

Appellant was found totally disabled and appropriate compensation and medical benefits were paid.

Appellant returned to work full time as a modified city carrier on March 11, 2004. The limited-duty position was within the physical restrictions set by Dr. Alfred C. Shen, a treating Board-certified neurosurgeon. Appellant could work 8 hours but was limited in that she could reach up to 4 hours a day, reach above her shoulder up to 3 hours a day, operate a motor vehicle at work 2 hours a day, operate a motor vehicle to and from work 2 hours a day, perform repetitive movements with wrists and elbows limited to 3 hours a day and push/pull/lift up to 3 hours a day up to 10 pounds. On March 24, 2004 Dr. Shen reiterated that appellant could work in a limited-duty status.

In a report dated December 13, 2004, Dr. Shen noted that appellant had reached maximum medical improvement. He noted that she was totally disabled from November 22 through December 6, 2004 but was subsequently partially disabled. Appellant was restricted to no lifting over 15 pounds and no repetitive climbing, bending or stooping. Dr. Shen indicated that appellant should avoid overhead reaching and avoid repetitive extension of the neck.

On March 18, 2005 appellant filed a claim for compensation for the period February 28 to March 18, 2005. Subsequent claims were filed through September 16, 2005.

In a medical report dated February 28, 2005, Dr. Shen indicated that appellant was totally disabled starting February 28 through May 28, 2005. He conducted a physical examination and reviewed appellant's magnetic resonance imaging of the same date. Dr. Shen diagnosed cervical spondylosis at C5-6, status post C6-7 anterior cervical discectomy and fusion, C6 versus C7 radicular symptoms and bilateral shoulder supraspinatus tendinitis. He indicated that appellant's symptoms had worsened especially her neck symptoms, and she was experiencing lower cervical paraspinous pain with radiation into the shoulders and the arms. Dr. Shen submitted a work status slip reiterating that appellant was totally disabled from February 28 through May 28, 2005.

At Dr. Shen's request, Dr. Ivor J. Nazareth, a Board-certified neurologist, conducted an electromyogram and nerve conduction study on March 15, 2005. Dr. Nazareth concluded that there was no evidence of carpal tunnel syndrome or of any ulnar neuropathy at the elbows on either side. He found minimal acute and chronic denervation involving the cervical 7th roots bilaterally and the right 8th root.

In reports dated June 13 through August 8, 2005, Dr. Shen indicated that appellant was partially disabled with restrictions of no lifting over 15 pounds, no repetitive climbing, bending or stooping, avoidance of overhead reaching and repetitive above the shoulder extension of the arms and that she should avoid repetitive extension of the neck. He limited her work hours to four hours a day five days a week.

In a report dated August 26, 2005, Dr. Louis Stabile, a Board-certified neurosurgeon, noted that he first saw appellant on March 17, 2005. Appellant had a magnetic resonance imaging (MRI) scan which showed severe tendinitis and tendinosis with a signal change in the distal portion of the supraspinatus tendon but no rotator cuff tear. Dr. Stabile noted that

appellant continued to experience pain. On August 8, 2005 he treated her with injections. Dr. Stabile opined:

“I would like to state for the record that I do believe [appellant’s] job as a letter carrier and letter sorter puts her at significant risk for significant shoulder pathology. In my opinion, there is a reasonable degree of medical certainty, more probable than not, that causality for her shoulder problems is related to her work. I, therefore, respectfully request that evaluation and treatment of both shoulders be considered an industrial-related claim also.”

By letter dated October 3, 2005, the Office approved a change to Dr. John B. Dorsey, a Board-certified orthopedic surgeon, as appellant’s designated physician. Dr. Dorsey examined appellant on September 21 and October 25, 2005 and reviewed her records. In a report dated October 28, 2005, he diagnosed: (1) status post anterior cervical fusion at C6-7 with bilateral C7 and right C8 radiculopathy, confirmed by x-ray, MRI scan and electromyogram studies; (2) cervical degenerative disc disease at C4-5 and C5-6 with secondary foraminal encroachment, confirmed by x-ray and MRI scan studies; (3) impingement syndrome of the bilateral shoulders, (4) bilateral elbow/forearm sprain, resolved; and (5) right hand sprain, resolved. Dr. Dorsey stated that appellant’s continued disability was related to her work activities and the accepted injury of November 1, 2002. With regard to appellant’s disability status, he stated:

“In my opinion, [appellant] has a permanent partial disability. She was on temporary total disability from February 28 through June 14, 2005, based upon the history provided, the medical records review and her current physical examination. It is not unreasonable to expect her to have been off work for that period of time based upon the fact that she had an increase in her pain to the point where she could not continue working due to repetitive hand and neck movements while casing mail. The patient states that looking up and down mail slots caused an increase in her symptoms and that she could not continue working. Furthermore, while she was off work, she experienced some recovery to the point where she could resume working on a limited basis as of June 14, 2005 but suffered periods of disability due to neck pain due to her job.

“[Appellant’s] condition is permanent and stationary and has been since so deemed by Dr. Shen, her primary treating physician, on December 13, 2004; however, there was an exacerbation of pain which rendered her temporarily totally disabled from February 28 through June 14, 2005. Currently, she is disabled from her employment due to neck and arm pain all causally related to the repetitive nature of her injury as of November 1, 2002.”

In a report dated January 6, 2006, Dr. Dorsey noted that appellant’s neck condition was improving and she was released to return to work on a limited-duty basis beginning January 1, 2006. However, in a report dated January 25, 2006, he noted that her pain increased after appellant returned to work on January 3, 2006. Dr. Dorsey noted that appellant’s condition had deteriorated over the past three years and that she was unable to continue working.

In a decision dated February 15, 2006, the Office denied appellant's claim for compensation for the period February 28 to September 16, 2005.

LEGAL PRECEDENT

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹

Office regulations provide that 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.² This term also means an inability to work that takes place 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.³

ANALYSIS

The Office accepted that appellant sustained a cervical strain, right hand sprain, bilateral elbow and forearm strain and aggravation of degenerative disc disease C5-6. Following this injury, appellant resumed her employment by working as a modified city carrier. She alleges that she sustained a recurrence of total disability on February 28, 2005.

Appellant has not alleged a change in the nature and extent of her light-duty job requirements. Instead, she attributed her recurrence of disability to a change in the nature and extent of her employment-related condition. Appellant must thus provide medical evidence establishing that she was disabled due to a worsening of her accepted work-related condition.⁴

The medical documentation does not establish that there was a spontaneous worsening of appellant's medical condition which had resulted from the accepted injury that was severe enough to make her unable to perform her limited-duty position. In a February 28, 2005 report, Dr. Shen stated that appellant was temporarily totally disabled from February 28 through

¹ *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

² 20 C.F.R. § 10.5(x).

³ *Id.*

⁴ See *Jackie D. West*, *supra* note 1.

May 28, 2005 due to a worsening of her symptoms, especially her neck symptoms. He noted that this pain was aggravated by lifting, pushing and pulling. However, Dr. Shen did not address how appellant's condition worsened to the degree that she could not perform her limited-duty position. He did not explain how her limited-duty job assignments caused or contributed to her symptoms. While appellant alleged repetitive hand and neck movements, she did not submit evidence to establish that her limited-duty assignments exceeded her work restrictions. As of his June 13, 2005 report, Dr. Shen no longer considered appellant totally disabled but found that she was partially disabled and could work within specified restrictions.

Dr. Stabile offered an opinion that appellant's condition was related to her federal employment. However he provided no opinion with regard to whether appellant was totally disabled for the claimed period.

Dr. Dorsey's reports are also insufficient to establish total disability from February 28 to September 16, 2005. He examined appellant on September 21 and October 25, 2005. As the Office denied disability for the period February 28 to September 16, 2005, Dr. Dorsey examined appellant after the period under consideration in the instant claim. He reviewed appellant's medical records and conducted a physical examination. On October 28, 2005 Dr. Dorsey indicated that appellant was disabled from her employment. He noted that she was totally disabled from February 28 through June 14, 2005 based upon the history provided and the medical records. Dr. Dorsey states that it was "not unreasonable to expect her to have been off work for that period of time based upon the fact that she had an increase in her pain to the point where she could not continue working due to repetitive head and neck movements while casing mail." However, Dr. Dorsey did not examine appellant during that period of time and his statement is speculative. An award of compensation may not be based on surmise, conjecture or speculation.⁵ His medical reports are insufficient to establish that her work assignments exceeded her restrictions. Appellant has failed to provide medical evidence that establishes that she was unable to perform her limited-duty position from February 28 to September 16, 2005. The Office properly denied appellant's claim for a recurrence of total disability.

CONCLUSION

The Board finds that appellant has failed to establish that she is entitled to compensation for the period February 28 to September 16, 2005.

⁵ *Calvin E. King*, 51 ECAB 394, 401 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 15, 2006 is affirmed.

Issued: August 23, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board