



syndrome in file number 132070949.<sup>1</sup> The Office based its termination of wage-loss compensation on the opinion of Dr. John W. Batcheller, a Board-certified orthopedic surgeon, who provided an impartial medical examination. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

On May 11, 2006 appellant filed a notice of recurrence of disability on December 5, 2006 due to her accepted employment injury in file number 132070949.<sup>2</sup> She stopped work on April 6, 2006 and returned to work for four hours per day on April 10, 2006.

In a May 10, 2006 letter, appellant related that she continued to experience pain after she returned to work in August 2004. Her physician advised her to reduce her work hours to four hours per day for four weeks.

In a progress report dated April 6, 2006, Dr. Mark H. Chan, a Board-certified physiatrist, discussed appellant's complaints of right arm and neck pain. He listed findings of right lateral epicondyle, cervical paraspinal and upper trapezius tenderness and pain on right wrist extension. Dr. Chan diagnosed cervical strain, lateral epicondylitis, forearm strain and right carpal tunnel syndrome. He opined that appellant should remain off work until April 8, 2006 and return to work for four hours per day for four weeks. On April 13, 2006 Dr. Chan diagnosed a cervical strain and referred her for acupuncture.

In a report dated May 4, 2006, Dr. Mathias Masem, a Board-certified orthopedic surgeon, discussed appellant's complaints of neck and upper trapezius pain and listed findings on physical examination of marked guarding and "significant pain behavior." He diagnosed cervical strain, degenerative disc disease and right lateral epicondylitis. Dr. Masem stated:

"[Appellant] is symptomatic from an upper extremity repetitive strain injury, including elbow tendinitis. She is additionally symptomatic from her cervical strain. Some of the symptoms in her upper extremities may be related to her cervical spine degenerative disc disease and working for prolonged periods in positions behind the computer."

Dr. Masem recommended diagnostic studies, acupuncture and a follow-up appointment. He stated: "In the meantime, her work hours are reduced to four hours per day, with regular hourly stretch breaks."

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<sup>1</sup> Docket No. 05-1819 (issued January 11, 2006). Appellant sustained bilateral wrist tendinitis, right carpal tunnel syndrome and cervical strain arising on or about January 8, 2003. She also has an accepted claim for left upper extremity tendinitis, left carpal tunnel syndrome, left lateral epicondylitis and left wrist strain under file number 131154330 and left wrist tendinitis under file number 132130646.

<sup>2</sup> In a decision dated March 23, 2006, the Office denied appellant's claim that she sustained cervical disc disease due to her accepted employment injury. The Office based its finding on the opinion of Dr. Robert R. McIvor, a Board-certified orthopedic surgeon, who provided a referral examination. Appellant requested an oral hearing, which the Office denied by decision dated April 26, 2006 as untimely. In a decision dated June 22, 2006, the Office denied appellant's request for reconsideration of its August 1, 2005 decision as the evidence submitted was insufficient to warrant merit review of the claim.

In a report dated June 23, 2006, Dr. Masem diagnosed bilateral carpal tunnel syndrome, cervical spondylosis, degenerative disc disease and chronic tendinitis of the wrist. He noted that she performed clerical work for the employing establishment which “chronically exacerbates her condition and, overtime, has made her condition considerably worse.” Dr. Masem opined that appellant’s primary problem was her cervical condition and referred her to Dr. Chan for continued treatment. Dr. Masem recommended that she continue working four hours per day with restrictions.

By decision dated August 23, 2006, the Office found that appellant failed to establish a recurrence of disability due to her accepted employment injury.

On August 25, 2006 Dr. Chan interpreted electrodiagnostic studies obtained on that date as showing no carpal tunnel syndrome or cervical radiculopathy. He found tenderness of the right cervical paraspinal and upper trapezius area. Dr. Chan diagnosed a cervical/trapezius strain. He noted that appellant continued working four hours per day.

In a report dated August 29, 2006, Dr. Masem diagnosed cervical spondylosis and degenerative disc disease. He stated: “I had recommended reduced work hours for [appellant] as she was primarily concerned with neck pain. My recommendations evidently have not been recognized and, correspondingly, [appellant] is choosing on her own to return to full-duty work.” Dr. Masem recommended alternating tasks, stretch breaks and an ergonomic workstation.

On September 21, 2006 appellant requested an oral hearing on the August 23, 2006 decision. She submitted statements to the hearing representative dated September 22, 2006 and January 24, 2007. Appellant described her history of injury and contended that the medical reports established that she sustained a recurrence of disability. At the hearing, held on January 25, 2007 she noted that she was performing her regular work duties at the time of her recurrence of disability.

By decision dated April 10, 2007, the hearing representative affirmed the August 23, 2006 decision.

### **LEGAL PRECEDENT**

A claimant alleging a recurrence of disability due to an accepted employment-related injury 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.<sup>3</sup>

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<sup>3</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

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.”<sup>4</sup>

### ANALYSIS

The Office accepted that appellant sustained cervical strain, bilateral wrist tendinitis and right carpal tunnel syndrome due to factors of her federal employment. By decision dated January 11, 2006, the Board affirmed the termination of her wage-loss compensation effective June 22, 2004 on the grounds that she had no further disability due to her accepted employment injury.<sup>5</sup>

Appellant subsequently alleged that she sustained a recurrence of disability on December 5, 2006 due to her accepted employment injury. She stopped work on April 6, 2006 and returned to work for four hours per day on April 10, 2006. In a report dated April 6, 2006, Dr. Chan found that appellant had right lateral epicondyle, cervical paraspinal and upper trapezius tenderness and pain on right wrist extension. He diagnosed cervical strain, lateral epicondylitis, forearm strain and right carpal tunnel syndrome. Dr. Chan opined that appellant should remain off work until April 8, 2006 and then work four hours per day for four weeks. He did not, however, provide any rationale for his finding that appellant should reduce her work hours or explain how and why the accepted condition caused disability from work. Medical conclusions unsupported by rationale are of diminished probative value.<sup>6</sup>

In a report dated May 4, 2006, Dr. Masem diagnosed cervical strain, degenerative disc disease and right lateral epicondylitis. On physical examination he found marked guarding and “significant pain behavior.” Dr. Masem noted that appellant's elbow tendinitis, repetitive strain injuries of the upper extremities and cervical strain were symptomatic. He determined that her upper extremity symptoms “may be related to her cervical spine degenerative disc disease and working for prolonged periods in positions behind the computer.” Dr. Masem recommended further tests. He stated: “In the meantime, her work hours are reduced to four hours per day, with regular hourly stretch breaks.” Dr. Masem attributed appellant's upper extremity condition in part to working at the computer and cervical degenerative disc disease. A recurrence of disability, however, is a work stoppage caused by “a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”<sup>7</sup> To the extent that Dr. Masem found that appellant's condition was aggravated by employment duties, any disability resulting from the alleged aggravation would be considered a new injury and not a recurrence as defined by the

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<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> See *supra* note 1.

<sup>6</sup> *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

<sup>7</sup> 20 C.F.R. § 10.5(x).

regulations. Additionally, the Office has not accepted degenerative disc disease of the cervical spine as employment related and there is no reasoned medical evidence supporting such a conclusion. Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>8</sup>

In a report dated June 23, 2006, Dr. Masem diagnosed bilateral carpal tunnel syndrome, cervical spondylosis, degenerative disc disease and chronic tendinitis of the wrist. He asserted that appellant's condition was "chronically exacerbate[d]" by her work duties. Dr. Masem recommended that she continue working four hours per day with restrictions. He did not, however, specifically attribute her disability to her accepted employment injury but instead to her employment duties. As discussed, a recurrence of disability does not include disability resulting from exposure to new work factors, even if it involves the same part of the body previously injured.<sup>9</sup> Therefore, Dr. Masem's report does not support that appellant sustained a recurrence of disability.

In a progress report dated August 25, 2006, Dr. Chan noted that appellant continued working four hours per day. He indicated that electrodiagnostic studies showed no carpal tunnel syndrome or cervical radiculopathy. Dr. Chan found tenderness of the right cervical paraspinals and upper trapezius and diagnosed a cervical/trapezius strain. While he indicated that she was working four hours per day, he did not specifically address whether she was partially disabled from work due to her accepted employment injury and thus his report is of diminished probative value.

On August 29, 2006 Dr. Masem diagnosed cervical spondylosis and degenerative disc disease. He stated: "I had recommended reduced work hours for [appellant] as she was primarily concerned with neck pain. My recommendations evidently have not been recognized and, correspondingly, [appellant] is choosing on her own to return to full-duty work." Dr. Masem opined that she should take stretch breaks and alternate tasks. As he did not assert that appellant remained partially disabled due to her employment injury, his opinion is insufficient to meet her burden of proof.

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between her claimed condition and her employment.<sup>10</sup> She must submit a physician's report in which the physician reviews those factors of employment identified by her as causing her condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale

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<sup>8</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3b(2) (May 1997). Appellant may file an occupational disease claim if she believes that new work factors caused her disability from employment.

<sup>10</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001).

in support of his or her opinion.<sup>11</sup> Appellant failed to submit such evidence and therefore failed to discharge her burden of proof.

**CONCLUSION**

The Board finds that appellant has not established that she sustained a recurrence of disability beginning April 6, 2006 causally related to her accepted employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 10, 2007 and August 23, 2006 are affirmed.

Issued: March 7, 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

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<sup>11</sup> *Robert Broome*, 55 ECAB 339 (2004).