United States Department of Labor
Employees' Compensation Appeals Board

T.B., Appellant	)	
and	)	**Docket No. 08-1663**
	)	**Issued: December 15, 2008**
U.S. POSTAL SERVICE, CANTON PROCESSING & DISTRIBUTION CENTER, Cleveland, OH, Employer	)	

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 May 27, 2008 appellant, through her attorney, filed a timely appeal from October 5, 2007 and May 1, 2008 merit decisions of the Office of Workers' Compensation Programs finding that she did not sustain a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she sustained a recurrence of disability on July 7, 2007 causally related to her February 3, 2006 employment injury.

FACTUAL HISTORY

On February 3, 2006 appellant, then a 41-year-old mail processing clerk, filed a traumatic injury claim alleging that on that date she pulled a muscle in her upper right arm. She did not

stop work.[1] On February 7, 2007 the Office accepted the claim for right shoulder sprain and right shoulder impingement syndrome.[2]

By letter dated February 7, 2007, the Office noted that appellant informed the Office on February 6, 2007 that she had a right shoulder tear and required surgery. It indicated that she was "currently off work under another filing, which pertains to the lower back." The Office requested that appellant submit a reasoned medical report addressing how the diagnosed conditions of bursitis and a rotator cuff tear were employment related and an opinion regarding any request for surgery.

On July 25, 2007 Dr. Jeffrey S. Dulik, an osteopath, reviewed appellant's complaints of right arm pain along the biceps and numbness and tingling in the right hand. Appellant related that she "picked up something yesterday at work and she felt as through the shoulder popped out of [the] socket." Dr. Dulik noted that she currently performed her full employment duties. He diagnosed peripheral enthesopathies and allied syndromes of the right shoulder and a sprain and strain of the acromioclavicular (AC) joint of the right shoulder and upper arm. Dr. Dulik opined that appellant could work with restrictions on repetitive use of the right shoulder and overhead use of the right arm. He opined that she "has aggravated the shoulder to what she has had before."

On July 26, 2007 appellant filed a recurrence of disability claim on July 5, 2007 causally related to her February 2006 work injury. She contended that she was limited upon returning to work after her original injury because occasionally she could not reach overhead. Appellant stopped work on July 7, 2007.

By letter dated August 2, 2007, the Office noted that appellant performed her usual employment following her work injury. It informed her of the definition of a recurrence of disability and requested that she submit additional factual and medical information supporting her alleged recurrence of disability.

In a letter to the Office dated August 27, 2007, Dr. Dulik noted that he had treated appellant since February 7, 2006 for a shoulder injury sustained at work due to heavy lifting. He last treated her on July 25, 2007 for complaints of numbness in her right hand and pain with overhead activities. At that time appellant related that she had lifted something at work the previous day and "felt as through her right shoulder popped out of socket. Dr. Dulik provided findings on examination and concluded:

> "It is my professional medical opinion within a reasonable degree of medical certainty that [appellant] sustained an AC joint sprain … and impingement syndrome … of the right shoulder as a result of her injury on February 3, 2006 and continues with symptoms from this injury.

[1] A magnetic resonance imaging (MRI) scan study obtained on August 11, 2006 revealed a partial distal supraspinatus tendon tear, mild impingement, mild bursitis and a small degenerative cyst.

[2] In February 7, 2007 letters, the Office indicated that it had originally processed the claim as a minor injury with no time lost and expenses not to exceed $1,500.00.

"[Appellant] was returned to work with light[-]duty restrictions of no overhead activity and no repetitive motion of the right shoulder until she has the recommended EMG [electromogram] of the right upper extremity."

On August 29, 2007 Dr. Dulik discussed appellant's complaints of increased right shoulder pain radiating into her wrist and noted that she worked light duty without sufficient assistance. He diagnosed right peripheral entheospathies, a partial, right nontraumatic rotator cuff tear and right shoulder and upper arm sprains and strains. Dr. Dulik found that appellant required activity modification. On September 14, 2007 he noted that the EMG showed carpal tunnel syndrome unrelated to her workers' compensation case. Dr. Dulik recommended arthroscopic surgery on the shoulder.

By decision dated October 25, 2007, the Office found that appellant had not established that she sustained an employment-related recurrence of disability beginning July 7, 2007. It noted that she had not responded to its request for further factual information and also did not submit rationalized medical evidence showing that she as unable to work as of July 7, 2007.

In a disability certificate dated September 26, 2007, received by the Office on October 31, 2007, Dr. Dulik found that appellant could work with restrictions on reaching over shoulder level, repetitive motion and lifting over 25 pounds. On November 5, 2007 Dr. Dulik performed a right shoulder arthroscopic subacromial decompression and rotator cuff repair.

On November 23, 2007 appellant, through her attorney, requested an oral hearing. On February 12, 2008 Dr. Dulik found that appellant could continue with work restrictions of no right arm use for six weeks. He stated, "Discussed with [her] that after review of her previous notes from February 2006 that her shoulder injury was related to the workers' compensation injury after she was lifting a heavy object at work." In a letter dated February 13, 2008, Dr. Dulik related that appellant's rotator cuff tear, AC joint sprain and right shoulder impingement syndrome resulted from the heavy lifting mechanism of injury sustained February 3, 2006. On February 26, 2008 the Office issued appellant compensation for total disability beginning November 5, 2007. Appellant returned to work with restrictions on February 25, 2008.

At the hearing, held on March 11, 2008, appellant related that she performed her regular job following her February 3, 2006 work injury. She experienced pain performing her duties. In early 2007, appellant's physician placed her on limited duty. She related that when she filed her CA-2a form she was "back doing [her] normal job." Appellant lifted a bag on July 24, 2007 and felt her arm pop.

By decision dated May 1, 2008, the Office hearing representative affirmed the October 25, 2007 decision. He found that the medical evidence did not establish that she was disabled due to her work injury beginning July 7, 2007 and that the evidence did not show that her light-duty employment changed such that she was unable to perform her duties. The hearing representative recommended that the Office expand acceptance of the claim to include a right rotator cuff tear.

LEGAL PRECEDENT

When an appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician, who on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports this conclusion with sound medical reasoning.[3]

Section 10.5(x) of the Office's regulations provides in pertinent part:

> "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."[4]

Office procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change, demonstrated by objective findings, in the medical condition that resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured. Office procedures further state: "If a new work-related injury or exposure occurs, Form CA-1 [notice of traumatic injury] or Form CA-2 [notice of occupational disease or illness] should be completed accordingly."[5]

ANALYSIS

The Office accepted that appellant sustained right shoulder sprain and right shoulder impingement syndrome due to a February 3, 2006 employment injury. Appellant continued working at her usual employment following her injury. At the hearing, she related that she worked limited duty in early 2007 but had resumed her usual employment at the time she filed her notice of recurrence of disability in July 2007.[6] Appellant alleged that she stopped work on July 7, 2007 causally related to her February 3, 2006 employment injury.

The medical evidence is insufficient to establish that appellant was unable to work from July 7 to November 5, 2007, due to her accepted February 3, 2006 employment injury.[7]

[3] *Ricky S. Storms*, 52 ECAB 349 (2001).

[4] 20 C.F.R. § 10.5(x).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2)(e) (May 1997).

[6] On a notice of recurrence of disability, appellant indicated that she was occasionally restricted from reaching overhead due to her work injury.

[7] Appellant underwent arthroscopic surgery on November 5, 2007. The Office paid her compensation for total disability beginning that date.

Dr. Dulik evaluated appellant on July 25, 2007 for complaints of right arm pain and tingling in the right hand. Appellant related that the day before at work she picked up an item and "felt as though the shoulder popped out of [the] socket." Dr. Dulik diagnosed peripheral enthesopathies and allied syndromes of the right shoulder and a sprain and strain of the AC joint of the right shoulder and upper arm. He found that she could work if she did not use her right shoulder for repetitive and overhead use. Dr. Dulik opined that appellant "has aggravated the shoulder to what she has had before." A recurrence of disability, however, is a spontaneous material change in a claimant's injury-related condition without intervening injury.[8] Dr. Dulik's description of appellant experiencing a pop in her arm after lifting at work on July 24, 2007 and his subsequent finding that she aggravated her shoulder condition implicates a possible new injury rather than supporting that she sustained a recurrence of disability. As he attributed her condition to a possible new injury rather than a "spontaneous change" in her accepted condition, his opinion is insufficient to meet her burden of proof.

On August 27, 2007 Dr. Dulik noted that he had treated appellant since February 7, 2006 for a shoulder injury sustained at work due to heavy lifting. He evaluated her on July 25, 2007 for complaints of pain after picking something up the day prior at work. Appellant "felt as though her right shoulder popped out of socket." Dr. Dulik attributed appellant's AC joint sprain and impingement syndrome to her February 3, 2006 work injury. He found that she could perform limited-duty work pending diagnostic studies. As noted, however, appellant must show a "spontaneous material change demonstrated by objective findings in the medical condition that resulted from a previous injury or occupational illness without an intervening injury or exposure to new factors causing the original illness."[9] Dr. Dulik described a possible new work injury on July 24, 2007 rather than finding that appellant experienced a spontaneous worsening of her accepted condition. Additionally, he did not provide any rationale for his finding that she was unable to perform her usual employment.[10] Consequently, Dr. Dulik's opinion is of diminished probative value.

On August 29, 2007 Dr. Dulik listed findings on examination and diagnosed right peripheral entheospathies, a partial, right nontraumatic rotator cuff tear and right shoulder and upper arm sprains and strains. In a September 26, 2007 progress report, he listed work restrictions of no reaching over shoulder level, performing repetitive motion or lifting over 25 pounds.[11] Dr. Dulik did not, however, specifically address the cause of the diagnosed conditions and work restrictions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[12]

[8] 20 C.F.R. § 10.5(x).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (January 1995).

[10] *Richard A. Neidert*, 57 ECAB 474 (2006) (medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof).

[11] The remaining reports from Dr. Dulik address appellant's condition and disability after her November 5, 2007 shoulder surgery.

[12] *Conard Hightower*, 54 ECAB 796 (2003).

An award of compensation may not be based on a claimant's own belief that there is causal relationship between her claimed condition and her employment.[13] Appellant has the burden to furnish medical evidence from a physician who, on the basis of a complete and accurate factual history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.[14] She failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof to establish that she sustained a recurrence of disability on July 7, 2007 due to her February 3, 2006 employment injury.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability on July 7, 2007 causally related to her February 3, 2006 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 1, 2008 and October 5, 2007 are affirmed.

Issued: December 15, 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

[13] *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[14] *Mary A. Ceglia*, 55 ECAB 626 (2004).