

**United States Department of Labor
Employees' Compensation Appeals Board**

D.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Newbury, OH, Employer**

)
)
)
)
)
)
)
)

**Docket No. 07-879
Issued: September 5, 2007**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 12, 2007 appellant filed a timely appeal from the January 16, 2007 merit decision of the Office of Workers' Compensation Programs' hearing representative, who affirmed the denial of her recurrence claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of appellant's claim.

ISSUE

The issue is whether appellant sustained a recurrence of disability beginning January 28, 2006 causally related to her accepted employment injuries.

FACTUAL HISTORY

On April 26, 2002 appellant, then a 36-year-old rural carrier associate, filed a claim alleging that her left shoulder condition, with spurs, was a result of her federal employment: "I have been receiving treatment for carpal tunnel, trigger thumb and de Quervain's tenosynovitis

of the left arm and after having the surgeries for all three my arm still continued to hurt.”¹ She stopped work on April 23, 2002. The Office accepted appellant’s claim for impingement syndrome of the left shoulder.² On January 31, 2005 she underwent an arthroscopic subacromial decompression and arthroscopic Mumford procedure on her left shoulder. Appellant returned to full duty without restrictions on July 23, 2005.

On November 23, 2005 appellant filed a claim alleging a recurrence of disability due to her left shoulder injury. She complained that performing the same duties that caused her original injury was currently causing swelling, soreness, sharp pains, aching and limited mobility. Appellant alleged that her current condition was related to the original injury because she was performing the same duties with a shoulder that did not have enough time to heal or regain full range of motion. On January 31, 2006 she filed a claim for compensation for wage loss beginning January 28, 2006.

Dr. Gregory C. Sarkisian, appellant’s orthopedic surgeon, reported on January 31, 2006 that appellant presented with multiple complaints, mainly left wrist pain and swelling of the hand. After describing his findings on physical and x-ray examination, he stated that appellant was unable to work because of severe pain.

On February 14, 2006 Dr. Sarkisian reported that a magnetic resonance imaging scan showed some persistent inflammation at the acromioclavicular (AC) joint. He reported that appellant had some tendinitis present and that the AC joint appeared to still have some minimal impingement of the rotator cuff. Dr. Sarkisian also noted some minimal arthritic changes at the AC joint. He stated that appellant did not have a cuff tear, but if an injection did not offer her great relief, he stated that he would consider repeat surgical intervention.

On February 28, 2006 Dr. Sarkisian reported as follows:

“[Appellant] admits that the injection in her shoulder did not help much at all. She still has pain mainly at the AC joint level and decreased range of motion. I do feel that [appellant] would benefit from a diagnostic and probable therapeutic repeat [arthroscopic subacromial decompression] and Mumford to decrease the impingement in her shoulder and to reevaluate the rotator cuff. She has failed other options and I feel that this is something that may very well help her long term. I also feel that this is certainly related to [appellant’s] initial problem of impingement from her diagnosis in 2002. I feel that she has aggravated her shoulder again by doing her activities at work and this should be part of her workmen’s compensation claim.”

On March 21, 2006 Dr. Sheldon Kaffen, an orthopedic surgeon and Office referral physician, offered a different opinion. He reported that, although appellant complained of severe

¹ Appellant filed an occupational disease claim in 2001, which the Office accepted for bilateral carpal tunnel syndrome, bilateral de Quervain’s synovitis and bilateral trigger thumbs. She underwent surgeries and returned to restricted duty on February 1, 2002. OWCP File No. 092006370.

² OWCP File No. 092022173.

pain, there were no objective findings to indicate that she continued to suffer residuals of the accepted left shoulder condition. Dr. Kaffen stated:

“Based on the current examination and review of the medical documentation, it is my opinion that there are no objective residuals to indicate that the claimant continues to suffer residuals of carpal tunnel syndrome of the right wrist, de Quervain’s tenosynovitis of the right wrist and right trigger thumb. In addition, it is my opinion, the claimant no longer exhibits objective findings to indicate she continues to experience residuals of the accepted condition of carpal tunnel syndrome of the left wrist, left trigger thumb and impingement of the left shoulder. She continues to experience objective findings and residuals of the accepted condition of de Quervain’s tenosynovitis of the left wrist, *i.e.*, limitation of motion, positive Finkelstein sign and marked tenderness over the radial extensor tendon. Therefore, it is my opinion to a reasonable degree of medical certainty, based on the history, physical examination and review of medical documentation that the only condition which has persisted in the de Quervain’s tenosynovitis of the left wrist.”

Dr. Kaffen reported that appellant’s work-related de Quervain’s tenosynovitis continued to disable her from performing the duties of a rural letter carrier, as she could not use her left hand or wrist for holding objects or sorting mail. It was also his opinion that appellant was capable of working full time with restrictions. He felt that appellant needed no treatment for her left shoulder.

In a May 12, 2006 decision, the Office denied appellant’s recurrence of disability claim. The Office found that the weight of the medical evidence rested with the opinion of Dr. Kaffen, who found that appellant could work with restrictions. The Office noted that Dr. Sarkisian did not reply to a request for comment on Dr. Kaffen’s examination.

Appellant requested an oral hearing before an Office hearing representative, which was held on November 8, 2006. She submitted a May 30, 2006 report from Dr. Sarkisian:

“I reviewed the medical examiner’s report of Dr. Kaffen, dated March 21, 2006. I do agree that [appellant] continues to suffer from symptoms in the left upper extremity including that of what appears to be de Quervain’s stenosing tenosynovitis of the left wrist and continued pain in the left shoulder which at times seems more subjective [than] objective. We have attempted to return [her] to restricted duties in the employing establishment without success due to her continued pain and inability to perform even restricted duties.”

On October 16, 2006 Dr. Sarkisian again commented on Dr. Kaffen’s findings:

“I have recently read Dr. Kaffen’s report on [appellant] and do disagree with his findings. I do agree with the statement regarding her left wrist that she does continue to have problems and may benefit from further treatment including injections or possibly even surgical release and revision of the de Quervain’s release. I also, however, feel that [appellant] is suffering from pain which is quite

significant in the left shoulder. The left shoulder pain is clinically quite evident over the AC joint, causing her discomfort and disability with the left shoulder. I do feel strongly that [she] would benefit from surgical treatment of her AC joint including arthroscopy and arthroscopy distal clavicle resection which should indeed help the symptomatology in the left shoulder. If indeed there is any additional pathology found in the shoulder at the time of arthroscopy that would be cared for at the same sitting.

“I do feel with a reasonable degree of medical certainty that [appellant’s] symptoms in the left shoulder are a direct result of a work injury and I do feel, again, that she would benefit greatly from arthroscopic treatment of the left shoulder as stated above with a reasonable degree of medical certainty.”

In a decision dated January 16, 2007, the Office hearing representative affirmed the denial of appellant’s recurrence claim. The hearing representative modified the Office’s May 12, 2006 decision to find that the issue was whether the accepted work injuries caused a recurrence of total disability from January 28 to October 26, 2006. The hearing representative found that Dr. Sarkisian’s reports were insufficient to prove a spontaneous change in appellant’s work-related medical condition.

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ “Disability” means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.⁴ 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.⁵

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.⁶

A recurrence of disability does not include a condition which results from a new injury, even if it involves the same part of the body previously injured, or by renewed exposure to the

³ 5 U.S.C. § 8102(a).

⁴ 20 C.F.R. § 10.5(f) (1999).

⁵ *Id.* at § 10.5(x).

⁶ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

causative agent of a previously suffered occupational disease. If a new work-related injury or exposure occurs, Form CA-1 or CA-2 should be completed accordingly.⁷

ANALYSIS

Appellant's November 23, 2005 claim does not fit the definition of a recurrence. She does not allege that her inability to work beginning January 28, 2006 was 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. On the contrary, appellant attributed the swelling, soreness, sharp pains, aching and limited mobility of her left upper extremity to performing the same duties that caused her original injury. Her claim, therefore, is in the nature of a new work-related injury. Even though it involves the same part of the body previously injured, and even though appellant attributes her condition to new exposure to the causative agent of a previously suffered occupational disease, Office procedures direct that she should file a Form CA-2, notice of occupational disease and claim for compensation. The Office hearing representative correctly found that the evidence was insufficient to prove a spontaneous change in appellant's work-related medical condition. The Board will therefore affirm the denial of appellant's recurrence of disability claim.

CONCLUSION

The Board finds that appellant has not met her burden to establish that she sustained a recurrence of disability beginning January 28, 2006 causally related to her accepted employment injuries.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(2) (May 1997).

ORDER

IT IS HEREBY ORDERED THAT the January 16, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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