

an aircraft, she slipped on the top step and fell. Appellant's claim was accepted for cervical spine strain.

On July 21, 2004 appellant filed a recurrence of disability claim causally related to the June 5, 2000 employment injury commencing that date. She stated that she could not lift her toolbox or other items. By letter dated August 18, 2004, the Office requested that appellant submit further information. No information was received in a timely fashion.

By decision dated September 17, 2004, the Office denied appellant's claim for a recurrence of disability.

Subsequently, appellant submitted a July 22, 2004 report by Dr. Steven M. Pittston, a chiropractor, who noted that appellant was a new patient who presented herself complaining of neck and upper back pain that radiated through to her chest intermittently. He noted that appellant attributed her condition to a workers' compensation injury which occurred in 2000. Dr. Pittston concluded:

"I found positive right lateral flexion and positive left lateral flexion with positive flexion and extension, primarily pointing to the right cervical spine. She also had point tenderness to the lower cervical and mid-thoracic spine, with joint dysfunction from motion analysis. There were also tender and sore inflamed tissues discovered upon palpitation."

In a September 8, 2004 report, Dr. Pittston noted that appellant was injured on June 5, 2000 when she was stepping down a ladder from the cockpit to a lower level and slipped and landed on her mid-back to neck region. He diagnosed an axio-compression of the disc in her upper thoracic and lower cervical spine, causing nerve root compression and radiating pain around her chest occasionally and also gives her continued cervical pain.

On September 27, 2004 appellant requested a review of the written record. In a decision dated March 4, 2005, the hearing representative found Dr. Pittston's reports insufficient to establish a recurrence of disability and affirmed the September 17, 2004 decision.

By letter dated July 14, 2005, appellant requested reconsideration. Appellant contended that her neck injury caused ongoing problems which eased after she was treated by Dr. Pittston.

By decision dated September 8, 2005, the Office denied reconsideration without reviewing the case on the merits.

LEGAL PRECEDENT -- ISSUE 1

Section 10.5(x) of the Office's regulations defines recurrence of disability in part as follows:

"[A]n 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.”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.²

Where a claimant alleges a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which she claims compensation is causally related to the accepted injury.³ In addition, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician’s conclusion of a causal relationship.⁴

ANALYSIS -- ISSUE 1

The Board finds that appellant has failed to submit sufficient medical opinion which relates her back condition on July 21, 2004 to her accepted cervical spine strain of June 5, 2000. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment injury.

Appellant submitted reports by her chiropractor, Dr. Pittston, in support of her claim. The Board notes that section 8101(2) of the Federal Employees’ Compensation Act provides that 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.⁵ Because the documentation from appellant’s chiropractor shows no diagnosis of a spinal subluxation as demonstrated by x-ray, Dr. Pittston is considered a physician as defined under the Act. As such, his reports do not constitute competent medical opinion. The Board will therefore affirm the Office’s decision denying appellant’s claim for a recurrence of disability commencing July 21, 2004.

¹ 20 C.F.R. § 10.5(x).

² *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

³ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

⁴ For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 738 (1986).

⁵ 5 U.S.C. § 8101(2).

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁶

ANALYSIS -- ISSUE 2

In the instant case, appellant did not make any argument that the Office erroneously applied or interpreted a specific point of law or advance a legal argument not previously considered by the Office. Furthermore, she did not submit any new evidence in support of her recurrence claim. Her contentions concerning her cervical condition were not supported by the submission of probative medical evidence. Accordingly, the Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, did not raise any substantive legal questions and failed to submit any relevant and pertinent new evidence not previously reviewed by the Office. Therefore, the Office properly denied reconsideration.

CONCLUSION

The Board finds that the Office properly determined that appellant failed to establish that she sustained a recurrence of disability on July 21, 2004 causally related to her accepted cervical spine strain of June 5, 2000. Furthermore, the Board finds that the Office properly refused to reopen appellant's claim for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b)(2)(iii).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 8 and March 4, 2005 are affirmed.

Issued: May 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