



bilateral elbow conditions causally related to factors of her employment. In a written statement accompanying the form, appellant alleged that these conditions were caused by years of repetitive computer usage.<sup>1</sup> The Office accepted the claim for right arm lateral and medial epicondylitis and right upper extremity repetitive strain. Appellant was off work for intermittent periods, and returned to work on June 7, 2004. Dr. Abid Haq, Board-certified in internal medicine and the attending physician, agreed to release appellant to return to a modified supervisory job in which she would be aided by the use of a voice-activated computer software program.

On July 2, 2004 appellant filed a claim for recurrence of disability, alleging that she was totally disabled due to her accepted upper extremity and epicondylitis conditions as of July 2, 2004. In a statement accompanying the form, appellant asserted that the Dragon Naturally Speaking voice-activated software system, with which she had been provided to assist her with her duties when she returned to work, had not lessened her pain. She asserted that she experienced significant pain in her elbows, thumbs, fingers, hands, shoulders and left arm.

In a report dated September 16, 2004, Dr. Haq diagnosed right hand and right wrist strain, right thumb de Quervain's tenosynovitis; right elbow epicondylitis, medial and lateral; right shoulder tendinitis; and chronic regional pain syndrome, right upper extremity. He stated:

“At rest she complains of pain involving her right shoulder, right hand and right thumb of slight intensity and constant frequency. With computer use, driving, grasping, hand motion, pulling, pushing, reaching and lifting, the right shoulder right trapezius, right elbow, right forearm, right wrist, right hand and right thumb pain is of slight to moderate intensity and constant frequency.... She states that even using the Dragon voice-activated software has not helped. [Appellant] states that sitting in the chair for more than 20 minutes causes the right shoulder pain to worsen.... She states that last year, when she worked at manual data entry, the bilateral upper extremity pain would commence after 10 to 15 minutes of repetitive hand activity. However, now the bilateral upper extremity pain starts with minimal use of the upper extremities. She states that the voice-activated software has not improved the quality of her work life or decrease her pain as she had expected. She feels the returning to work even though it has been modified has caused a recurrence of her old injury.”

Dr. Haq concluded that it was more likely than not that appellant's right hand, right thumb, right wrist, right elbow and right shoulder pain was a result of sitting at her work using the Dragon voice-activated transcription system. He characterized this as an exacerbation or flare-up of her preexisting right hand, wrist, forearm and shoulder injury, which worsened when she went back to her work as a supervisor using the new voice-activated software. Dr. Haq advised that appellant's work activity exacerbated her preexisting conditions. However, he opined that appellant did not have significant objective findings, and that the subjective pain was out of proportion to the objective findings. Dr. Haq felt that she would not be able to return to her modified duties because of unrelenting pain in her bilateral upper extremities. He also

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<sup>1</sup> The Office also accepted a claim for left wrist/left arm strain on June 11, 1999.

asserted that, due to her development of chronic regional pain syndrome, appellant would not be able to resume any type of work.

By decision dated September 29, 2004, the Office denied appellant compensation for a recurrence of her accepted bilateral elbow, right arm and right upper extremity conditions. The Office found that appellant failed to submit medical evidence sufficient to establish that the claimed conditions as of July 2, 2004 were caused or aggravated by her accepted conditions.

By letter dated February 10, 2005, appellant requested reconsideration.

In a report dated January 20, 2005, Dr. Haq essentially reiterated his previous findings and conclusions. He stated that appellant had developed a chronic myofascial pain syndrome, resulting in her symptoms of neuralgia and myalgia. Dr. Haq advised that this condition had prevented appellant from pursuing any meaningful work activities. Appellant was currently unable to tolerate more than five minutes of any activity involving her right hand, wrist, arm, elbow and shoulder. Dr. Haq asserted that, despite the best intentions of her employer, in providing work modifications, she was unable to work because of the unrelenting pain. He reiterated that, although there were no significant objective findings and negative diagnostic tests, she still suffered from considerable pain and was therefore unable to work.

By decision dated March 8, 2005, the Office denied modification of the September 29, 2004 Office decision.

On August 5, 2005 appellant requested reconsideration. Appellant did not submit any additional medical evidence.

By decision dated October 11, 2005, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

### **LEGAL PRECEDENT -- ISSUE 1**

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and who supports that conclusion with sound medical reasoning.<sup>2</sup>

### **ANALYSIS -- ISSUE 1**

In the instant case, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her condition or disability as of July 2, 2004 to her accepted employment injury. For this reason, she has not discharged her burden of proof to

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<sup>2</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

establish her claim that she sustained a recurrence of disability as a result of her accepted employment conditions.

In support of her recurrence claim, appellant submitted the September 16, 2004 report of Dr. Haq, who noted appellant's complaints of frequent right shoulder, right hand, right elbow, right forearm, right wrist and right thumb pain. These symptoms were aggravated by computer use, grasping, hand motion, pulling, pushing, reaching and lifting. In addition, the Dragon voice-activated software had not helped to decrease appellant's pain, as she had hoped. She related that her bilateral upper extremity pain started with minimal use of the upper extremities, and that even sitting in her chair for more than 20 minutes caused a worsening of her right shoulder pain to worsen.

Dr. Haq stated that appellant's work activity exacerbated her preexisting conditions, which were aggravated by her work activities. Dr. Haq stated that it was "more likely than not" that appellant's right hand, right thumb, right wrist, right elbow and right shoulder pain resulted from sitting at her work while using the Dragon voice-activated transcription system. He felt that she would not be able to return to her modified duties because of unrelenting pain in her bilateral upper extremities and because of the development of chronic regional pain syndrome. Dr. Haq diagnosed right hand and right wrist strain, right thumb de Quervain's tenosynovitis; right elbow epicondylitis, medial and lateral; right shoulder tendinitis; and chronic regional pain syndrome, right upper extremity. Therefore his report provided a diagnosis of appellant's current condition and indicated generally that she complained of disabling bilateral elbow, right arm and right upper extremity pain as of July 2, 2004 but did not constitute a probative, rationalized medical opinion sufficient to establish that appellant's disability as of July 2, 2004 was causally related to her accepted bilateral elbow, right arm and right upper extremity conditions. Thus, Dr. Haq's September 16, 2004 report did not establish a worsening of appellant's condition, and therefore did not constitute probative, rationalized evidence demonstrating that a change occurred in the nature and extent of the injury-related condition.<sup>3</sup> Appellant thus failed to submit evidence to show that she sustained a worsening of her original injuries or was totally disabled from all work after July 2, 2004. As appellant has not submitted medical evidence sufficient to establish that she sustained a recurrence of her work-related bilateral elbow, right arm and right upper extremity conditions, the Office properly denied compensation in its September 29, 2004 decision.

Following the September 29, 2004 decision, appellant submitted Dr. Haq's January 20, 2005 report in which he reiterated his opinion that appellant had developed chronic myofascial pain syndrome which prevented her from engaging in any meaningful work activities. He advised that appellant was currently unable to tolerate more than five minutes of any activity involving her right hand, wrist, arm, elbow and shoulder. This report, however, essentially reiterated the findings and conclusions he outlined in his September 16, 2004 report. Dr. Haq's opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.<sup>4</sup> Moreover, his opinion is of limited probative value for the further reason that it is generalized in nature and equivocal in that he only noted

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<sup>3</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>4</sup> *Id.*

summarily that although there were no significant objective findings and negative diagnostic tests, she still suffered from considerable pain and was therefore unable to work. Further, his diagnosis of pain related to chronic pain syndrome is not relevant, as this pertains to a new injury.

Dr. Haq's January 20, 2005 report did not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment-related conditions and her alleged recurrence of disability. Causal relationship must be established by rationalized medical opinion evidence. Dr. Haq's report, however, failed to provide an explanation in support of appellant's claim that she was disabled as of July 2, 2004. Neither of his reports indicated a worsening of appellant's condition, and therefore do not constitute probative, rationalized evidence demonstrating that a change occurred in the nature and extent of the injury-related condition.

Accordingly, as appellant has not submitted medical evidence supporting her claim that she sustained a recurrence of her employment-related bilateral elbow, right arm and right upper extremity conditions as of July 2, 2004, appellant failed to meet her burden of proof. The Board therefore affirms the March 8, 2005 Office decision affirming the September 29, 2004 Office decision denying compensation based on a recurrence of her work-related disability.

### **LEGAL PRECEDENT -- ISSUE 2**

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by constituting relevant and pertinent evidence not previously considered by the Office.<sup>5</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>6</sup>

### **ANALYSIS -- ISSUE 2**

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not constituted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted is not pertinent to the issue on appeal. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.<sup>7</sup> Appellant has not submitted new medical evidence which addresses the relevant issue in this case: whether appellant sustained a recurrence of her work-related disability as of July 2, 2004. Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by

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<sup>5</sup> 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

<sup>6</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

<sup>7</sup> *See David J. McDonald*, 50 ECAB 185 (1998).

the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

**CONCLUSION**

The Board finds that appellant has not met her burden to establish that she was entitled to compensation for a recurrence of disability as of July 2, 2004 causally related to her accepted bilateral elbow, right arm and right upper extremity conditions. The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 11 and March 8, 2005 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: June 2, 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