

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

S.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Troy, MI, Employer**

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**Docket No. 08-325
Issued: February 2, 2009**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 13, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 18, 2007 that affirmed the denial of 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 the case.

ISSUE

The issue is whether appellant sustained a recurrence of disability commencing November 25, 2006 causally related to her accepted employment condition.

FACTUAL HISTORY

On April 13, 2004 appellant, then a 39-year-old mail processor, filed an occupational disease claim alleging that she developed a bilateral shoulder condition due to repetitive lifting at work. She noticed the condition in June 1998 and stopped work on March 26, 2004 and worked intermittently thereafter. The Office accepted the claim for temporary aggravation of right

shoulder arthritis and temporary left shoulder strain, temporary neck strain and temporary lumbar strain.

On March 15, 2005 Dr. Paul J. Siatczynski, a Board-certified orthopedic surgeon, performed hemiarthroplasty of the right shoulder and diagnosed degenerative arthritis. On June 12, 2005 appellant accepted a limited-duty position and returned to work. On June 27, 2005 she filed a CA-2a, notice of recurrence of disability claim, which was accepted by the Office on July 15, 2005. On October 25, 2005 appellant accepted a limited-duty position working three days per week with lifting restrictions. On February 15, 2006 she filed a CA-2a, notice of recurrence of disability claim which was accepted by the Office on March 1, 2006. On February 16, 2006 Dr. Siatczynski performed arthroscopic limited debridement of the rotator cuff and glenoid with acromioplasty of the right shoulder and diagnosed status post hemiarthroplasty of the right shoulder with rotator cuff tendinitis. The Office authorized both surgical procedures.

In reports dated February 24 to August 9, 2006, Dr. Siatczynski noted that appellant was progressing well postoperatively. On June 6, 2006 appellant underwent a functional capacity evaluation which determined that she could work subject to restrictions of waist to crown lifting limited to 20 pounds rarely, 15 pounds occasionally and 10 pounds frequently.

On August 10, 2006 appellant accepted a position as a modified light-duty mail processing clerk, 6.5 hours per day, 3 days per week with restrictions of lifting limited to 10 pounds and "cutting" limited to 30 minutes per hour.

On October 20, 2006 Dr. Siatczynski noted appellant's continued complaints of right shoulder pain. In a duty status report of the same date he changed her work restrictions to 3 days per week, 6.5 hours per day, lifting limited to 10 pounds and cutting reduced from 30 to 20 minutes per hour. On October 20, 2006 Dr. Siatczynski advised that appellant was unable to work due to headaches caused by shoulder pain. On November 17, 2006 he treated appellant for worsening bilateral shoulder pain with clicking. Dr. Siatczynski opined that reducing appellant's hours and restricting lifting and cutting was ineffective in relieving her symptoms. He noted that he had no choice but to take appellant off work during the Christmas rush to see if her condition improved and advised that she was disabled through January 5, 2007. Appellant also submitted reports from Dr. Naysha Varghese, a Board-certified internist, dated November 8, 2006, who treated appellant for right shoulder pain and advised that she could return to work on November 20, 2006.

Appellant submitted several CA-7 forms claiming compensation for total disability beginning November 11, 2006. On December 12, 2006 the Office advised appellant of the evidence needed to establish her claim for compensation for total disability starting November 25, 2006. It requested that she submit a physician's reasoned opinion addressing the relationship of her claimed disability and the original work injury. The Office subsequently developed the claim as a recurrence of disability.

On December 12, 2006 the Office referred appellant for a second opinion to Dr. Michael J. Geoghegan, a Board-certified orthopedic surgeon, to determine if she had residuals of her accepted condition. It provided Dr. Geoghegan with appellant's medical records,

a statement of accepted facts and a detailed description of her work duties. In a January 11, 2007 report, Dr. Geoghegan reviewed the records provided and performed a physical examination of appellant. He diagnosed degenerative arthritis involving the right shoulder and rotator cuff tendinitis. Dr. Geoghegan noted that appellant underwent a hemiarthroplasty with poor results and was scheduled for a total shoulder arthroplasty. He noted findings of an audible and palpable click of the right shoulder, positive impingement sign and limited passive and active motion. Dr. Geoghegan advised that appellant had residuals of her work injury which included limitation of motion and audible and palpable snap of the right shoulder present on active and passive motion. He indicated that, following the arthroplasty, appellant would not be able to return to her previous job as a mail processor. Dr. Geoghegan advised that appellant could not do any overhead work, extend her arm or lift over five pounds.¹

The Office requested a supplemental report from Dr. Geoghegan asking that he address whether appellant's work stoppage on November 25, 2006 was medically warranted given her work restrictions. On February 7, 2007 Dr. Geoghegan advised that, as of the date he examined appellant on January 11, 2007, she was not totally disabled but could perform work within her restrictions which included limitation of any overhead work, no lifting over five pounds and no reaching with the right upper extremity.

Appellant submitted a November 3, 2006 report from Dr. Siatczynski, who treated her for left shoulder pain. Dr. Siatczynski diagnosed rotator cuff tendinitis, no evidence of arthritis, possibly due to overstress at work. He indicated that appellant was currently working three days a week and advised that he would not provide additional restrictions.

In a decision dated March 5, 2007, the Office denied appellant's claim for a recurrence of disability as of November 25, 2006 to March 5, 2007.

On March 10, 2007 appellant requested an oral hearing which was held on July 30, 2007. She submitted reports from Dr. Siatczynski dated January 5 to July 2, 2007. He noted that appellant's condition was unchanged with clicking from the glenoid with rotation. Dr. Siatczynski diagnosed degenerative arthritis and recommended a total arthroplasty of the right shoulder. On April 25, 2007 he performed a revision of the right shoulder and diagnosed failed hemiarthroplasty of the right shoulder. In a July 2, 2007 duty status report, Dr. Siatczynski noted that appellant could return to work on June 25, 2007 with a restriction of no use of the right arm. On July 20, 2007 Dr. Varghese opined that appellant developed a left shoulder and back condition due to her right shoulder injury. He diagnosed lumbosacral, cervical spine strain and left shoulder tendinitis and opined that these conditions were causally related to appellant's initial work injury.

On June 28, 2007 the employing establishment offered appellant a limited-duty assignment as a clerk using the left arm only. Appellant rejected the position noting that the job could not be performed efficiently with one arm.

¹ In a letter dated December 19, 2006, the Office indicated that appellant would be paid a total of 26 hours for December 1, 2, 8 and 9, 2006.

Appellant submitted reports from Dr. Siatczynski dated July 25 to August 10, 2007, who addressed left shoulder pain. Dr. Siatczynski diagnosed left shoulder rotator cuff tendinitis and recommended continuing her position with one arm and physical therapy. On August 22, 2007 he noted that appellant was doing well but had weakness of the right shoulder. Dr. Siatczynski recommended physical therapy and opined that, in one month, appellant would be able to perform her job subject to a five-pound lifting restriction on her right arm. On September 19, 2007 he noted that appellant's right shoulder was too weak to lift so he continued her restrictions of working with one arm. Dr. Siatczynski indicated that a magnetic resonance imaging scan of the left shoulder revealed some change in the supraspinatus tendon, with no evidence of a tear or atrophy. He recommended physical therapy for the left shoulder.

On August 21, 2007 appellant's supervisor, Douglas M. Kope, advised that she was working in the prep area within her restrictions prior to her work stoppage in November 2006. He stated that appellant did not have to lift anything weighing more than five pounds. Mr. Kope indicated that the prep area experienced less volume in the Christmas rush period. He advised that Christmas rush in the prep area occurred in August or September 2007 when mailers sent out catalogs. Mr. Kope indicated that since there was no Christmas rush for appellant in the prep area in November 2007 she should not have been taken off her limited-duty position, which was within her physician's restrictions.

In a decision dated October 18, 2007, the hearing representative affirmed the March 5, 2007 decision, finding that appellant failed to establish that her recurrence of disability commencing November 25, 2006 was causally related to her accepted conditions.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 he 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.²

Causal relationship is a medical issue³ 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

² *Terry R. Hedman*, 38 ECAB 222 (1986). See 20 C.F.R. § 10.5(x) for the definition of a recurrence of disability.

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

ANALYSIS

The Office accepted appellant's claim for temporary aggravation of right shoulder arthritis, temporary left shoulder strain, temporary neck strain and temporary lumbar strain. Appellant returned to a light-duty position on August 10, 2006, as a modified light-duty mail processing clerk, 6.5 hours per day, 3 days per week with restrictions of lifting limited to 10 pounds and "cutting" to 30 minutes per hour. She stopped work and claimed disability compensation beginning November 25, 2006, alleging that she experienced pain in both shoulders causally related to her accepted work injury. However, 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.

On October 20, 2006 Dr. Siatczynski noted appellant's complaints of right shoulder pain and adjusted her work restrictions, reducing her cutting duties from 30 minutes to 20 minutes per hour. On November 3, 2006 he noted appellant's complaints of left shoulder pain and diagnosed rotator cuff tendinitis. Dr. Siatczynski noted that appellant was working three days a week and advised that he would not provide additional restrictions. His treatment records, contemporaneous with the claimed recurrence of disability, do not establish that appellant was totally disabled or a change in the nature of her physical condition, which prevented her from performing her light-duty position.⁵ Dr. Siatczynski did not support that appellant experienced a change in the nature and extent of her injury-related condition that resulted in total disability beginning November 25, 2006. The Board finds that these reports do not support a recurrence of disability.

On November 17, 2006 Dr. Siatczynski noted appellant's worsening bilateral shoulder pain. He stated that he took appellant off work during the Christmas rush to see if her condition would settle down. Dr. Siatczynski infers that appellant's workload increased in November 2006 and suggested that her condition would worsen if she continued to work. However, the Board has held that fear of future injury is not compensable.⁶ Dr. Siatczynski did not provide a rationalized opinion explaining the reasons why appellant's accepted condition caused disability such that she was unable to perform limited duty.⁷ Dr. Siatczynski did not note a specific date of a recurrence of disability or address 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. The Board finds that the evidence is insufficient to establish a change in the nature of appellant's injury-related condition that would disable her beginning November 25, 2006.

⁴ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *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).

⁶ *See I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008).

⁷ *Id.*

The additional reports from Dr. Siatczynski noted appellant's status and ongoing treatment but he failed to address a recurrence of disability or explain any particular change in the nature of appellant's physical condition.

Appellant also submitted a November 8, 2006 report from Dr. Varghese, who noted that she was treated from November 14 to 17, 2006 for right shoulder pain. However, Dr. Varghese did not address the issue of a recurrence of disability commencing November 25, 2006. Rather, he indicated that appellant could return to work on November 20, 2006. Her reports do not support appellant's claim.

The Office referred appellant to Dr. Geoghegan for a second opinion. In a January 11, 2007 report, he diagnosed degenerative arthritis involving the right shoulder and rotator cuff tendinitis. Dr. Geoghegan indicated that appellant underwent a hemiarthroplasty with poor results. He noted findings upon physical examination of audible and palpable click of the right shoulder, positive impingement sign and limited passive and active motion. On February 7, 2007 Dr. Geoghegan advised that as of the date he examined appellant on January 11, 2007, she was not totally disabled but could perform work within her restrictions.

The Board finds that the medical 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 which exceeded her medical restrictions. Dr. Siatczynski's November 17, 2006 report noted a worsening bilateral shoulder pain and advised that he took her off work. As noted, the record does not establish that appellant's work exceeded her light-duty restrictions or that she experienced an increased workload during November. On August 21, 2007 appellant's supervisor, Mr. Kope, indicated that she worked in the prep area within her restrictions prior to her work stoppage in November 2006 and advised that the prep area did not experience a Christmas rush, rather, there was less volume during this period as the Christmas rush in that area occurred in August or September.

Appellant has not met her burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or 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 November 25, 2006 to March 5, 2007 causally related to her accepted conditions.

ORDER

IT IS HEREBY ORDERED THAT the October 18 and March 5, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 2, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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