



2002 the Office accepted appellant's claim for impingement syndrome, left shoulder.<sup>1</sup> The Office paid appellant appropriate medical and compensation benefits. On August 19, 2003 appellant underwent surgery. She returned to limited-duty work on September 25, 2003. On February 23, 2004 appellant returned to her regular work duties.

On July 6, 2004 appellant filed a claim for a recurrence, alleging a recurrence of the accepted injury to her left shoulder on or about July 6, 2004. She indicated that the impingement syndrome increased as she continued to work and that she could no longer tolerate working. The employing establishment controverted the recurrence claim, alleging that appellant was released to full duty with no restrictions and that the factual and medical evidence does not establish that the recurrence resulted from the accepted injury.

By letter dated August 3, 2004, the Office requested that appellant submit further information. In a statement dated September 2, 2004, appellant responded and described her employment duties. She indicated that she believed that she sustained a recurrence of disability causally related to the employment injury because the symptoms were the same as before. Appellant also submitted prescriptions for physical therapy dated April 2 through November 22, 2003. She submitted notes by a nurse practitioner dated from July 16 through August 9, 2004 indicating that she was treating appellant for left shoulder pain for an August 1, 2004 work injury and that appellant was placed on light duty. These notes were countersigned by Dr. J. Rob Hutchinson, a Board-certified family practitioner.

By decision dated September 21, 2004, the Office denied appellant's claim for recurrence as it found that the evidence did not support a medical connection between the original accepted condition of left shoulder impingement and her claim for recurrence of disability.

By letter dated September 28, 2004, appellant requested reconsideration. In support thereof, she submitted reports and progress notes by Dr. Craig Storck, her chiropractor, dated August 19 to September 24, 2004. In these reports, Dr. Storck indicated that he treated appellant for moderately severe constant pain in both shoulders that was made worse by repetitious movements and stress. He opined that appellant was partially temporarily disabled in that she could do no repetitive movements involving any upper extremity.

By decision dated January 12, 2005, the Office denied appellant's claim for a recurrence of her left shoulder injury. The Office noted that the reports of appellant's chiropractor were not sufficient to establish a recurrence.

On February 10, 2005 appellant requested reconsideration. In support thereof, she submitted a January 18, 2005 medical report by Dr. Hutchinson wherein he indicated that appellant had left shoulder pain with impingement symptoms and supraspinatus tendon inflammation. Dr. Hutchinson noted that in July 2004 appellant had a recurrence of her left shoulder pain while doing her work activities. He recommended that appellant be placed on work restrictions with bilateral upper extremity of no pushing, pulling or reaching above the shoulder to do work activities.

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<sup>1</sup> The Office had previously accepted that appellant suffered from right shoulder tendinitis and right shoulder impingement syndrome.

By decision dated May 2, 2005, the Office reviewed appellant's claim on the merits but denied modification of the decision.

On June 27, 2005 appellant again requested reconsideration. In support thereof, she submitted a June 13, 2005 medical report by Dr. John W. Ellis, a Board-certified family practitioner. In this report, Dr. Ellis reviewed appellant's medical and personal history. He examined appellant and determined that she had impairments based on bilateral shoulder impingement syndrome status post multiple surgeries on the right, bilateral shoulder girdle strain/tendinitis and bilateral bicipital tendinitis. Dr. Ellis opined that these impairments arose out of appellant's employment. Specifically, he noted that appellant's complaints in her upper extremities are a continuation of her work-related injury to her right shoulder on January 1, 1999 and her left shoulder on July 1, 2001. Dr. Ellis opined that due to these injuries appellant has been temporarily totally disabled to work since September 25, 2004.

By decision dated September 5, 2005, the Office denied reconsideration after reviewing appellant's case on the merits.<sup>2</sup>

### **LEGAL PRECEDENT**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in medical condition which had resulted from a previous injury or illness without intervening injury or new exposure to the work environment that caused the illness.<sup>3</sup>

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted employment injury.<sup>4</sup> Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her employment injury.<sup>5</sup> 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

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<sup>2</sup> The Board notes that appellant submitted new evidence with her appeal. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Therefore, the evidence presented after the September 5, 2005 decision cannot be considered by the Board. Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

<sup>3</sup> 20 C.F.R. § 10.5(x).

<sup>4</sup> *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

<sup>5</sup> *Carmen Gould*, 50 ECAB 502 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

related to the employment injury.<sup>6</sup> Moreover, the physician's conclusion must be supported by sound medical reasoning.<sup>7</sup>

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>8</sup> In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.<sup>9</sup> 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.<sup>10</sup>

### ANALYSIS

Appellant has not presented rationalized medical evidence sufficient to support her claim that she sustained a recurrence of her accepted left shoulder injury on July 6, 2004. Initially, the Board notes that the report of Dr. Storck, appellant's chiropractor, is not considered probative medical evidence in that a chiropractor is considered a physician for the purposes of the Federal Employees' Compensation Act only when he treats appellant for a diagnosis of subluxation as shown by x-ray.<sup>11</sup> As there is no evidence that Dr. Storck was treating appellant for a subluxation as diagnosed in an x-ray, he is not considered a physician under the Act.<sup>12</sup> Dr. Hutchinson noted that appellant had a recurrence of left shoulder pain while doing her work activities. Pain is generally not a compensable diagnosis.<sup>13</sup> A notation that appellant had pain in her left shoulder in 2004, without more by way of medical rationale explaining the origin of and relationship, if any, to the employment injury, does not establish that it was a recurrence of her accepted left shoulder impingement syndrome.

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<sup>6</sup> *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

<sup>7</sup> *Alfredo Rodriguez*, 47 ECAB 473 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

<sup>8</sup> *See Ricky S. Storms*, *supra* note 6; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

<sup>9</sup> For the importance of bridging information in establishing a claim for a recurrence of disability, *see Richard McBride*, 37 ECAB 748 at 753 (1986).

<sup>10</sup> *See Ricky S. Storms*, *supra* note 6; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>11</sup> 5 U.S.C. § 8101(2). Section 8101(2) of the Act provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>12</sup> *See Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>13</sup> *Paul D. Weiss*, 36 ECAB 720 (1985); *John L. Clark*, 32 ECAB 1618 (1981).

The Board also finds that the medical report of Dr. Ellis is not sufficient to establish a recurrence. Although Dr. Ellis opined that appellant's complaints in her left shoulder are a continuation of the July 1, 2001 accepted injury, his opinion does not constitute rationalized medical evidence that establishes such recurrence. Dr. Ellis basically summarizes the medical evidence and appellant's history and concludes that there is a recurrence. There is no evidence of bridging symptoms between the recurrence and the accepted injury. Furthermore, the physical examination conducted by Dr. Ellis did not show any objective evidence of a left shoulder disability. Finally, Dr. Ellis opines that appellant has been totally disabled since September 25, 2004; however, appellant filed a claim alleging a recurrence of disability on July 6, 2004. The opinion of Dr. Ellis does not indicate that appellant was totally disabled as of that date.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by his employment are sufficient to establish a recurrence.<sup>14</sup>

Appellant has not submitted any rationalized medical evidence establishing that she sustained a recurrence of disability on July 6, 2004 causally related to her accepted employment injury to her left shoulder. The Board finds that appellant has not met her burden of proof.

### **CONCLUSION**

The Office properly found that appellant had not established a recurrence of disability on July 6, 2004 causally related to her accepted left shoulder injury.

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<sup>14</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated September 5 and May 2, 2005 are affirmed.

Issued: December 27, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board