



unloading mail containers. She returned to work in a part-time limited-duty position on July 31, 2000. The Office accepted the claim for right shoulder contusion and bursitis.<sup>1</sup>

After the claim was filed, appellant was treated for right shoulder bursitis, right shoulder adhesive capsulitis and impingement syndrome of the right rotator cuff tendon. An August 16, 2000 magnetic resonance imaging (MRI) scan of the right shoulder revealed subdeltoid bursitis. A functional capacity evaluation dated January 29, 2001 revealed that appellant could work in the light physical demand level. The Office also developed the medical evidence. On October 15, 2003 the employing establishment offered appellant a limited-duty position as a rehabilitation clerk, which she accepted on October 17, 2003.

On January 23, 2004 the Office asked the employing establishment to address appellant's assertions that her work duties were overly repetitive. On April 1, 2004 the employing establishment indicated that all her duties were self paced, with no required quota output per shift. The employer noted that appellant could stop keying and perform other duties at any time. On October 19, 2004 the employing establishment offered her a full-time position as a modified rehabilitation clerk, effective October 19, 2004, which she accepted.

Appellant submitted reports from Dr. Marie Kirincic, a Board-certified orthopedist, dated October 11 to 18, 2004, who noted a history of her July 30, 2000 work injury and subsequent treatment. Dr. Kirincic diagnosed right adhesive capsulitis, left medial epicondylitis and left trapezius strain with C5-6 and C6-7 mild to moderate degenerative changes. In reports dated November 15, 2004 to June 23, 2005, she treated appellant for chronic myofascial pain, right adhesive capsulitis and left medial epicondylitis and recommended that appellant continue working light duty with restrictions.

On April 28, 2005 the employing establishment offered appellant a limited-duty position as a rehabilitation clerk. The job duties were the same as the October 15, 2003 job offer except that, when verifying mail, the manual express pouches would be below shoulder level and the lifting limitation was five pounds occasionally up to 10 times per hour. Appellant did not accept or reject the position but continued to work as a light-duty part-time flexible rehabilitation clerk.

Appellant continued to submit reports from Dr. Kirincic from June 23 to August 23, 2005, who noted that appellant reached maximum improvement with regard to the right adhesive capsulitis and left lateral epicondylitis. Dr. Kirincic diagnosed chronic refractory myofascial pain syndrome and cervicothoracic area with degenerative joint disease at C5-7. In an August 23, 2005 work status report, she noted that appellant could work with a five-pound lifting restriction, no repetitive use of the right arm, no left arm lifting, no repetitive activities and a 15-minute break every hour.

Appellant submitted several CA-7 forms, claims for compensation, for total disability for the period beginning October 22, 2005. In a November 3, 2005 attending physician's report,

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<sup>1</sup> Appellant filed the following claims for compensation: File No. xxxxxx544, the Office accepted left-sided lateral epicondylitis with a date of injury of December 20, 2002; File No. xxxxxx515, the Office accepted left trapezius strain, which occurred on November 8, 2003. These claims were combined with the current claim before the Board.

Dr. Kirincic noted a history of repetitive mail sorting and diagnosed adhesive capsulitis, epicondylitis, chronic spasms and cervical spondylosis. She noted with a checkmark “yes” that appellant’s condition was caused or aggravated by a work injury. Dr. Kirincic indicated that appellant could continue working limited duty with a lifting restriction of five pounds occasionally.

In statements dated October 25 and 27, 2005, appellant indicated that she never accepted the April 28, 2005 job offer and had not been performing the duties of that job; rather on April 29, 2005 she was assigned to tour two to verify mail at a mall parcel bundle sorting machine. She indicated reporting for work on October 21, 2005 but did not perform the repetitive duties in the job offers of October 18, 2003 or April 28, 2005. Appellant indicated that her supervisor requested a copy of her work restrictions and she advised that she submitted all appropriate paperwork but was sent home.

On November 14, 2005 the Office requested that appellant submit medical evidence establishing total disability from work beginning October 22, 2005.

Appellant submitted statements dated December 1 and 6, 2005 and asserted that she submitted sufficient evidence to show that she could no longer perform her work duties. She noted that the employer ceased to make available suitable work and she was instructed to go home on October 22, 2005. On December 6, 2005 appellant indicated that she did not report to work on April 28, 2005 for the restricted-duty position; rather, she reported on April 30, 2005 and performed a tour two position verifying mail until she was sent home on October 22, 2005. She believed that the October 18, 2003 and April 28, 2005 job offers were not suitable and therefore she did not accept them.

On November 18 and December 9, 2005 the Office contacted the employing establishment and verified that work within appellant’s restrictions remained available to her and she chose to go home on October 22, 2005 instead of performing the duties of her modified job. The employing establishment indicated that the job remained available.

On September 9, 2005 the Office issued a wage-earning capacity determination.<sup>2</sup> It found that the position of part-time flexible rehabilitation clerk fairly and reasonably represented appellant’s wage-earning capacity. The Office noted that she had no wage loss as her actual earnings were equivalent to the pay rate for the position she held at the time of her injury.

Appellant submitted a December 12, 2005 report from Dr. Kirincic, who noted appellant’s complaints of left-sided cervicothoracic, bilateral elbow and bilateral shoulder pain. She reported being sent home from work on October 22, 2005. Dr. Kirincic noted limited range of motion of the cervical spine, tightness and trigger points in the cervical paraspinals, some sensory alteration with tenderness over the bilateral lateral epicondyle. She diagnosed right adhesive capsulitis and left lateral epicondylitis, ongoing right lateral epicondylitis, left-sided cervicothoracic myofascial pain syndrome, spondylosis at C5 to C7 with weakness on the left

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<sup>2</sup> The decision was corrected in a December 15, 2005 decision, which found that the position of full-time rehabilitation distribution clerk fairly and reasonably represented appellant’s wage-earning capacity. The Office noted that appellant had worked full time for over 60 days with no wage loss.

deltoid and biceps. Dr. Kirincic recommended that appellant resume work with a lifting restriction of five pounds and noted that she would benefit from eliminating repetitive work. On December 13, 2005 she noted that an MRI scan of the cervical spine revealed mild to moderate degenerative disc disease, mild diffuse stenosis and mild C6-7 foraminal narrowing. Dr. Kirincic opined that appellant's ongoing muscular problems were the result of repetitive use of the upper extremities with underlying mild arthritis of the neck.

On January 18, 2006 the Office denied appellant's claim for compensation beginning October 22, 2005, finding that the evidence was not sufficient to establish that her total disability was due to her accepted work injury.

Appellant requested an oral hearing which was held on January 26, 2007. She submitted an August 23, 2005 attending physician's report from Dr. Kirincic, who noted appellant's history and diagnosed right shoulder strain, bursitis and adhesive capsulitis. Dr. Kirincic checked a box "yes" that appellant's condition was work related. She recommended that appellant continue working limited duty. In a January 24, 2006 report, Dr. Kirincic noted appellant's desire to accept the April 2005 job offer and return to work. In a February 23, 2006 report, she diagnosed degenerative disc disease of the cervical spine, left-sided foraminal narrowing at C6-7 and repetitive myofascial pain syndrome and recommended that appellant return to work. On February 24, 2006 Dr. Kirincic noted that appellant was off work for four months and was able to return to perform the duties set forth in the April 28, 2005 job offer.

In a decision dated March 2, 2007, the hearing representative affirmed the Office decision dated January 18, 2006, denying compensation from October 22, 2005 to March 30, 2006.

Appellant submitted a March 23, 2007 report from Dr. Kirincic, which summarized appellant's treatment and noted that she reported being sent home from work on October 22, 2005. She reported that the employer was not accommodating her restrictions and she feared reinjuring herself. Dr. Kirincic recommended that appellant return to sedentary work without repetitive use of the right arm and a five-pound lifting restriction. Appellant indicated that the employer would not accommodate her restrictions. Dr. Kirincic indicated that for this reason she could not foresee appellant returning to gainful employment in her previous position. She diagnosed right shoulder adhesive capsulitis, epicondylitis of the elbows, degenerative joint disease of the cervical spine and myofascial pain. Dr. Kirincic indicated that the conditions worsened with repetitive use of the arm and prolonged cervical flexion. In a June 28, 2007 report, she noted treating appellant's symptoms and reported diagnoses. Dr. Kirincic advised that appellant could return to limited-duty work.

Appellant appealed her claim to the Board and in an decision dated May 9, 2008, the Board set aside the March 2, 2007 Office decision in appeal Docket No. 07-1347 and remanded the case to reconstruct the record. The Board noted that the Director had not forwarded the complete contents of appellant's case record for review by the Board.<sup>3</sup>

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<sup>3</sup> Docket No. 07-1347 (issued May 9, 2008).

In a decision dated May 22, 2008, a hearing representative affirmed the Office decision dated January 18, 2006. The hearing representative noted that appellant failed to establish that she sustained a recurrence of disability on October 22, 2005 causally related to her work injury.

### **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 of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show 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.<sup>4</sup>

Causal relationship is a medical issue<sup>5</sup> and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup>

### **ANALYSIS**

The Office accepted appellant's claim for right shoulder contusion, bursitis, tenosynovitis of the right hand, left-sided lateral epicondylitis and left trapezius strain. Appellant returned to a modified-duty position on October 19, 2004, as a modified rehabilitation clerk. On April 28, 2005 the employing establishment offered her a limited-duty position as a rehabilitation clerk. Appellant did not accept or reject the position but continued to work as a light-duty part-time flexible rehabilitation clerk. On October 22, 2005 she stopped work and claimed disability compensation beginning October 22, 2005, alleging that the employer ceased to make available suitable work and she was instructed to go home on October 22, 2005. In the instant case, appellant has not submitted sufficient evidence to support 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.<sup>7</sup>

Appellant submitted attending physician's report from Dr. Kirincic dated November 3, 2005. Dr. Kirincic diagnosed adhesive capsulitis, epicondylitis, chronic spasms and cervical spondylosis and opined that appellant's condition was caused or aggravated by a work injury.

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<sup>4</sup> *Terry R. Hedman*, 38 ECAB 222 (1986). See 20 C.F.R. § 10.5(x) for the definition of a recurrence of disability.

<sup>5</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>6</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> The Office is not precluded from adjudicating a limited period of employment-related disability when a formal wage-earning capacity determination has been issued. *Sandra D. Pruitt*, 57 ECAB 126 (2005).

However, Dr. Kirincic also indicated that appellant could work within restrictions. In her December 12, 2005 report, she treated appellant for left-sided cervicothoracic, bilateral elbow and bilateral shoulder pain. Appellant reported being sent home from work on October 22, 2005. Dr. Kirincic noted diagnoses and opined that appellant could work within restrictions. Other reports from her similarly indicated that appellant could work within restrictions. None of Dr. Kirincic's reports, most contemporaneous with the claimed disability, noted a specific date of disability nor did she note a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented her from performing her light-duty position.<sup>8</sup> Rather, Dr. Kirincic related that appellant reported being sent home by the employing establishment or that the employing establishment was not accommodating her restrictions. She did not explain how any particular duty caused a disabling change in her accepted conditions. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.<sup>9</sup>

Appellant submitted reports from Dr. Kirincic dated March 23 and June 28, 2007, which summarized her treatment. Dr. Kirincic noted seeing appellant on November 3, 2005 and she reported working on October 22, 2005 when her supervisor sent her home. She recommended sedentary work without repetitive use of the right upper extremity with a five-pound lifting restriction; however, appellant indicated that the employer would not accommodate her restrictions. Dr. Kirincic diagnosed adhesive capsulitis of the right shoulder, epicondylitis of the elbows, degenerative joint disease of the cervical spine and myofascial pain. She indicated that the conditions worsen with repetitive use of the upper extremities with prolonged cervical flexion.<sup>10</sup> Dr. Kirincic appears merely to be repeating appellant's opinion on disability without providing her own opinion regarding whether appellant's condition caused recurrent disability during the claimed time period. To the extent that she is providing her own opinion, she failed to provide a rationalized opinion on causal relationship between the claimed period of recurrent disability and the accepted employment conditions of right shoulder contusion, bursitis, tenosynovitis of the right hand, left-sided lateral epicondylitis and left trapezius strain.<sup>11</sup> Furthermore, Dr. Kirincic's report did not provide a rationalized opinion explaining the reasons appellant's recurrent condition and disability was due to the accepted work injury.<sup>12</sup> She did not note a specific date of disability nor did she note a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from performing her light-duty position. Rather, Dr. Kirincic recommended that appellant return to work in a sedentary position with restrictions. Therefore, the evidence was insufficient to

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<sup>8</sup> See *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971) (where the Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence).

<sup>9</sup> See *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>10</sup> To the extent that the physician indicated that appellant's condition would worsen if she returned to work, the Board has held that fear of future injury is not compensable. *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008).

<sup>11</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>12</sup> *Id.*

establish a change in the nature of appellant's injury-related condition that would disable her from October 22, 2005 to March 30, 2006.

The Board further finds that the evidence does not substantiate that appellant experienced a change in the nature and extent of the light-duty requirements or was required to perform duties that exceeded her medical restrictions. Appellant asserted that she stopped work when the employing establishment did not provide her work within her restrictions beginning October 22, 2005. On November 3, 2005 Dr. Kirincic noted that appellant reported being sent home from work on October 22, 2005 because she was unable to perform her job duties and the employer would not accommodate her restrictions. However, she is repeating appellant's assertions regarding her work duties. The record does not establish that appellant's work exceeded her light-duty restrictions. The job duties of the April 28, 2005 position were the same as the October 15, 2003 job offer with additional restrictions on placement of the mail pouches and lifting limitations. On November 18 and December 9, 2005 the employing establishment verified that work within appellant's restrictions remained available to her and she chose to go home on October 22, 2005 instead of performing the duties of her modified job. The employing establishment indicated that the job remained available. Appellant has not met her burden of proof in establishing that there was a change in the nature and extent of the light-duty requirements after she returned to work.

#### **CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability from October 22, 2005 to March 30, 2006 causally related to her accepted conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 22, 2008 is affirmed.

Issued: August 19, 2009  
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