

of her job, which included lifting, loading, sweeping and dispatching large amounts of mail.¹ Appellant did not stop working for the employing establishment but continued in a limited-duty position. Beginning in February 2005, her limited-duty position restricted her from lifting more than 10 pounds or working at or above shoulder level.

Appellant sought treatment from attending physicians who diagnosed a cervical sprain or strain and recommended work restrictions.² She participated in physical therapy treatment sessions on a regular basis.

The results of x-ray testing of appellant's cervical spine obtained in December 2004 revealed minimal to mild degenerative changes and the results of magnetic resonance imaging (MRI) scan obtained in February 2005 showed a small right C5-6 disc herniation.³

The Office accepted that appellant sustained an employment-related cervical sprain/strain and paid compensation for periods of disability.

In February 2005, appellant was diagnosed with myofascial pain syndrome by Dr. Scott A. Young, an attending Board-certified orthopedic surgeon, and Dr. David P. Ushman, an attending Board-certified preventive medicine physician.

Appellant stopped work for the period March 8 to April 22, 2005 and claimed that she sustained a recurrence of total disability during this period due to her accepted employment injury.⁴

Appellant submitted a March 8, 2005 form report in which Dr. Ushman indicated that she was authorized to be off work from March 8 to 13, 2005. He listed the "date of injury" as November 12, 2004 and stated that her modified-duty restrictions were no lifting more than 10 pounds and no working at or above shoulder level. In form reports dated March 15 and 29, 2005, Dr. Ushman diagnosed myofascial pain syndrome and indicated that appellant was authorized to be off work from March 8 to April 12, 2005.⁵ In a report dated March 14, 2005, Dr. Paul O. Jacobs, an attending Board-certified internist, diagnosed myofascial pain syndrome and indicated that appellant was authorized to be off work on March 14, 2005 until the end of her shift.

¹ Appellant indicated that she first became aware of her condition and its relation to her employment on November 12, 2004.

² Some of the earlier medical reports contained a diagnosis of right shoulder sprain or strain, but a number of these reports also indicated that appellant had normal range of motion of her right shoulder.

³ The results of MRI scan of appellant's right shoulder in January 2005 revealed some minor signal abnormality within the supraspinatus tendon compatible with tendinopathy but no evidence of rotator cuff tear or glenoid labral.

⁴ Appellant performed no work for the period March 8 to April 11, 2005 and, therefore, his claim is for total disability during this period. He performed part-time work during the period April 12 to 22, 2005 and, therefore, his claim is for partial disability during this period.

⁵ Dr. Ushman now indicated that under the portion for modified-duty restrictions that appellant was not eligible for modified work.

In a report dated March 9, 2005, Dr. Ushman stated that appellant had myofascial pain syndrome in her upper back and neck which was based on examination findings of spasm and tenderness of the muscles. He indicated that she needed to “rest muscles” beginning March 8, 2005 through an estimated date of March 31, 2005. In a report dated March 15, 2005, Dr. Ushman stated that appellant appeared on that date complaining of myofascial pain in the “right upper quadrant involving her shoulder and neck on the right side.” He stated that she reported pain in this area when she performed her limited-duty work and diagnosed myofascial pain syndrome. Dr. Ushman indicated that he did not know whether appellant could return to her job on a full-time basis, but noted that he would have to see whether he could “get the pain under control.” He stated, “At this point, we will just authorize two weeks time loss to give her a chance to rest.”

In a report dated March 29, 2005, Dr. Ushman indicated that appellant’s examination was essentially normal, including range of motion and strength testing and indicated that he was unable to palpate any specific increased muscle tension in her neck or upper back. He stated that an MRI scan of the neck and right shoulder was essentially normal and diagnosed myofascial pain. Dr. Ushman indicated that he would continue physical therapy and “extend [appellant’s] time loss.” He noted that, if nerve conduction studies were normal he would request a mental health evaluation.⁶ In reports dated April 6, 2005, Dr. Ushman stated that appellant was authorized to be off work from April 6 to 11, 2005, that she could perform limited-duty work for 4 hours per day (with no lifting more than 10 pounds) through April 18, 2005 and that she then could perform limited-duty work on a full-time basis beginning April 19, 2005.⁷

In a June 8, 2005 letter addressed to the Office, Dr. Ushman stated:

“You asked specifically whether [appellant’s] time loss during the period of March 30 through April 30, 2005 was due to cervical strain or myofascial pain syndrome.

“I have reviewed our medical records. [Appellant’s] diagnosis during that period of time on the Kaiser Medical Record was in fact myofascial pain syndrome. Therefore, her time loss was due to this medical problem.”

By decision dated July 15, 2005, the Office denied appellant’s claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability between March 8 and April 22, 2005 due to her accepted employment injury.

⁶ Dr. Ushman arranged to have electromyogram (EMG) and nerve conduction studies performed on appellant’s right upper extremity on April 13, 2005. The results of the studies were normal with no evidence of cervical radiculopathy or median/ulnar neuropathy.

⁷ In reports dated April 27, 2005, Dr. Ushman discussed the normal results of diagnostic testing and the failure of various treatment modalities and stated that appellant could return to her regular work. In reports dated May 4, 2005, Dr. Jeffrey S. Pierson, an attending Board-certified internist, indicated that the results of his examination was entirely normal, including the results of range of motion, motor and sensory testing and stated that appellant could return to her regular work.

LEGAL PRECEDENT

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a limited-duty position or the medical evidence of record establishes that she 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 disability and show that 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 limited-duty job requirements.⁸

ANALYSIS

The Office accepted that appellant sustained a cervical sprain/strain due to her work duties as an automation clerk. She stopped work for the period March 8 to April 22, 2005 and claimed that she sustained a recurrence of disability due to her accepted employment injury. The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of disability between March 8 and April 22, 2005 due to her accepted employment injury, cervical sprain/strain.

Appellant submitted several reports in which Dr. Ushman, an attending Board-certified preventive medicine physician, diagnosed myofascial pain syndrome and indicated that she was totally or partially disabled for various periods.

In a report dated March 9, 2005, Dr. Ushman stated that appellant had myofascial pain syndrome and noted that she needed to “rest muscles” beginning March 8, 2005 through an estimated date of March 31, 2005. In form reports dated March 15 and 29, 2005, Dr. Ushman diagnosed myofascial pain syndrome and indicated that appellant was authorized to be off work from March 8 to April 12, 2005.⁹ In a report dated March 15, 2005, Dr. Ushman again diagnosed myofascial pain syndrome and stated, “At this point, we will just authorize two weeks time loss to give her a chance to rest.” In a report dated March 29, 2005, Dr. Ushman indicated that appellant’s physical examination was essentially normal and that an MRI scan of her neck and right shoulder was essentially normal, but he nevertheless indicated that he would “extend her time loss.”¹⁰ In a June 8, 2005 letter, Dr. Ushman stated that appellant’s disability between March 30 and April 30, 2005 was due to her myofascial pain syndrome.

The Board notes that Dr. Ushman suggested that appellant had disability between March 8 and April 22, 2005 due to an employment-related myofascial pain syndrome. However

⁸ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁹ Dr. Ushman later indicated in a form report dated April 6, 2005, that appellant was authorized to be off work from April 6 to 11, 2005, that she could perform limited-duty work for 4 hours per day (with no lifting more than 10 pounds) through April 18, 2005 and that she then could perform limited-duty work on a full-time basis beginning April 19, 2005.

¹⁰ Dr. Ushman indicated that appellant’s range of motion and strength testing were normal and that he was unable to palpate any specific increased muscle tension in her neck or upper back. He later indicated that the EMG and nerve conduction testing of appellant’s right upper extremity was normal.

he did not provide a clear, rationalized medical opinion relating her claimed recurrence of disability to an employment-related condition. Appellant's claim was accepted for cervical sprain/strain rather than myofascial pain syndrome. Dr. Ushman did not explain the medical process through which she could have sustained disabling employment-related myofascial pain syndrome or through which she could have sustained a recurrence of disability due to her accepted cervical sprain/strain.¹¹ Such medical rationale is necessary in the present case because, as noted by Dr. Ushman, appellant exhibited essentially normal findings on examination and on MRI scan, EMG and nerve conduction testing of her neck and right upper extremity.¹² He repeatedly mentioned her reported pain complaints and his recommendation for her to take time off and "rest" appears to have been mostly based on appellant's subjective complaints rather than any objective findings.¹³

For these reasons, appellant did not show a change in the nature and extent of her injury-related condition or a change in the nature and extent of her limited-duty job requirement and the Office properly denied her claim that she sustained a recurrence of disability between March 8 and April 22, 2005 due to her accepted employment injury.¹⁴

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability between March 8 and April 22, 2005 due to her accepted employment injury.

¹¹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

¹² Dr. Ushman stated in his March 9, 2005 report, that appellant had myofascial pain syndrome in her upper back and neck based on examination findings of spasm and tenderness of the muscles. However, it is unclear at which examination he recorded such findings as the March 9, 2005 report does not describe any particular office visit by appellant.

¹³ The Board notes that there is no evidence that appellant's limited-duty work was changed.

¹⁴ The record also contains March 14, 2005 report in which Dr. Jacobs, an attending Board-certified internist, diagnosed myofascial pain syndrome and indicated that appellant was authorized to be off work on March 14, 2005 until the end of her shift. However, Dr. Jacobs provided no opinion on the cause of her disability. Appellant submitted additional evidence after the Office's July 15, 2005 decision, but the Board cannot consider such evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' July 15, 2005 decision is affirmed.

Issued: March 9, 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