

Appellant also moved boxes in the workroom, when necessary; lifted boxes weighing 25 to 52 pounds and restocked shelves, as needed. She indicated that her office had five employees; however, two male employees left and she acquired their duties.¹ The employing establishment agreed with appellant's description of her work activities. It noted that repairs and adjustments were made to appellant's workstation, including installation of an ergonomic chair and a headset.

Appellant underwent surgery for a torn right rotator cuff on February 14, 2005. She returned to work June 2005 on a part-time basis gradually increasing her hours to full time. In a December 7, 2005 report, Dr. Scott M. Fried, an attending osteopath, advised that appellant could work with modification to her workstation and restrictions on repetitive activities with no lifting or reaching.

Appellant stopped work on March 13, 2006. On March 17, 2006 she filed a recurrence of disability claim beginning March 13, 2006. The employing establishment noted that it had accommodated her work environment.

The Office initially denied the claim; however, on December 11, 2006, an Office hearing representative accepted the claim for a right shoulder repetitive strain injury and rotator cuff tear.² Appellant was advised to file a Form CA-2a, notice of recurrence, if she felt she sustained a recurrence of total disability on March 13, 2006.³

On December 28, 2006 appellant filed another claim for a March 13, 2006 recurrence of disability. She noted that she returned to part-time light-duty with restrictions and gradually increased her work hours until she resumed an eight-hour-a-day schedule. Appellant indicated that she maintained her restrictions and continued with physical therapy two to three days a week. The employing establishment noted that, after appellant's injury, her workstation and keyboard were altered and she was provided a headset, ergonomic desk chair and dragon software.

In a January 3, 2007 letter, the Office informed appellant of the medical evidence needed to support a recurrence of total disability due to her employment-related conditions.

In a January 19, 2007 statement, appellant noted that she returned to her secretarial job on March 14, 2005 following her February 14, 2005 shoulder surgery. She advised that her duties were the same, but that her workload had increased due to staff shortages. Appellant opined that her current disability and medical treatment were related to the original work injury and her employment activities because her condition worsened with time and her work duties

¹ Appellant also described her outside activities, which included part-time employment as a cashier/sales clerk and her duties as an usher in her church and noted that 11 years earlier she was treated for thoracic outlet syndrome in her shoulder.

² After the Office formally accepted appellant's claim for right sprain of shoulder and upper arm and right rotator cuff tear, it also approved appellant's February 14, 2005 surgery.

³ The Office was also requested to develop a new claim for appellant's occupational claim filed in May 2006 for repetitive injury to her left shoulder. That claim was assigned case number xxxxxx656 and is not presently before the Board.

exacerbated her condition. She noted difficulty performing her duties after she returned to work from the surgery.

In a March 9, 2006 disability certificate, Dana Steiner, a physician's assistant, advised that appellant was totally disabled from March 13, 2006 due to increasing upper extremity injury.

Electrodiagnostic testing on March 30, 2006 revealed moderate and mild compromise of the brachial plexus, radial, medial and ulnar nerves.

In a May 2, 2006 report, Dr. Ernest Baran, a Board-certified physiatrist, diagnosed bilateral plexopathy based on somatosensory evoked potential testing studies and clinical examination. He also diagnosed restrictive capsulitis in the right shoulder.

In a January 4, 2007 treatment note, Dr. Fried noted appellant's physical findings and opined that she remained significantly symptomatic. He advised that appellant would remain out of work and continue with physical therapy. She recently underwent a work capacity evaluation. A January 18, 2007 electroneuromyographic evaluation revealed a mild, bilateral brachial plexus, a moderate right radial nerve compromise, as well as bilateral median and right ulnar nerve compromise.

By decision dated March 6, 2007, the Office denied appellant's claim for a recurrence of disability.

In an April 9, 2007 medical report, Dr. Fried advised that by February 16, 2006 appellant was working full time but engaged in activities that were outside her capacities. He had recommended that she stop work as her right arm symptoms continued to progressively worsen. Dr. Fried stated that appellant's continued repetitive work activities worsened her symptoms and repetitive strain or cumulative traumas, which resulted in a progression of the nerve and inflammatory process about her shoulder resulting in a brachial plexus injury. He stated that this was recognized during a March 13, 2006 office visit after appellant left work upon his recommendation. By July 17, 2006, appellant had some improvement with respect to her symptoms and decreased inflammation. Her newly diagnosed conditions of right arm repetitive strain/cumulative trauma disorder and positive bilateral median nerve carpal tunnel and right radial tunnel and brachial plexopathy were secondary to her work activities which exacerbated her right shoulder and brachial plexus symptoms and disabled her from her secretarial position on March 13, 2005. Dr. Fried advised that appellant had ongoing residuals and limitations. The objective findings and functional capacity testing confirmed her pathology and inability to work.

Appellant requested a hearing, which was held on July 17, 2007. By decision dated September 27, 2007, an Office hearing representative affirmed the March 6, 2007 decision. The hearing representative found a recurrence of disability did not occur as appellant identified new work activities as responsible for her disability commencing March 13, 2006.

LEGAL PRECEDENT

The Office's regulation defines the term recurrence of disability as 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. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁴

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or 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 total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁵ To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.⁶

Appellant's claim was accepted for a right shoulder strain and torn rotator cuff.

ANALYSIS

After appellant's February 2005 right shoulder surgery, she returned to her position with modifications to her workstation and restrictions on repetitive activities with no lifting or reaching.⁷ She gradually increased her hours to full time. The employing establishment noted that appellant was accommodated with a keyboard, headset, dragon software and an ergonomic chair. Appellant filed a claim for a recurrence of disability commencing March 13, 2006 attributing her disability and current conditions to an increase in her work-related activities. She advised her work assignments had increased due to staff shortages.

The Office denied appellant's recurrence claim on the basis that her increased work load following her return to modified duty was a new factor of employment. The evidence, however, indicates that appellant's office had downsized in 2004 and that was when appellant acquired any additional duties. The record does not indicate that appellant was performing new work duties at the time of her alleged recurrence. To establish her claim for a recurrence of disability, appellant must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.

⁴ 20 C.F.R. § 10.5(x).

⁵ *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁶ *Maurissa Mack*, 50 ECAB 498 (1999).

⁷ There is no clarifying report from Dr. Fried in the record indicating the exact restrictions on repetitive activity.

The record contains no evidence that the light-duty job requirements changed or were withdrawn. On December 7, 2005 Dr. Fried indicated that appellant could work with modifications to her workstation and the evidence indicates that the employing establishment made such modifications. He set forth restrictions on repetitive activities, lifting and reaching. Appellant indicated that she maintained her restrictions and there is no evidence to the contrary. While she indicates she had an increase in her work assignments or work load due to office downsizing, the evidence of record indicates that this occurred in 2004, which is prior to her claimed recurrence of March 13, 2006. There is no evidence showing that appellant experienced a change in the nature and extent of the light-duty requirements or that she was required to perform duties that exceeded her medical restrictions.

The medical evidence of record is also insufficient to establish that appellant's condition had changed such that she could not perform the activities required by her modified job. Appellant provided a March 9, 2006 disability certificate from Ms. Steiner, a physician's assistant. However, physician's assistants are not physicians under the Act and are not competent to render a medical opinion.⁸

Dr. Fried's reports are insufficient to establish appellant's claim. On January 4, 2007 he opined that appellant was significantly symptomatic and should remain out of work. However, Dr. Fried did not offer any opinions as to whether appellant's disability was caused by residuals of the accepted work injury.⁹ In an April 9, 2007, he noted the history of injury and opined that appellant's newly diagnosed right arm conditions were secondary to her ongoing work activities. Dr. Fried stated appellant's work activities exacerbated her right shoulder and brachial plexus symptoms and disabled appellant's from her secretarial position on March 13, 2005. He indicated appellant's continued repetitive activities and work activity worsened her symptomatology and progressed her repetitive strain or cumulative traumas, which resulted in progression of her nerve problem as well as the inflammatory process about her shoulder and brachial plexus injury. Dr. Fried, however, did not support his opinion with medical rationale. He did not sufficiently explain a spontaneous change in her accepted schedule strain and rotator cuff or provide rationale explaining how her accepted conditions had progressed or contributed to the brachial plexus condition. Dr. Fried did not discuss how her accepted rotator cuff tear and repetitive strain progressed to cause a nerve condition or inflammatory process about her shoulder. His opinion is of diminished probative value as there is insufficient explanation of the causal relationship between appellant's disability for work and the accepted employment conditions.¹⁰ The Board notes that the newly diagnosed conditions of bilateral median nerve

⁸ See 5 U.S.C. § 8101(2) (defines the term physician). See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the Act).

⁹ *K.W.*, 59 ECAB ____ (Docket No. 07-1669, issued December 13, 2007); *J.M.*, 58 ECAB ____ (Docket No. 06-2094, issued January 30, 2007) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁰ See *Frank D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports lacking rationale on causal relationship are entitled to little probative value).

carpal tunnel, right radial tunnel and brachial plexopathy have not been accepted by the Office.¹¹ Dr. Fried's reports do not establish a change in the nature and extent of the injury-related condition.

Appellant has not met her burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit her from performing the light-duty position she assumed after she returned to work.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a recurrence of total disability beginning on March 13, 2006 causally related to her accepted employment-related injuries.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 27 and March 6, 2007 are affirmed.

Issued: December 22, 2008
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

¹¹ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (for conditions not accepted by the Office as being employment related, the claimant bears the burden of proof to establish causal relationship).