

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

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**D.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Des Moines, IA, Employer**

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**Docket No. 08-478  
Issued: July 15, 2008**

*Appearances:*

*Theodore E. Karpuk, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 29, 2007 appellant filed a timely appeal from an August 30, 2007 decision of the Office of Workers' Compensation Programs, which affirmed the denial of her recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

**ISSUE**

The issue is whether appellant sustained a recurrence of disability commencing November 17, 2005 causally related to her accepted conditions.

**FACTUAL HISTORY**

The Office accepted appellant's November 15, 1999 occupational disease claim for herniated lumbar discs at L2-3 and L5-S1 and right carpal tunnel syndrome. Appellant underwent lumbar laminectomies and discectomies on December 1, 1999. A right wrist carpal tunnel release was performed on April 4, 2000. Appellant received appropriate benefits for her disability for work.

Appellant returned to full-time limited duty on August 13, 2001. Her physical limitations were provided by Dr. William O. Samuelson, an attending Board-certified orthopedic surgeon, who advised in October 2001 that appellant's work required repetitive bending, reaching and lifting that aggravated her back condition. Thereafter, on May 14, 2002, the employing establishment offered appellant full-time modified duty, which she accepted on June 7, 2002.<sup>1</sup> Appellant was followed by Dr. Samuelson through August 2004.

In a July 18, 2005 report, Dr. Raymond Emerson, a Board-certified orthopedic surgeon, treated appellant for back pain which followed a period of prolonged sitting at work.<sup>2</sup> He treated her conservatively and advised that she could continue to work subject to her physical limitations. On October 3, 2005 Dr. Emerson advised that she could work full time with lifting restricted from 20 to 34 pounds, a two-hour restriction on pushing, pulling, standing and walking and sitting limited to one hour.

On November 17, 2005 appellant was treated by Dr. Joseph J. Chen, Board-certified in physical medicine and rehabilitation.<sup>3</sup> She presented with complaints of back pain and he recommended that she stay off work for two weeks and commence an exercise program. On December 5, 2005 Dr. Chen returned appellant to work part time for four hours a day. On December 16, 2005 he advised that he was supporting appellant's application for a disability retirement. Dr. Chen noted that he had treated appellant since March 1, 2001 and had followed her for complaints of chronic back pain. He noted that she recently completed a two-week pain management program and was released to return to her duties with the postal service. Dr. Chen stated his opinion that appellant was unable to fulfill the duties of a modified address management systems specialist due to chronic myofascial back pain and wrist pain, for which additional surgery was not warranted. He set forth physical restrictions, noting that she could not lift more than 20 pounds on an occasional basis, sit and stand for no longer than 30 minutes without a break and stand in one position no more than 2 hours a day.

Appellant filed a claim for a recurrence of disability.<sup>4</sup> On January 6, 2006 the Office advised appellant to submit additional evidence in support of her claim. It apprised her of the necessity to submit medical evidence establishing the relationship of her disability for work to her accepted conditions.

On February 9, 2006 Dr. Chen advised that appellant was limited to no more than four hours of work a day. On February 20, 2006 he stated that appellant's right leg radiculopathy symptoms had resolved but she still experienced myofascial pain in the low back and left lower

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<sup>1</sup> On June 18, 2002 the employing establishment noted that appellant's job title had changed to that of modified address management specialist. Appellant work in the position conformed to her physical limitations.

<sup>2</sup> The record contains a June 15, 2005 magnetic resonance imaging scan of the lumbar spine. It noted postoperative changes at L2-3 with no evidence of nerve root impingement or displacement and postoperative defects at L5-S1 with progressive disc space narrowing.

<sup>3</sup> Appellant was first treated by Dr. Chen in 2001.

<sup>4</sup> Appellant's claim form, dated July 27, 2005, was developed by the Office as a claim for a recurrence of disability commencing November 17, 2005. She also submitted CA-7 claims for compensation for intermittent periods of work through February 10, 2006. Appellant received a disability retirement on June 23, 2006.

extremity which limited her sitting and standing. Dr. Chen stated that appellant's symptoms were a direct result of her accepted herniated discs "and the repetitive nature of her work situation which involves repetitive sitting, standing, bending, reaching and stooping...." He did not evaluate her right carpal tunnel condition. Dr. Chen stated that appellant related having been given many more duties over the prior year which required repetitive activities and increased sitting flexed forward at a computer, which exacerbated her symptoms.

On June 13, 2006 appellant was treated by Dr. Emerson for pain in her left lower extremity and low back discomfort. Dr. Emerson noted that appellant planned to retire the following week.

In an August 14, 2006 decision, the Office denied appellant's recurrence of disability claim. It found that the medical evidence submitted was insufficient to establish a material worsening in her accepted condition which rendered her totally disabled from performing her modified-duty assignment.

On July 30, 2007 appellant requested reconsideration. She contended that the reports of her attending physicians supported her claim of a recurrence of disability commencing November 17, 2005. Appellant resubmitted numerous medical reports from Dr. Chen previously of record and considered by the Office. An August 11, 2005 report from Dr. Timothy L. Hains, a Board-certified anesthesiologist, noted that he provided an epidural steroid injection for relief of back pain.

By decision dated August 30, 2007, the Office denied modification of the August 14, 2006 decision. It found that the medical evidence was insufficient to establish a material worsening of her accepted back condition resulting in total disability for 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 establishes that she can perform limited-duty work, the employee has the burden of proof to establish a recurrence of total disability. The employee must show a change in the nature of the injury-related condition or a change in the nature of the limited-duty job requirements.<sup>5</sup>

A recurrence of disability is defined as the 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.<sup>6</sup> The Board has held that whether a particular injury causes an employee to be disabled for work is a medical question that must be resolved by competent and probative medical evidence.<sup>7</sup> The weight of medical opinion is determined on the report of a physician, who provides a complete and accurate factual and medical history, explains how the

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<sup>5</sup> See *Cecelia M. Corley*, 56 ECAB 662 (2005); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>6</sup> 20 C.F.R. § 10.5(x).

<sup>7</sup> See *Donald E. Ewals*, 51 ECAB 428 (2000).

claimed disability is related to the employee's work and supports that conclusion with sound medical reasoning.<sup>8</sup>

### ANALYSIS

The Office accepted that appellant sustained herniated lumbar discs at L2-3 and L5-S1, for which she underwent surgery in 1999. Appellant's claim was also accepted for right carpal tunnel syndrome. She returned to work at modified duty and sustained several periods of intermittent disability for work which are not at issue in this appeal. Appellant retired on disability as of June 23, 2006. On appeal, counsel for appellant contends that the medical evidence from Dr. Chen and Dr. Emerson establishes a recurrence of disability commencing November 17, 2005 casually related to her accepted back condition.

Dr. Chen examined appellant on November 17, 2005 and recommended that she stay off work for two weeks. On December 5, 2005 he advised that she was able to return to work for four hours a day. In a December 16, 2005 report, Dr. Chen noted that he had treated appellant since March 1, 2001 and that she had completed a two week course in pain management and had been returned to work. He stated that he supported her application for a disability retirement and noted additional restrictions based on chronic myofascial back pain. On February 20, 2006 Dr. Chen stated that appellant's low back symptoms were the result of her accepted herniated discs "and the repetitive nature" of the work she had been performing. He was told by appellant that, over the prior year, she had been given many more duties which required repetitive motion and increased sitting in a flexed forward position at the computer.

The Board finds that the reports of Dr. Chen are insufficient to establish a recurrence of disability commencing November 17, 2005 due to appellant accepted low back condition. Rather than noting a spontaneous onset of low back symptoms for which treatment was provided, Dr. Chen attributed appellant's change of condition to additional work duties that she had been given during the prior year. Therefore, the medical evidence implicates new employment exposures as a cause of appellant's change in medical condition.<sup>9</sup> As noted, a recurrence of disability is defined as a spontaneous change in an accepted medical condition without any intervening injury or new exposures in the work environment. As the limited narrative reports of Dr. Chen implicate new employment exposures, the medical evidence from the physician does not support her claim of a recurrence as of November 17, 2005.

Similarly, the reports of Dr. Emerson and Dr. Hains are not sufficient to establish appellant's claim. Both physicians noted appellant's condition post discectomies in 1999 at L3-2 and L5-S1. Dr. Emerson treated appellant in July 2005, noting a prolonged period of sitting as a source of her increased back pain. Dr. Hains addressed his treatment of appellant following a recent episode of back pain following prolonged standing at work. He provided an epidural injection which was administered on August 11, 2005. These reports predate the period of claimed disability commencing November 17, 2005. Moreover, neither physician provided a

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<sup>8</sup> See *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>9</sup> The Office did not adjudicate whether appellant sustained a new occupational injury due to her work exposures and this issue is not presently before the Board.

rationalized opinion on the relevant issue of causal relationship. Both physicians implicated additional new work exposures, prolonged sitting and standing in 2005, as a cause of her increased back symptoms. The June 13, 2006 report of Dr. Emerson, again noted appellant's symptoms on examination and the fact that she would soon be retiring from work. None of the medical evidence submitted establishes that appellant sustained a material change in her accepted low back condition which prevented her from continuing in her modified-duty assignment.<sup>10</sup> The evidence of record does not establish that appellant was assigned to duties which exceeded her medical restrictions.

The Board notes that appellant's application for a disability retirement was accepted based on the reports of her attending physicians. The decision of the Office of Personal Management in granting appellant a disability retirement is not determinative of her right to benefits under the Federal Employees' Compensation Act. It is well established that decisions of other federal agencies or governmental bodies are not dispositive to issues raised under the Act.<sup>11</sup> Decisions made by such tribunals are pursuant to different statutes which have varying standards for establishing disability and eligibility for benefits.

### CONCLUSION

The Board finds that appellant has not established a recurrence of disability on or after November 17, 2005 causally related to her accepted lower back condition.

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<sup>10</sup> The reports of appellant's physicians do not support a change in her accepted right carpal tunnel condition. Dr. Chen noted that he did not specifically treat appellant for residuals of this condition and the reports of Dr. Emerson and Dr. Hains addressed her low back symptoms.

<sup>11</sup> See *Andrew Fullman*, 57 ECAB 574 (2006); *Wayne E. Boyd*, 49 ECAB 2002 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 30, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 15, 2008  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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