

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

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**T.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Grand Rapids, MI, Employer**

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**Docket No. 08-976  
Issued: September 9, 2008**

*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  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 12, 2008 appellant filed a timely appeal from Office of Workers' Compensation Programs' merit decisions dated August 7, 2007 and January 16, 2008. 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 disability as of September 22, 2006 causally related to her accepted cervical condition.

**FACTUAL HISTORY**

On October 27, 2004 appellant, a 48-year-old mail handler, was struck in the head by a stack of mail. She filed a claim for benefits on November 2, 2004, which the Office accepted for neck sprain, head concussion and postconcussive syndrome. The Office paid compensation for temporary total disability. Appellant accepted a modified job offer on November 5, 2004.

On May 20, 2007 appellant filed a Form CA-2a claim for benefits, alleging that she sustained a recurrence of disability on September 22, 2006 which was causally related to her accepted cervical condition.

By letter dated May 24, 2007, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits based on a recurrence of disability. It asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether her claimed condition as of September 22, 2006 was causally related to her October 27, 2004 employment injury. The Office stated that appellant had 30 days to submit the requested evidence.

Appellant submitted a September 22, 2006 return to work certificate from Dr. Karla Hemphill-Harris, an osteopath, who stated:

“[Appellant] should not lift more than 10 pounds at work. No bending, turning or extension of the neck, effective September 22 until October 31, 2006.”

By decision dated August 7, 2007, the Office denied the recurrence of disability claim. It found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability as of September 22, 2006 was caused or aggravated by the accepted condition.

By letter dated August 10, 2007, appellant’s attorney requested an oral hearing, which was held on November 14, 2007. Appellant submitted a report of a magnetic resonance imaging [MRI] scan dated June 4, 2005 and reports dated September 21 and December 21, 2006 and June 22, 2007 from Dr. Joseph Vanden Bosch, a specialist in anesthesiology. In his September 21, 2006 report, Dr. Vanden Bosch stated that x-rays of appellant’s cervical spine in 2004 did reveal some reversal of the normal cervical lordosis curvature, indicating muscular spasm. He then explained that to determine whether there was some degree of underlying mechanical irritation contributing to her neck pain left-sided cervical facet injections from C3-4 through C5-6 were given, following which appellant had sustained improvement of greater than 50 percent for close to one month. However, Dr. Vanden Bosch also noted that recently appellant had started having some resurgence of her pain but overall it did continue to be noticeably improved. Appellant rated her neck pain a 4 out of 10 on a pain scale, but with the benefit of the treatment she was better able to perform her job duties at the employing establishment as a mail handler with less discomfort.

On December 21, 2006 Dr. Vanden Bosch stated that appellant had reported some noticeable improvement of about 40 percent in her left-sided neck pain for four weeks following repeat left-sided intra-articular cervical facet injections this past September. He also noted:

“Unfortunately, [appellant] did not seem to have more noticeable sustained relief compared to her previous facet treatment, which also did seem to provide about this amount of relief. She states that she has been working long 12-hour workdays almost seven days a week at [the employing establishment]. Since [appellant] did not seem to have more sustained relief following the repeat facet

treatment, I informed her that I would prefer to try more conservative care at this time involving a course of physical therapy her at the clinic. This would include manual therapy to help reduce soft tissue irritation in the cervical spine and improve her cervical range of motion with some joint mobilization.

“On examination there continues to be some tenderness with palpation over the left-sided cervical paravertebral muscles overlying the facets with some spasm. Cervical extension and left lateral rotation are mildly restricted. Appellant continues to have problems with left-sided cervicgia with referred symptoms secondary to an element of cervical spondylosis along with a significant myofascial component.”

In his June 22, 2007 report, Dr. Vanden Bosch related that appellant considered the physical therapy beneficial. He advised that over the post few months she was starting to have a noticeable resurgence of her left-sided neck pain. Dr. Vanden Bosch noted tenderness and spasm on examination over the left-sided cervical paravertebral muscles overlying the facets from C4-5 through C6-7; cervical extension and lateral rotation were restricted. He related that appellant complained of a reemergence of her left-sided cervicgia, with referred symptoms secondary to an element of underlying mechanical irritation of the cervical facet joints from spondylosis, along with a myofascial component. Dr. Vanden Bosch gave appellant cervical facet injections, after which he noted degenerative changes.

By decision dated January 16, 2008, an Office hearing representative affirmed the July 22, 2004 Office decision.

### **LEGAL PRECEDENT**

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and who supports that conclusion with sound medical reasoning.<sup>1</sup> A recurrence of disability is defined as the inability to work caused by a spontaneous change in a medical condition which results from a previous injury or illness without an intervening injury or new exposure in the work environment that caused the illness.<sup>2</sup>

### **ANALYSIS**

Appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her condition or disability as of September 22, 2006 to her accepted cervical condition. 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 condition. Appellant has failed to submit evidence to show that she sustained a worsening of her cervical

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<sup>1</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

<sup>2</sup> *See* 20 C.F.R. § 10.5(x); *Donald T. Pippin*, 54 ECAB 631 (2003).

condition or was totally disabled from all work after September 22, 2006. As she did not submit medical evidence sufficient to establish that she sustained a recurrence of her work-related cervical condition, the Office properly denied compensation in its August 7, 2007 decision.

Appellant submitted Dr. Hemphill-Harris' September 22, 2006 report, which outlined work restrictions for appellant effective September 22 through October 31, 2006. The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>3</sup> Dr. Hemphill-Harris' report did not provide a history of injury or a diagnosis of appellant's current condition. The report outlined work restrictions for a neck condition and indicated generally that appellant complained of disabling pain as of September 22, 2006, but did not contain a probative, rationalized medical opinion sufficient to establish that appellant's disability as of September 22, 2006 was causally related to her accepted cervical condition.

Dr. Hemphill-Harris' opinion, therefore, is of limited probative value as it does not contain any medical rationale explaining how or why appellant's accepted condition is causally related to her alleged recurrence of disability.<sup>4</sup> Appellant thus failed to submit evidence to show she sustained a worsening of her cervical condition or was totally disabled from all work after September 22, 2006. As she did not submit medical evidence sufficient to establish that she sustained a recurrence of her work-related cervical condition, the Office properly denied compensation for a recurrence of disability in its August 7, 2007 decision.<sup>5</sup>

Following the August 7, 2007 decision, appellant submitted Dr. Vanden Bosch's September 21 and December 21, 2006 and June 22, 2007 reports. Dr. Vanden Bosch related complaints of cervical pain and noted tenderness on examination with palpation over the left-sided cervical paravertebral muscles overlying the facets from C4-5 through C6-7, in addition to some spasm. He advised that cervical extension and left lateral rotation were mildly restricted and noted that appellant continued to experience left-sided cervicalgia and cervical spondylosis, with a significant myofascial component. Dr. Vanden Bosch prescribed a course of physical therapy which temporarily improved her condition, but noted a regression of her condition in his June 22, 2007 report. These reports, however, did not address the causal connection, if any, between appellant's employment-related cervical strain and her alleged recurrence of disability. Causal relationship must be established by rationalized medical opinion evidence. Dr. Vanden Bosch's reports failed to provide an explanation of how appellant's cervical strain would cause or contribute to her disability as of September 22, 2006. While his reports provided a diagnosis of appellant's current condition and note that she complained of disabling cervical pain as of September 22, 2006, they did not provide a discussion of how appellant's accepted condition would cause or contribute to the noted degenerative changes of the cervical spine or establish that appellant's disability as of September 22, 2006 was causally related to her accepted cervical strain condition. The Board finds that appellant failed to submit rationalized medical evidence

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<sup>3</sup> See *Ann C. Leanza*, 48 ECAB 115 (1996).

<sup>4</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>5</sup> *Id.*

sufficient to establish that her current condition was causally related to her October 27, 2004 employment injury.

Appellant has not submitted sufficient medical evidence supporting her claim that she sustained a recurrence of her employment-related disability as of September 22, 2006. The Office hearing representative properly found that appellant was not entitled to compensation based on a recurrence of her disability. The Board will affirm the January 16, 2008 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 September 22, 2006 causally related to her accepted cervical strain condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 16, 2008 and August 7, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 9, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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