United States Department of Labor
Employees' Compensation Appeals Board

S.W., Appellant	)	
and	)	**Docket No. 08-119**
	)	**Issued: September 18, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Wilmington, DE, Employer	)	

Appearances:
Aaron B. Aumiller, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On October 10, 2007 appellant filed a timely appeal from a July 12, 2007 Office of Workers' Compensation Programs' merit decision. Under 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 sustained a recurrence of her accepted right shoulder condition as of August 21, 2001.

FACTUAL HISTORY

Appellant, a 45-year-old letter carrier, filed a claim, alleging that she injured her right shoulder on July 28, 1996 in the performance of duty. The Office accepted the claim for right shoulder strain, but accepted it as an occupational disease rather than as a traumatic injury.

Appellant returned to work on limited duty and was off work for intermittent periods. The Office authorized surgery for right shoulder arthroscopy, right rotator cuff debridement and right shoulder acromioplasty on March 10, 1999. The surgery was performed by Dr. Brent R.

Noyes, a Board-certified in orthopedic surgery. The claim was expanded to include the conditions of right shoulder impingement syndrome and right shoulder arthroscopic surgery.

On January 28, 2000 the employing establishment offered a limited-duty job to appellant within her physical restrictions, which included: no reaching above the shoulder; no reaching above the elbow level; no pushing or pulling over 10 pounds; no lifting over 10 pounds; sitting at a workstation, not requiring reaching above the elbow level; sitting, standing and walking, full duty, for eight hours per day; alternate positions as medically necessary. The job required appellant to work a 3:30 p.m. to midnight shift. The job offer was approved on February 9, 2000 by Dr. Noyes, appellant's treating physician, who performed the March 1999 right shoulder surgery.

An Office memorandum dated May 15, 2000, indicated that appellant had accepted the job offer and had returned to work but was only working six to seven hours per day. It stated, "Claimant claiming her workstation is not accommodating. They have an industrial engineer working with claimant. Claimant also did n[o]t sign job offer."

In a letter to the Office dated August 6, 2001, it stated:

> "Per Tour III manager, John Williams, [appellant] has not worked her distribution clerk bid assignment since 1992 or her limited[-]duty assignment riffing mail on her tour (3:30 [p.m.] to midnight) for several years. She, in fact, has refused to accept the limited[-]duty job offer that was approved by her treating physician on February 4, 2000. [Appellant] further refuses to provide any medical documentation to the [employing establishment]. Therefore, the [employing establishment] does not have sufficient or current medical information in order to provide productive work for the employee.
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> "Due to a concerted effort by the plant manager and her tour manager to return [appellant] to her limited[-]duty assignment on Tour III, [appellant] has been directed to report at 3:30 [p.m.] She has been reporting at 3:30 [p.m.] for several weeks now. But -- it has been communicated to me, by John Williams, Tour III manager, that [appellant] upon reporting to Tour III, informed him that all she is required to do is to clock in and sit at a table -- doing nothing -- and she stated that is exactly what she has been doing and that is her intention to do so in the future.
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> "[Appellant's] regular bid assignment is a Level 5/Step 0 -- distribution clerk assigned to 3:30 [p.m.] to midnight. She refuses to sign job offers, certified receipts or accept certified letters or any communication from the [employing establishment] via mail or during work hours regarding her injury and/or limited[-]duty job offers.
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> "It has been anonymously reported to this Office that [appellant] his been observed routinely shooting hoops, yet all medical restrictions state 'no overhead/elbow/shoulder work." [Appellant] volunteered this information and

confirmed with this Office, the report of her shooting hoops was correct -- but added she shoots hoops for shoulder exercise."

A statement of accepted facts dated August 6, 2001 indicated that appellant had not performed work as a distribution clerk for several years. It stated that her current duties included performing sedentary duties as a union representative for postal employees.[1]

Appellant underwent an impairment evaluation on September 11, 2001, performed by Dr. Stephen F. Latman, Board-certified in orthopedic surgery, pursuant to a claim for a schedule award based on partial loss of use of her right shoulder. In his report, Dr. Latman stated that appellant was capable of performing the duties for modified distribution clerk as described in the January 28, 2000 job offer. He stated that the job should include a workplace modification recommended by a physical therapist on February 13, 1997; this entailed an adjustment in her chair height so that her arms could be more at her sides, to avoid wrist flexion as she sorted mail, wrist splints to maintain extension and a foot rest to help support her and reduce back strain.

On April 15, 2002 appellant filed a Form CA-2a claim for benefits, alleging that she sustained a recurrence of disability as of August 22, 2001 causally related to her accepted right shoulder condition.

By decision dated September 18, 2002, the Office denied appellant compensation for a recurrence of her accepted right shoulder condition.

In a November 18, 2002 report, Dr. Barry L. Bakst, an osteopath, stated that appellant continued to have complaints of right shoulder pain despite undergoing arthroscopic surgery of the right shoulder in 1999. He related complaints of right shoulder pain which was constant with any movement and she was extremely limited with forward flexion of her shoulder as well as abduction and internal as well as external rotation. Dr. Bakst stated:

"Since August 22, 2001, [appellant] has been out of work secondary to apparent issues regarding modifications of her workstation. She states that with increased activity she notes increased right shoulder pain and there have been conflicting stories apparently between her supervisor and work as well as her perception of the problem. Unfortunately, [appellant] has not worked in quite some time secondary to the job restrictions as well as the workstation ergonomic modifications."

Dr. Bakst diagnosed chronic right shoulder pain with previous arthroscopic surgery secondary to impingement syndrome. He stated that he was giving appellant a note stating that she may work with restrictions as per Dr. Noyes' previous notes.

[1] By letter dated August 1, 2001, the employing establishment advised appellant that it was declining her request for a reasonable accommodation for a sales and service associate position. The employing establishment informed appellant that she was not capable of performing the position because it required working on the window as well as performing manual distribution duties. It noted that her accommodation required an elbow level chair and another restriction which could not be identified. The employing establishment advised appellant that "with such restrictive requirements it is not reasonable to conclude she can be accommodated in this position."

In a February 25, 2003 report, Dr. William A. Newcomb, Board-certified in orthopedic surgery, stated:

> "The purpose of her visit today was to get a letter concerning causal relationship from when Dr. Noyes was treating her number of years ago. We looked through the chart and could n[o]t find anything pertaining to this. She [i]s going to find that information in letter form and get it back to us. This will require an extensive review. I explained to her, since I [a]m just coming into this picture, that I am not sure what the results of my investigation will be."
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> * * *
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> "I [wi]ll see her as needed. Because her symptoms have n[o]t changed since she saw Dr. Noyes, the restrictions at work will remain unchanged."

By letter dated September 4, 2003, appellant requested reconsideration.

By decision dated December 19, 2003, the Office denied modification of its September 18, 2002 decision.

By letter dated December 15, 2004, appellant requested reconsideration.

In e-mails dated September and November 2004, the employing establishment indicated that it had considered appellant's claim to be closed, but it had conducted an internal inquiry to determine whether her recurrence claim had any merit. The e-mails discussed how the employing establishment had attempted for several years to find work within appellant's restrictions based on the January 28, 2000 job offer approved by her treating physician, Dr. Noyes, but that she had refused to cooperate with them. The employing establishment noted that she had been reporting for work but was actually just sitting at a table performing no work. The e-mails indicated that the supervisory manager on the tour at the time confronted her and asked her for updated medical documentation on at least three occasions; however, appellant never provided this information. Appellant was sent home in August or September 2001. She then requested reasonable accommodations, but delayed a meeting to arrange this accommodation for approximately four months. The employing establishment indicated that she provided different reasons as to why she would be unable to attend the accommodation meetings. When appellant finally did report for the team meeting she failed to provide updated medical documentation. In essence, the employing establishment indicated that appellant never actually worked the limited-duty job offer, refused to perform any work and refused to submit any current medical documentation. This course of events caused the employing establishment to put her out of the building and consider her claim closed.

By decision dated February 7, 2005, the Office denied modification of the September 18, 2002 Office decision. It stated:

> "The evidence of record establishes that [appellant] was offered a limited[-]duty position by the employing establishment on January 28, 2000 that was approved by Dr. Noyes. [Appellant] was given a higher chair as recommended by the physical therapist on February 13, 1997. She informed her Tour Manager that all

she is required to do is to clock in and sit at a table doing nothing and that is exactly what she had been doing and that is her intention to do so in the future. Dr. Latman [in his September 11, 2001 report] ... also indicated that appellant was capable of performing the duties for the modified distribution clerk as described on January 28, 2000 and that workplace modification should be carried out as recommended by the physical therapist on February 12, 1997. The additional workplace modifications recommended by the physical therapist were approved by Dr. Noyes. Also, Dr. Newcomb mentioned in his office note dated February 25, 2003 that because [appellant's] symptoms have n[o]t changed since she saw Dr. Noyes, the restrictions at work will remain unchanged. [Appellant] returned to work and performed the duties of the January 28, 2000 limited[-]duty job offer approved by Dr. Noyes. The evidence of record does not reflect that the job was taken away from [appellant] because she was physically incapable of performing her job duties."

In a report dated March 31, 2005, Dr. John Hogan, Board-certified in orthopedic surgery, who stated findings of right shoulder pain on examination, noted appellant's medical history and reviewed the ergonomic accommodations required for her to accept a modified, light-duty position. He advised that a dispute had arisen between appellant and the employing establishment regarding the appropriateness of her workstation; appellant asserted that she was currently not working because the employing establishment had not made the appropriate accommodations. Dr. Hogan noted that there was a gap in the medical records between April 2000 and July 30, 2001, at which time she had renewed shoulder complaints, from July 30 to December 18, 2001, at which time Dr. Noyes noted that she was receiving psychological help and from December 2001 until September 3, 2002, at which time she experienced more shoulder symptoms.

By letters dated October 3, 2004 and July 19, 2005, the employing establishment informed appellant that it was unable to find a job which offered her reasonable accommodations for her work-related right shoulder conditions.

By letter dated February 5, 2006, appellant requested reconsideration.

By decision dated May 19, 2006, the Office denied modification of the September 18, 2002 Office decision.

On May 1, 2007 appellant requested reconsideration.

By decision dated July 12, 2007, the Office denied modification of the September 18, 2002 Office decision.

LEGAL PRECEDENT

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability. 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.[2]

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury. In addition, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[3]

ANALYSIS

The record does not contain any medical opinion showing a change in the nature and extent of appellant's injury-related condition. Appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her condition or disability as of August 21, 2001 to her employment injury. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment injury.

The contemporaneous medical evidence indicates that appellant was capable of performing the modified job offered by the employing establishment on January 28, 2000. The job offer was approved on February 9, 2000 by Dr. Noyes, appellant's treating physician, who performed the March 1999 right shoulder surgery. In his September 11, 2001 impairment evaluation, Dr. Latman stated that appellant was capable of performing the duties for modified distribution clerk as described in the January 28, 2000 job offer. He noted that the job should include the workplace modifications recommended by a physical therapist on February 13, 1997. Dr. Bakst stated in his November 18, 2002 report that he was giving appellant a note stating that she could work in accordance with Dr. Noyes restrictions. However, while appellant reported for duty in 2000 and showed up for work until August 2001, the e-mails and letters from the employing establishment indicate that appellant, by her own admission, refused to cooperate with any attempts to accommodate her in the modified job and occupied her time at the worksite by sitting in a chair doing nothing except performing her duties as union representative. The record also indicates that appellant refused to submit an updated medical opinion regarding her condition, even though the Office and the employing establishment made repeated requests for this documentation. In his February 25, 2003 report, Dr. Newcomb noted that he was seeing appellant in order to get a letter concerning causal relationship from when Dr. Noyes was treating her a number of years ago, but could not find anything in her chart. Appellant apparently never contacted him after this examination. Accordingly, the record contains no contemporaneous rationalized, probative medical opinion sufficient to establish that appellant's claimed disability as of August 21, 2001 was causally related to her accepted right shoulder condition. The Office therefore properly denied compensation for a claimed recurrence of

[2] *Terry Hedman*, 38 ECAB 222 (1986).

[3] For the importance of bridging information in establishing a claim for a recurrence of disability, *see Robert H. St. Onge*, 43 ECAB 1169 (1992); *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 738 (1986).

disability in its September 18, 2002, December 19, 2003, February 7, 2005 and May 19, 2006 decisions.

Appellant subsequently submitted a March 31, 2005 report from Dr. Hogan. However, Dr. Hogan's report does not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment injury and her alleged recurrence of disability. Causal relationship must be established by rationalized medical opinion evidence. Dr. Hogan noted right shoulder pain on examination, noted appellant's medical history and reviewed the restrictions and ergonomic accommodations listed in the record. He stated, however, that there were several gaps in the medical records; between April 2000 and July 30, 2001, between July 30 and December 18, 2001 and between December 18, 2001 and September 3, 2002. Dr. Hogan did not present any opinion regarding whether appellant sustained any disability causally related to her employment as of August 21, 2001.

The reports submitted by appellant failed to provide an explanation in support of her claim that she was disabled as of August 21, 2001. These reports did not establish a worsening of appellant's condition and therefore do not constitute probative, rationalized opinion evidence demonstrating that a change occurred in the nature and extent of the injury-related condition.[4]

In addition, the Board finds that the evidence fails to establish that there was a change in the nature and extent of appellant's limited-duty assignment such that she no longer was physically able to perform the requirements of her light-duty job. As stated above, while appellant reported to the worksite for duty in 2000 she refused to formally accept the modified job approved by her treating physician, Dr. Noyes, and refused to cooperate with the employing establishment for the purpose of engaging in some form of productive capacity. Appellant reluctantly returned to work where she wound up doing nothing other than sitting at a table, then was ordered off the jobsite in August 2001 when the division manager discovered what she had actually been doing since returning to the worksite in 2000. Although the record indicates that appellant periodically attempted to bid on other jobs, she failed to attain these positions, either because they were unable to reasonably accommodate her work restrictions or because appellant did not diligently pursue these jobs by processing the paperwork or updating her medical profile. She has failed to establish that she stopped working because there had been a change in the nature and extent of her limited-duty assignment such that she no longer was physically able to perform the requirements of her light-duty job.

Accordingly, as appellant has not submitted any factual or medical evidence supporting her claim that she was disabled from performing her light-duty assignment as of August 21, 2001 as a result of her accepted right shoulder condition, she failed to meet her burden of proof. The Board will affirm the July 12, 2007 Office decision.

CONCLUSION

The Board finds that appellant has not met her burden to establish that she was entitled to compensation for a recurrence of disability as of August 21, 2001 causally related to her accepted right shoulder condition.

[4] *William C. Thomas*, 45 ECAB 591 (1994).

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board