

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

E.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Concord, CA, Employer**

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**Docket No. 08-136
Issued: February 23, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 18, 2007 appellant filed a timely appeal from a July 24, 2007 Office of Workers' Compensation Programs' decision denying her claim for a recurrence of disability. Pursuant to 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 on January 6, 2005 causally related to her January 20, 1999 employment injury.

FACTUAL HISTORY

On January 20, 1999 appellant, then a 45-year-old letter carrier, sustained an injury to her neck and arms caused by casing mail on January 20, 1999. At this time she was on limited duty due to a work-related lumbar strain on July 24, 1997.¹ The Office accepted appellant's claim for

¹ The Office accepted a lumbar strain under OWCP File No. xxxxxx752.

a cervical strain. Appellant was placed on modified duty with physical limitations based on her cervical and lumbar conditions.

On November 28, 2000 Dr. Norman B. Livermore, appellant's attending physician, placed her on limited duty for six hours a day, standing limited to five minutes, carrying and lifting limited to 10 pounds and the ability to change positions frequently. Appellant filed a claim for two hours of disability a day caused by her cervical condition. Her claim was denied by decisions dated February 6, April 10 and July 24, 2001.

On September 20, 2001 appellant filed a claim for a recurrence of disability for two hours a day beginning September 25, 2000, alleging that her limited-duty position aggravated her cervical strain. The Office denied appellant's claim by decisions dated January 23 and November 14, 2002 under case file number xxxxxx758. Appellant's claim for a recurrence of disability from February 11 to 24, 2003 was denied by decision dated May 12, 2003.

On December 5, 2003 appellant filed a claim for a shoulder condition caused by repetitive use of her arms at work. The Office accepted appellant's claim for a left rotator cuff tear and right shoulder strain under case file number xxxxxx422. As of June 2004, appellant's work restrictions included no lifting above the shoulders, no performing repetitive hand motions, no casing mail and no lifting more than 10 pounds.²

Appellant stopped work on January 6, 2005. On February 9, 2005 she filed a claim for a recurrence of disability beginning January 24, 2005.

On February 15, 2005 the Office asked appellant to provide evidence establishing that she was unable to perform her light-duty job due to a change in the nature and extent of her accepted cervical strain or a change in the nature and extent of her light-duty physical requirements.

In a January 26, 2005 narrative report, Dr. David W. Chow, an attending Board-certified physiatrist and specialist in pain management, stated that he had treated appellant since May 4, 2004 for lumbar disc herniations and radiculopathy, cervical disc herniations and radiculopathy, rotator cuff tendinitis and bilateral wrist and elbow tendinitis. Magnetic resonance imaging (MRI) scans revealed cervical and lumbar disc herniations and stenosis. Dr. Chow stated that appellant's symptoms had worsened and she was placed on total disability as of January 6, 2005. Appellant was unable to perform any work for at least three months due to severe neck pain, low back pain and upper and lower extremity pain. In a January 26, 2005 form report, Dr. Chow diagnosed cervical disc displacement caused by repetitive motion of the hands and neck. Appellant was totally disabled from January 6 to March 6, 2005. In a March 4, 2005 disability certificate, Dr. Chow extended her period of disability to April 6, 2005. In a March 29, 2005 narrative report, he reviewed the medical history and provided findings on physical examination. Dr. Chow advised that appellant remained totally disabled.

² By letter dated May 16, 2006, the employing establishment provided a description of appellant's work restrictions and advised that she was never required to work outside her restrictions.

By decision dated April 19, 2005, the Office denied appellant's claim on the grounds that she failed to establish that her inability to perform her limited-duty job was due to a change in the nature and extent of her accepted cervical strain or a change in her modified duties. On May 9, 2005 appellant requested a hearing that was held on April 12, 2006.

In a February 24, 2006 report, Dr. Chow provided findings on physical examination and stated that appellant was experiencing neck pain radiating into her upper extremities and low back pain radiating into her lower extremities. Appellant had a longstanding history of cervical degenerative disc protrusions causing neck pain and upper extremity tendinitis due to repetitive/overuses injuries. Dr. Chow noted appellant's complaint of increased neck pain recently. He diagnosed cervical disc displacement at C4-5 and C5-6,³ cervical degenerative disc disease, lumbar disc displacement at L4-5 and L5-S1, left L5 radiculopathy and neuroforaminal stenosis, a left rotator cuff tear and bilateral rotator cuff tendinitis, bilateral and medial epicondylitis, bilateral wrist tendinitis and bilateral acromioclavicular (AC) joint degenerative arthritis. Dr. Chow opined that appellant was permanently disabled.

By decision dated June 14, 2006, an Office hearing representative affirmed the April 19, 2005 decision.

On May 18, 2007 appellant requested reconsideration and submitted new medical evidence.⁴ In a September 14, 2004 report, Dr. Chow reviewed the medical history and provided findings on physical examination. He noted that appellant's complaint that her work duties aggravated her bilateral neck pain and radiated into the bilateral trapezial regions of her shoulders. Appellant's duties included sitting and writing with her head down for prolonged periods of time. Dr. Chow stated that appellant's persistent neck pain symptoms were caused by disc displacement and disc protrusions at C4-5 and C5-6. The symptoms were "not simply due to a muscular neck strain [which] typically resolve[s] within three months." Dr. Chow recommended that cervical disc displacement be accepted as work related. On November 19, 2004 he stated that appellant reported worsening neck pain and low back pain which she attributed to casing mail. In a November 19, 2004 disability certificate, Dr. Chow diagnosed lumbar and cervical disc protrusions and bilateral rotator cuff and wrist tendinitis and stated that she could not case mail.

In a January 6, 2005 report, Dr. Chow stated that he performed a cervical transforaminal epidural steroid injection on the right at C5 and C6 to alleviate a cervical disc herniation, radiculopathy and stenosis. On January 20, 2005 he provided findings on physical examination and stated that appellant had a 50 percent reduction in neck and upper extremity pain following her January 6, 2005 steroid injection. Dr. Chow indicated that, if she continued to show improvement, she could undergo physical therapy and transition back to light-work duties. In a March 4, 2005 report, he stated that appellant was unable to work beginning January 24, 2005 due to a worsening of her employment-related conditions. Dr. Chow stated that appellant's repetitive lifting, loading and transferring heavy objects on January 20, 1999 caused bilateral neck pain, bilateral shoulder and upper extremity pain and bilateral low back pain radiating to

³ A February 7, 2003 MRI scan of appellant's cervical spine revealed posterior disc bulging at C4-5 and C5-6.

⁴ Appellant also submitted four documents previously considered by the Office.

her lower extremities. He stated that there was a direct causal relationship between the mechanism of injury, the repetitive lifting, loading and transferring heavy objects and appellant's low back and lower extremity symptoms, bilateral shoulder pain, bilateral wrist and hand pain and right elbow pain. Dr. Chow stated that lumbar disc displacement at L4-5 and L5-S1, lumbar radiculopathy and lumbar stenosis should be accepted as related to the January 20, 1999 employment injury. He opined that appellant's bilateral shoulder pain, right elbow pain and bilateral hand and wrist pain occurred in August or September 2004 due to her light-duty work involving repetitive motions of the upper extremities. Appellant's light-duty work exacerbated her bilateral rotator cuff tendinitis and caused new injuries of right elbow tendinitis and bilateral wrist tendinitis. Dr. Chow recommended these conditions be accepted as causally related to the January 20, 1999 employment injury. He stated that appellant's light-duty work exacerbated her accepted cervical strain and caused cervical disc displacement. Dr. Chow stated that appellant's ability to return to light-duty work depended on a successful course of physical therapy. In a March 21, 2005 form report, he diagnosed cervical and lumbar disc protrusions with radiculopathy and stenosis, cervical disc displacement at C4-5 and C5-6, left L5 radiculopathy and lumbar disc displacement at L4-5 and L5-S1. Dr. Chow stated that appellant was still disabled.

In a June 23, 2006 report, Dr. Chow stated that appellant's neck pain had been quite severe over the past several months. He provided findings on physical examination and opined that appellant was still totally disabled. In reports dated July 3 and 10, 2006 Dr. Chow stated that appellant was totally disabled. Appellant had attempted light-duty work but was unable to tolerate even light-duty activities due to pain caused by cervical and lumbar disc protrusions, chronic left L5 radiculopathy, upper extremity tendinopathy and a rotator cuff tear. A March 1, 2007 MRI scan revealed bony and disc degenerative changes with reversal of the normal lordosis, a broad-based C5-6 disc bulge and mild anterior flattening of the spinal cord. In a March 13, 2007 statement, Dr. Chow stated that a simple cervical strain, such as appellant sustained on January 20, 1999, would have improved over time but her condition did not. He stated that appellant had an MRI and electromyogram (EMG) scan performed at the time of the 1999 employment injury, she would have been diagnosed with disc protrusions at C4-5 and C5-6. Dr. Chow stated that appellant's condition was exacerbated over time, to include shoulder pain, right elbow pain and bilateral hand/wrist pain, by the repetitive upper extremity activities required in her light-duty work, especially casing mail. He stated that cumulative repetitive upper extremity activities directly caused appellant's tendinitis. In a March 13, 2007 report, Dr. Chow noted that the March 1, 2007 MRI scans revealed central focal disc protrusions at C3-4 and C5-6 and annular disc bulges at C4-5. He provided findings on physical examination and indicated that appellant was still disabled.

By decision dated July 24, 2007, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained a recurrence of disability on January 6, 2005 causally related to her January 20, 1999 employment injury.⁵

⁵ Subsequent to the July 24, 2007 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

LEGAL PRECEDENT

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or 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 disability and show that he or she cannot perform such light duty. 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 job requirements.⁶ To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.⁷

ANALYSIS

Appellant has the burden to provide medical evidence establishing that she was disabled on January 6, 2005 due to a worsening of her accepted cervical strain or a change in her job duties such that she was unable to perform her light-duty work.

At the time of appellant's January 20, 1999 cervical strain, she was on limited duty due to a work-related lumbar strain on July 24, 1997. As of June 2004, prior to her claimed recurrence of disability on January 6, 2005, her work restrictions included no lifting above the shoulders, no performing repetitive hand motions, no casing mail and no lifting more than 10 pounds.

On September 14, 2004 Dr. Chow stated that appellant's persistent neck pain symptoms were caused by disc protrusions at C4-5 and C5-6. The symptoms were "not simply due to a muscular neck strain [which] typically resolve[s] within three months." Dr. Chow recommended that cervical disc displacement be accepted as work related. However, his statement that a neck strain typically resolves in three months is not consistent with his opinion that the cervical disc displacement, diagnosed several years later in 2004, was caused by the January 20, 1999 cervical strain. On November 19, 2004 Dr. Chow stated that appellant reported worsening neck pain and low back pain which she attributed to casing mail. He diagnosed lumbar and cervical disc protrusions and bilateral rotator cuff and wrist tendinitis and stated that she could not case mail. However, the record reflects that casing mail was not included in appellant's light-duty job. Therefore, Dr. Chow's opinion is not based on an accurate factual history regarding the circumstances of appellant's claimed recurrence of total disability. Further, these reports predate

⁶ *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986); 20 C.F.R. § 10.5(x) provides, "*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. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, non-performance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."

⁷ *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *Maurissa Mack*, 50 ECAB 498, 503 (1999).

the claimed January 6, 2005 recurrence of total disability and are, therefore, of diminished probative value. Moreover, a cervical disc displacement is not an accepted condition and Dr. Chow provided insufficient rationale establishing causal relationship to the January 20, 1999 accepted cervical strain. In the 2004 reports, he did not provide sufficient medical rationale explaining how there was a worsening of appellant's accepted cervical strain or a change in her light-duty job requirements such that it resulted in a recurrence of disability on January 6, 2005.

On January 20, 2005 Dr. Chow provided findings on physical examination and stated that appellant had a 50 percent reduction in neck and upper extremity pain following a January 6, 2005 steroid injection. He indicated that, if appellant continued to show improvement, she could undergo physical therapy and transition back to her light-duty work. However, on January 26, 2005, Dr. Chow stated that appellant's symptoms had worsened and she was totally disabled beginning January 6, 2005 due to severe neck pain, low back pain and upper and lower extremity pain. He again diagnosed cervical disc displacement caused by repetitive motion of the hands and neck. However, Dr. Chow indicated that appellant's disability beginning January 6, 2005 was caused by several medical conditions. The sole accepted condition in this case is a cervical strain. Appellant must establish that her total disability on January 6, 2005 was caused by a change in the nature and extent of her cervical strain or a change in the nature and extent of her light-duty job. As noted, Dr. Chow provided insufficient medical rationale explaining how appellant's other conditions were causally related to the January 20, 1999 employment injury. On March 4 and 21, 2005 he stated that appellant was totally disabled. Dr. Chow stated that lumbar disc displacement at L4-5 and L5-S1, lumbar radiculopathy and lumbar stenosis should be accepted as related to the January 20, 1999 employment injury. However, he provided insufficient rationale explaining how these conditions were causally related to appellant's accepted cervical strain. Dr. Chow opined that appellant sustained right elbow and bilateral wrist tendinitis and an exacerbation of her bilateral rotator cuff tendinitis in August or September 2004 due to her light-duty work involving repetitive motions of the upper extremities. However, the record reflects that repetitive hand motions were not included in her light-duty job requirements. Therefore, Dr. Chow's opinion is not based on an accurate factual background regarding the circumstances of appellant's claimed recurrence of total disability. Due to these deficiencies, these reports are not sufficient to establish that appellant sustained a recurrence of total disability on January 6, 2005 due to a change in the nature and extent of her cervical strain or a change in the nature and extent of her light-duty job requirements.

On February 24, 2006 Dr. Chow diagnosed cervical disc displacement at C4-5 and C5-6, cervical degenerative disc disease, lumbar disc displacement at L4-5 and L5-S1, left L5 radiculopathy and neuroforaminal stenosis, a left rotator cuff tear and bilateral rotator cuff tendinitis, bilateral and medial epicondylitis, bilateral wrist tendinitis, and bilateral AC joint degenerative arthritis. He opined that appellant was permanently disabled. In reports dated July 3 and 10, 2006, Dr. Chow stated that appellant had attempted light-duty work but was unable to tolerate even light-duty work due to pain caused by cervical and lumbar disc protrusions, chronic left L5 radiculopathy, upper extremity tendinopathy and a rotator cuff tear. On March 13, 2007 he indicated that a simple cervical strain, the accepted January 20, 1999 employment injury, should have improved over time but did not improve in appellant's case. Dr. Chow stated that, if an MRI and EMG scan had been performed at the time of the 1999 employment injury, appellant would have been diagnosed with disc protrusions at C4-5 and C5-6. However, his opinion that appellant had cervical disc problems in 1999 is speculative and

not established by objective medical evidence. Dr. Chow stated that appellant's condition was exacerbated over time and she developed shoulder pain, right elbow tendinitis and bilateral hand and wrist tendinitis caused by the cumulative repetitive upper extremity activities required by her light-duty work, especially casing mail. However, his description of her light-duty activities is not based on an accurate factual background because her light-duty job did not include casing mail. Because Dr. Chow's opinions regarding causal relationship are not based on an accurate factual background and because he provided insufficient medical rationale in his reports, this medical evidence does not establish that appellant sustained a recurrence of disability on January 6, 2005 due to a change in the nature and extent of her cervical strain or a change in the nature and extent of her light-duty job requirements.

The Board finds that appellant failed to establish that she was disabled on January 6, 2005 due to a change in the nature and extent of her employment-related cervical strain or a change in the nature and extent of her light-duty job requirements. Therefore, the Office properly denied her claim for a recurrence of disability.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a recurrence of disability on January 6, 2005 causally related to her January 20, 1999 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 24, 2007 is affirmed.

Issued: February 23, 2009
Washington, DC

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

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

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