTORY

On June 16, 1995 appellant, then a 29-year-old clerk, filed a traumatic injury claim alleging that on June 13, 1995 a heavy shelf fell on her head. The Office accepted the claim for a contusion to the scalp and cervical strain. She initially returned to light duty, part time and then

resumed full duty in her original position.¹ In a letter dated July 25, 2001, the Office authorized ongoing treatment.² After receiving medical reports which recommended a change in appellant's job assignment, appellant returned to light duty with reduced hours in July or August 2001.³ She worked in her light-duty position until the employing establishment withdrew such work approximately in September or October 2002. Appellant has not returned to her regular-duty position and remains under the care of Dr. Sheela Gurbani, a neurologist.

On August 10, 2001 appellant filed a recurrence claim alleging that she had never been free of her symptoms since her work injury of June 13, 1995.

In an August 27, 2001 report, Dr. Gurbani diagnosed cervical disc disease with radiculopathy and right shoulder tendinitis which she opined was causally related to the June 13, 1995 work injury "by history of her symptoms." She advised that appellant should work light duty limited to six hours daily.

The Office proceeded to develop the issue of whether there were any residuals from the 1995 neck and head injury and the 1998 back injury and referred appellant to Dr. Mordechai Kamel, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated September 24, 2001, he found that the lumbosacral strain and the cervical strain had resolved. Dr. Kamel found degenerative cervical disc disease and degenerative lumbar disc disease, tendinitis of the right shoulder and possible job-related right carpal tunnel syndrome. He opined that appellant's back and neck strains caused by her work injuries had resolved as, under normal circumstances, those diagnoses typically resolve over the course of three months to a year depending on the severity of the injury. Dr. Kamel further stated that appellant's bulging discs were consistent with her age and opined that there was no correlation between appellant's work injuries.

The Office found a conflict of medical opinion between Dr. Gurbani and Dr. Kamel and referred appellant, along with a statement of accepted facts, a series of questions and the case file, to Dr. Charles Brennan, a Board-certified orthopedic surgeon, for an impartial medical examination. In a December 4, 2001 report, he provided an impression of resolved lumbosacral strain, chronic neck and right shoulder pain syndrome with cervical disc degeneration, chronic right shoulder tendinitis and right wrist carpal tunnel syndrome. Dr. Brennan opined that those conditions were unrelated to the employment injuries of 1995 or 1998 as both work injuries

¹ The record indicates that the Office also accepted a separate claim for a low back strain arising from a December 30, 1998 work incident. The Office assigned that claim file number A01-0353315.

² The record reflects that, on July 16, 2001, an Office medical adviser reviewed the file and advised that there was significant evidence to suggest a radiculopathy causally related to the 1995 neck injury and recommended ongoing physical therapy.

³ The record reflects that, in an August 8, 2001 report, Dr. Donald Waugh, a fitness-for-duty examiner for the employing establishment, diagnosed a chronic neck strain with degenerative disc at C4-5 and C6-7 and early carpal tunnel syndrome on the right side and recommended that appellant's job assignment be changed to avoid repetitive motion and lifting and twisting. In a January 23, 2001 report, Dr. Frank Bunch, an orthopedic surgeon, diagnosed chronic neck strain with cervical degenerative disc and early carpal tunnel on the right side and recommended that appellant avoid repetitive motion and lifting and twisting.

should have resolved within a period of a few months. He concluded that appellant's current symptoms were related to a degenerative process rather than an acute injury.

In a letter dated February 8, 2002, the Office informed appellant of the factual and medical evidence needed to support her recurrence claim.

In a letter dated February 14, 2002, the Office proposed a termination of benefits on the basis that the weight of the medical evidence, as established by Dr. Brennan's report, demonstrated that the injury-related conditions had resolved. However, there is no final termination decision of record.⁴

Appellant submitted evidence that included a January 14, 2002 report from Dr. Gurbani who opined that appellant remained disabled for repetitive work that involved the right shoulder and neck. She further opined that appellant's symptoms were causally related to the June 13, 1995 injury "by history." In a May 6, 2002 report, Dr. Gurbani noted that appellant was doing light-duty work six hours a day with no overhead or repetitive tasks. She noted continued complaints of shoulder and neck pain and opined that such were causally related to the 1995 work injury. The continuation of light-duty work was recommended.

By decision dated August 23, 2002, the Office denied appellant's recurrence claim on the basis that the medical evidence of file failed to support a causal relationship to the work injury of June 3, 1995.⁵

Appellant submitted a September 9, 2002 report in which Dr. Gurbani noted that appellant was continuing her light-duty work, six hours a day. She stated that appellant's right shoulder was worse in terms of overall strength, range of motion and pain symptoms while appellant's overall chronic pain syndrome remained the same. A repeat electromyogram (EMG) and magnetic resonance imaging (MRI) scan of the cervical spine and right shoulder was recommended to see whether there was any further progression or worsening given appellant's clinical history and symptoms. In a September 16, 2002 work tolerance evaluation form, Dr. Gurbani provided diagnoses of cervical discopathy, radiculopathy, right shoulder tendinopathy and chronic pain syndrome and advised light work of six hours daily with restrictions on lifting and overhead work. In an October 24, 2002 report, she noted the findings of the October 17, 2002 right shoulder MRI scan which, when compared with the previous MRI scan, remained an unchanged and persistent chronic osteoarthritis and tendinopathy with some shifting and changes in the mechanical alignment. The EMG study revealed a chronic denervation in the C5-6 distribution on the right consistent with a chronic persistent radiculopathy. Dr. Gurbani stated that those findings would explain appellant's pain and advised that appellant's shoulder pain seems to bring on the neck pain. She stated that appellant's work consists of repetitive neck and shoulder movements as in sorting mail and dropping them into

⁴ As there is no final termination decision before the Board, the Board does not have jurisdiction over this issue. 20 C.F.R. § 501.2(c).

⁵ The Board notes that the record contains another decision also dated August 23, 2003 denying appellant's recurrence claim which inadvertently contains an August 26, 2003 memorandum for the Director recommending a termination of benefits on the grounds that no residuals remained from the June 3, 1995 work injury.

bins almost repetitively for hours at a stretch and opined that appellant's symptoms were aggravated by her work. Dr. Gurbani continued to opine that appellant's symptoms were causally related to her 1995 injury by history. She noted that appellant's modified duties were taken away and recommended a modified work schedule of six hours with no repetitive or overhead tasks.

In a September 11, 2002 letter, appellant requested an oral hearing from the Office's decisions of August 23, 2002, which was held October 21, 2003. She testified that she had resumed full-time regular duty at some point following her injury and continued in that manner until her symptoms worsened in July 2001, when she worked light duty six hours daily. Appellant stated that the employing establishment terminated her light duty when the Office's denial decision was received and that she had declined their offer of returning to regular employment as it would have violated her restrictions.

In a May 5, 2003 report, Dr. Gurbani advised that appellant has: (1) severe discogenic cervical pain with right upper extremity radiculopathy; (2) severe intrinsic shoulder dysfunction due to moderately severe tendinopathy of the right shoulder muscles which include the supraspinatus, biceps and subscapularis tendons; (3) right carpal tunnel syndrome; and (4) a chronic pain syndrome as a result of the neck, shoulder and arm dysfunction as it relates to pain and limitation of movement. She noted that appellant was last seen on October 24, 2002 and that since October 2002 appellant has not been able to return to work as the employing establishment had taken away her modified work schedule in September or October 2002 and she was unable to work her regular duty. Dr. Gurbani diagnosed: (1) severe extensive cervical discogenic pain syndrome involving multiple levels of the cervical spine; (2) right shoulder dysfunction due to intrinsic derangement of shoulder anatomy; (3) chronic cervical radiculopathy; and (4) right carpal tunnel syndrome. She opined that appellant remained disabled for repetitive work which involved the right shoulder, right neck and right upper extremity and opined that appellant's current symptoms resulted from her 1995 work injury.

In an October 20, 2003 report, Dr. Gurbani noted that, while appellant was given some light-duty work for about a year, her employers demanded that she return to her original work, which she was unable to do, and appellant has been out of work for almost a year. She referenced her prior report and diagnoses and added that appellant has "severe carpal tunnel syndrome on the right and, therefore, has chronic pain syndrome in the neck, shoulder, arm and the wrist greatly aggravated by the nature of her work which is repetitive and involves the use of her dominant upper extremity." Dr. Gurbani stated that appellant has extensive cervical discogenic pain syndrome involving multiple levels of the cervical spine and the C6-7 nerve roots so that she has cervical radiculopathy; shoulder dysfunction due to intrinsic derangement of the shoulder, as documented on MRI scans of the shoulder, with severe tendinitis of the right shoulder muscles; and carpal tunnel syndrome on the right side, which greatly aggravates the symptomatology. She concluded that "by history her symptoms are causally related to the accident dated July 13, 1995 and remains her major cause for her present disability and continued need for medical management." Dr. Gurbani recommended light-duty work with no over-the-head or repetitive motions.

In a January 20, 2004 decision, an Office hearing representative affirmed the Office's August 23, 2004 decision denying the claimed recurrence on the grounds that the medical

evidence of record failed to demonstrate that her disability was causally related to the June 13, 1995 work injury. The hearing representative found that appellant's light-duty and modified work hours in August 2001 were not necessitated by her work injury.

In a January 3, 2005 letter, appellant requested reconsideration. She argued that her carpal tunnel condition was work related and, for this reason alone, the Office's finding that appellant no longer had a work-related injury was incorrect. The attorney additionally contended that the issue was whether appellant's multiple diagnoses were in any way proximately caused, aggravated, precipitated or accelerated by the 1995 injury.

By decision dated August 31, 2005, the Office denied modification of its prior decision. It found that appellant's continuing symptoms were due to her nonwork-related degenerative disc disease.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁶ This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁷

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.⁸ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury. Moreover, the physician's conclusion must be supported by sound medical reasoning.

For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship.⁹

⁶ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB ____ (Docket No. 04-887, issued September 27, 2004).

⁷ *Id.*

⁸ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁹ *Alice J. Tysinger*, 51 ECAB 638 (2000).

ANALYSIS

Appellant indicated that after her June 13, 1995 injury she eventually returned to full duty and worked full duty until July or August 2001, when she returned to modified work with restricted hours. Thereafter, she filed a notice of recurrence of disability. Appellant claimed that she sustained a recurrence of disability which necessitated her return to modified work with restricted hours due to her June 13, 1995 employment injury, which the Office accepted for contusion to the scalp and cervical strain.

It is well established that medical evidence must explain from a medical perspective how the current condition is related to the injury.¹⁰ Additionally, there must be medical evidence of bridging symptoms between appellant's present condition and the accepted injury to support the physician's conclusion of a causal relationship.¹¹ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.¹²

The medical evidence contemporaneous with appellant's claimed recurrence includes numerous reports from Dr. Gurbani. In a report of August 27, 2001, she diagnosed cervical disc disease with radiculopathy and reported that appellant could work light duty limited to six hours daily. In a January 14, 2002 report, Dr. Gurbani noted that appellant was performing light-duty work but continued to have shoulder and neck pain. In a September 16, 2002 work tolerance evaluation form, she diagnosed cervical discopathy, radiculopathy, right shoulder tendinopathy and chronic pain syndrome and recommended light work of six hours daily with restrictions on lifting and overhead work. In an October 24, 2002 report, Dr. Gurbani noted MRI scan and EMG findings of the right shoulder/arm and that appellant's modified work was taken away. She advised that appellant's neck and shoulder pain were aggravated by her repetitive duties and recommended that appellant be placed on modified work with limited hours and restrictions. In May 5 and October 20, 2003 reports, Dr. Gurbani diagnosed severe cervical discogenic pain syndrome involving multiple levels of the cervical spine; right shoulder dysfunction due to intrinsic derangement of shoulder anatomy; chronic cervical radiculopathy; and right carpal syndrome and opined that appellant remained disabled for repetitive work as it aggravated her symptomatology. Although in each of her reports, Dr. Gurbani concluded that appellant's current symptoms resulted from her 1995 work injury, she failed to provide any explanation for her conclusion that appellant's current condition was caused or aggravated by the employment injury. It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for a recurrence. A mere conclusion without the necessary medical rationale explaining how and why the physician believes that a claimant's accepted exposure would result in a diagnosed condition is not sufficient to meet the claimant's burden of proof. The medical evidence must also include rationale explaining how the physician reached the conclusion he or

¹⁰ *Tomas Martinez*, 54 ECAB 623 (2003).

¹¹ *See Ricky S. Storms*, 52 ECAB 349 (2001).

¹² *Id.*

she is supporting.¹³ Thus, Dr. Gurbani's reports are insufficient to establish appellant's claim. Moreover, the record does not contain a medical report providing a reasoned medical opinion that her claimed recurrence of disability was caused by the June 13, 1995 employment injury. Furthermore, the Board notes that, in September and December 2001, Dr. Kamel, a second opinion physician, and Dr. Brennan, an impartial medical examiner, respectively, had opined that appellant's injury-related condition had resolved.

The Board further notes that appellant's degenerative cervical and lumbar disc conditions, right shoulder conditions and right carpal tunnel syndrome conditions, upon which she is claiming a recurrence of disability, have not been accepted by the Office as employment related. For conditions not accepted by the Office as being employment related, it is appellant's burden to provide rationalized medical evidence sufficient to establish causal relationship,¹⁴ and a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion that the condition was caused by the employment injury and is unsupported by medical rationale.¹⁵ In this case, there is no medical evidence of record which provides a rationalized explanation regarding how any of appellant's current medical conditions was caused or aggravated by appellant's 1995 or 1998 work injuries or any other factor of appellant's federal employment.

In her reports from 2002 onward, Dr. Gurbani opined that, based upon appellant's history of her symptoms, appellant's conditions of severe discogenic cervical pain with right upper extremity radiculopathy; severe intrinsic shoulder dysfunction due to moderately severe tendinopathy of the right shoulder muscles; right carpal tunnel syndrome; and chronic pain syndrome were causally related to the June 13, 1995 work injury and advised that appellant was disabled from repetitive work involving the right shoulder, neck and arm. She originally recommended that appellant work light duty six hours daily and in her later reports recommended light-duty work with no over-the-head or repetitive motions. Dr. Gurbani's reports, however, lack sufficient rationale to meet appellant's burden of proof. While she opines that the employment injury caused appellant's current neck and right shoulder problems, her opinion lacks the certainty needed to establish her claimed recurrence or that her current degenerative neck condition and right shoulder condition was caused or aggravated by the employment injury.¹⁶ An opinion that a work-related injury several years prior caused another condition or disability to occur must be based on bridging evidence between the injury and the period of disability or other explanation.¹⁷ Dr. Gurbani provided no explanation for her conclusion of causal relationship.

¹³ *Beverly A. Spencer*, 55 ECAB ____ (Docket No. 03-2033, issued May 3, 2004).

¹⁴ *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁵ *See Albert C. Brown*, 52 ECAB 152 (2000).

¹⁶ *See John W. Montoya*, 54 ECAB 306 (2003) (the physician must provide an opinion on whether the employment incident described caused or contributed to claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rational).

¹⁷ *See Linda L. Mendenhall*, 41 ECAB 532 (1990).

Finally, to the extent that appellant is claiming that her right carpal tunnel condition is a result of her repetitive duties, this would be a claim for a new injury as this condition has not been accepted by the Office as employment related.¹⁸

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a recurrence of disability causally related to her accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 31, 2005 is affirmed.

Issued: August 1, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

¹⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997). In its August 31, 2005 decision, the Office advised appellant to file a claim for an occupational disease if she felt this condition was work related.