

wrist motion, no lifting over five pounds, no pushing or pulling heavy mail carts and no lifting of mailbags.

In a return to work form report dated May 22, 2003, Dr. Kavitha Vanga, Board-certified in internal medicine and appellant's treating physician, stated that she could return to work as of May 22, 2003 with restrictions of no lifting exceeding five pounds, no pulling, pushing or repetitive movements of the right arm and no repetitive squatting, bending or lifting.

On June 29, 2003 appellant filed a CA-2a form, claim for benefits, alleging that she sustained a recurrence of disability on June 18, 2003, which was causally related to her accepted right shoulder rotator cuff tendinitis condition. The Office accepted the claim.

In an August 5, 2003 statement, appellant stated:

"The reason I ... believe that this current disability or medical treatment is related to the original work injury; is because the same symptoms are there and they still occur. I still have pain in my shoulder. I can only raise my shoulder to a certain degree, I also have swelling in my shoulder and hand area, it is very painful.

"I repair the mail, I tape packages, when I finish taping the mail, I throw the packages in a hamper. My restrictions say that I should only lift five pounds, I try to stick to my restrictions, a lot of the packages are a lot heavier, you try to look at the package before you pick it up, but sometime the package looks a lot lighter than it [is]. I also write out about two to three hundred flyers to put on the containers. I have to round date or cancel out stamps. With the pressure pushing up and down on the round dater, bothers my shoulder and hand."

Appellant submitted an August 4, 2003 report from Dr. Sarah McDade, a specialist in physical and rehabilitative medicine, who stated that appellant had been experiencing right shoulder pain since 2001 and had been diagnosed with a right shoulder rotator cuff (supraspinatus) partial tear and biceps tenosynovitis. She noted that she had been diagnosed with moderately severe right carpal tunnel syndrome. Dr. McDade noted on examination that appellant showed extreme right shoulder range of motion restrictions as well as strength deficits, which led her to diagnose right shoulder adhesive capsulitis. She noted that conservative treatment including physical therapy, pain medications, ice and heat had effected little improvement. Dr. McDade stated that, due to the extent of appellant's right shoulder motion and strength limitations, she had placed her on work restrictions of no lifting greater than five pounds, no lifting at or above the shoulder level and no lifting or work above 60 degrees, as she was unable to lift her arm past the range of 50 to 60 degrees in any direction. In an August 22, 2003 form report, she stated that appellant could return to work as of August 22, 2003 with restrictions of no lifting over five pounds, no lifting above the shoulder and no work above the shoulder level.

In a February 9, 2004 report, Dr. James Wang, Board-certified in internal medicine, noted appellant's complaints of right shoulder pain. He related that appellant believed that this pain resulted from overuse of the right shoulder due to excessive lifting, pulling and pushing at work and that it began in January 2001. Dr. Wang stated that appellant experienced pain in the area of

her right shoulder overlying the glenohumeral joint, which sometimes radiated upwards towards the neck and radiated downwards towards the biceps. He advised that the pain worsened with movement down the shoulder, particularly that involving internal rotation, as well as with lifting, any kind of repetitive motion or any kind of shoulder movement; appellant also noted some weakness secondary to pain. Dr. Wang stated on examination that appellant had limited flexion, extension and abduction, in addition to right shoulder joint crepitus upon passive range of motion. He diagnosed suprascapular tear with adhesive capsulitis. Dr. Wang recommended injections, physical therapy and imposition of a brachial plexus block prior to physical therapy.

In a form report dated February 20, 2004, Dr. McDade stated that appellant had complaints of continued right shoulder pain, hand swelling and limited motion with possible reflex sympathetic dystrophy. She advised that appellant was scheduled for examination with a specialist. Dr. McDade checked a box indicating “no activity; unable to work” and indicated that appellant could return to work on March 2, 2004.

In an April 20, 2004 report, Dr. McDade, stated:

“This is a return visit on this 49-year[-]old female that I have seen on multiple visits for right shoulder pain. It is significant for a partial rotator cuff tear, but there is definitely underlying neurological abnormalities and I am suspicious of complex regional pain syndrome.... She states that she has continued on the swelling and pain in the shoulder, paresthesias as well and she is very concerned about the injection. At this point, I have no other conservative treatment to offer to her. If she does do [an] injection or fails to do it, my only other option is to send her back to Dr. Anderson for the surgical approach. I did take her off work until May 10 and she will follow up with me as needed.”

On June 2, 2004 appellant underwent surgery to ameliorate an adhesive capsulitis condition in her right shoulder. The procedure was performed by Dr. Henry Kroll, Board-certified in anesthesiology, who implanted a supra clavicular nerve block in her right shoulder.

In a report dated June 11, 2004, Dr. Vanga stated that appellant had experienced chronic right shoulder pain and noted that a 2003 magnetic resonance imaging (MRI) scan showed a partial supraspinatus tear. She noted that appellant had been off work because of her right shoulder pain. Dr. Vanga stated on examination that appellant displayed considerable pain and that all of her shoulder movements were restricted. She advised that appellant was able to actively abduct the shoulder only about 30 degrees, with pain anteriorly over the shoulder. Dr. Vanga diagnosed partial right rotator cuff tear and placed her off work for three weeks.

In a July 8, 2004 report, Dr. Vanga noted continuing right shoulder pain and diagnosed complex regional pain syndrome of the right shoulder, with adhesive capsulitis. She advised that the supraspinatus nerve block helped relieve appellant’s pain at first, the pain eventually returned. Dr. Vanga stated that appellant had tried to work with restrictions intermittently since 2000 but found it hard to find a position which accommodated her work restrictions.

In a report dated August 2, 2004, Dr. Wesley Jackson, Board-certified in general surgery, stated:

“[Appellant] is a 49-year[-]old right hand dominant female with right shoulder pain. We saw her a year ago as a referral from her primary physician, Dr. Vanga. At that time, her symptoms were very nonspecific and inconsistent with any intracapsular or rotator cuff pathology per se because she had a lot of periscapular pain, radiating pain, history of carpal tunnel symptoms and no specific episode of injury. [Appellant] was therefore referred at that time to the pain clinic. She returns today stating [that] her symptoms have really not changed all that much. [Appellant] has gone through two pain clinic injections in her brachial plexus, neither of which helped for any longer than a week. She has had an intracapsular injection by Dr. McDade per the patient’s description. [Appellant] said that did not help for very long. She has also been back in therapy for a couple months back in April with some help, but no long lasting effect. [Appellant] complains of pain at rest as well as pain with activity, mainly overhead activity. She is off work on workers’ compensation and she works with [the employing establishment] without any specific plans to return anytime soon.

“[Appellant] does not describe any numbness in her hands. She does describe some swelling and is not sure whether she has weakness in her right upper extremity. [Appellant] does not describe any symptoms in her neck or frank radiculopathic-like symptoms.”

Dr. Jackson noted limited range of motion, difficulty with overhead lifting and positive impingement signs on examination. He diagnosed right shoulder pain, nonspecific intracapsular pathology, possible continued complex regional pain syndrome. Dr. Jackson stated that appellant would undergo ultrasound testing of her right shoulder to rule out any rotator cuff pathology, as well as another injection.

In a report dated September 14, 2004, Dr. Vanga noted that appellant was currently on sick leave. She essentially reiterated her previous findings and conclusions.

In a September 21, 2004 statement, appellant stated:

“I was unable to attend work on January 22, 2004 and April 2, 2004 because of the pain in my right shoulder was so severe that I was unable to perform my job assignment. I could barely lift my shoulder. I feel my injury is job related because it was the same symptoms that I have always have. I have been in pain everyday since my injury occurred. I did return back to work after February 3, 2004 after being on disability.”

On September 28, 2004 appellant filed a CA-2a form claim for benefits, alleging that she sustained recurrences of disability from January 22 to February 3, 2004 and as of April 2, 2004 and continuing, which were causally related to her accepted right shoulder rotator cuff tendinitis condition.¹

In a November 2, 2004 statement of accepted facts, the Office indicated that, as of February 14, 2000, appellant's work restrictions included no repetitive hand/wrist motion, no lifting over five pounds and no pushing or pulling of heavy mail carts. It stated that her work duties included pushing buttons on machines; working the mail repair desk wrapping packages; doing quality checks; and doing labels and filing. The Office noted that appellant also was periodically assigned to hanging empty mail sacks, an activity which apparently began several months prior to February 2001. In appellant's March 2001 claim, she indicated that her duties hanging empty mail sacks aggravated her right shoulder problem; she was no longer assigned to duties involving empty mail sacks after January 2001. She went off work again from June 20, 2003 until she returned to light duty on July 12, 2003.

By decision dated November 18, 2004, the Office denied appellant compensation for a recurrence of her accepted right shoulder condition. It stated that appellant failed to meet her burden of proof to establish that she had an objective worsening of her work-related right shoulder condition or that she experienced a change in the nature and extent of the light-duty requirements.

By letter dated January 12, 2005, appellant requested reconsideration.

Appellant submitted a December 2004 report from Dr. Vanga, who stated:

"This is a letter updating the medical condition of [appellant]. As you know, she has a tear in the right rotator cuff following work-related trauma back in October 2000. [Appellant] has been having worsening pain since earlier this year and has been completely off work since April 2004.

"[Appellant] had an ultrasound of the shoulder done back in 2000 initially when she had the symptoms. This showed intrasubstance tear in the supraspinatus tendon. The repeat ultrasound done this year, back in August 2004, showed the same finding, but in addition [appellant] had also a calcific deposit in the supraspinatus tendon and moderate arthritis in the [AC] acromioclavicular joint which was new =compared to the previous ultrasound.

"[Appellant] was given ultrasound-guided injection into the calcific deposit which did not help. [She] has been through brachial plexus block which did not help either. Physical therapy did not improve the pain. At this time [appellant] is in pain all the time irrespective of all the injections she had and is on pain medication around the clock.

¹ Appellant stated on the form that she returned to light duty on or about February 3, 2004 and worked until April 3, 2004.

“I do understand that [appellant] has been on restrictions for her problem before going off work completely in April 2004. Although she was not lifting anything more than 10 pounds, she was still doing repetitive movements with her arms, including wrapping packages, tiling, etc., which made her condition worse. Subjectively, the pain got worse and objectively [appellant] developed some arthritis in her [AC] joint and also a small calcific deposit in her supraspinatus tendon.

“In regards to [appellant’s] symptoms and not responding to any treatment modalities except for control of pain with medications, she is not able to return to work. Even if the work were not to involve any kind of lifting, the repetitive movements of her arms would make her condition worse.”

By decision dated April 7, 2005, the Office denied the request for modification of the November 18, 2004 decision.

By letter dated May 5, 2005, appellant requested reconsideration. She submitted a May 31, 2005 return to work form from Dr. Vanga, which indicated that she had placed appellant off work from May 1 to September 1, 2005.

By decision dated June 30, 2005, the Office denied appellant’s request for modification.

By letter dated June 26, 2006, appellant’s attorney requested reconsideration.

In a March 28, 2006 report, Dr. Janevski stated:

“[Appellant] works at [the employing establishment]. She had a right carpal tunnel release in January 2000.... [Appellant] also has [a] right shoulder injury with rotator cuff tear. This occurred in 2001. This was a work[-]related injury. [Appellant] has been off work for the past two years due to the shoulder problem.

Dr. Janevski noted that appellant had also developed pain and triggering of the right third digit, which began three to four months previously. He advised that she had been off work for about two years and stated that this was not a work-related condition. Dr. Janevski noted that appellant was not sure what she was going to do about her right shoulder condition. He stated that she continued to be off work due to the right shoulder problem.

In a July 24, 2006 report, Dr. Vanga essentially reiterated her previously stated findings and conclusions.

In addition, appellant submitted copies of her diary accounts dated June 19, 2001 to January 23, 2002, which described duties at work which the employing establishment allegedly had her perform. She also submitted statements from coworkers Dale Gaines and Michele Coombs dated June 18 and July 18, 2006, respectively, as well as a June 15, 2006 statement from her daughter, which asserted that the employing establishment made her perform duties

exceeding her physical restrictions, which resulted in the aggravation of her accepted employment conditions. In appellant's July 18, 2006 statement, coworker and union steward Ms. Coombs stated:

"I have been a mail handler union steward at the priority mail center for eight years. [D]uring this time I have ... [represented appellant]. Often times [appellant] would work in the repair unit, which encompassed repairing damaged mail, retrieving damaged mail from each console on the SPBS machines and hanging priority sacks.

"[Appellant] would come to me when she felt that a supervisor was asking her to work outside of her restrictions. I ... always advised [her] not to work outside of her restrictions. On July 23, 2003 [appellant] was asked to hand cancel several hundred small parcel packages and on January 24, 2004, she was working repair and her hand began to swell, so a picture was taken of her hand and she went home. This is only a few of the incidents that occurred."

By decision dated February 28, 2007, the Office denied appellant's request for modification.² By decision dated December 3, 2007, it reissued the February 28, 2007 decision.³

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.⁴

ANALYSIS

In the instant case, the record does not contain any medical opinion showing a change in the nature and extent of appellant's injury-related conditions. Appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her condition or disability as of January 22 and April 2, 2004 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 during these periods.

² The Office noted that it accepted a claim for bilateral carpal tunnel syndrome, which under claim File No. xxxxxx269, date of injury April 14, 1999. It stated that it had administratively combined this bilateral carpal tunnel claim with the instant claim.

³ By order dated August 21, 2007, the Board remanded the case to the district office for inclusion of the February 28, 2007 decision, which was not in the case record at that time. Docket No. 07-1117 (issued August 21, 2007).

⁴ *Terry Hedman*, 38 ECAB 222 (1986).

Appellant submitted reports from Drs. Wang, McDade, Vanga, Jackson and Janevski. These physicians noted complaints of chronic right shoulder pain, swelling, parasthesias and limited range of motion and diagnosed various ailments: suprascapular tear, adhesive capsulitis, right rotator cuff tendinitis and reflex sympathetic dystrophy. While the reports from these physicians provided diagnoses of appellant's condition and indicated generally that she complained of right shoulder pain, they did not contain a probative, rationalized medical opinion sufficient to establish that her disability as of January 22 and April 2, 2004 was causally related to her accepted right shoulder rotator cuff tendinitis condition.⁵ Dr. McDade placed appellant on work restrictions of no lifting greater than five pounds, no lifting at or above the shoulder level and no lifting or work above 60 degrees in her August 4, 2003 report. She also checked a box indicating "no activity; unable to work" in her February 20, 2004 report and stated that appellant could return to work on March 2, 2004. However, reports which support causal relationship with a checkmark are insufficient to establish the claim, as the Board has held that without further explanation or rationale, a checked box is not sufficient to establish causation.⁶

Dr. Vanga submitted reports from 2003 through 2006. In her June 11, 2004 report, she noted that appellant had been off work because of her right shoulder pain. Dr. Vanga stated that a 2003 MRI scan of appellant's right shoulder showed a partial supraspinatus tear. On examination she noted considerable right shoulder pain and stated that all of appellant's shoulder movements were restricted. Dr. Vanga diagnosed partial right rotator cuff tear and placed her off work for three weeks. She stated in a July 8, 2004 report, that appellant had tried to work with restrictions intermittently since 2000 but found it difficult to find a job which accommodated her work restrictions. In her December 2004 report, Dr. Vanga stated that appellant had been experiencing worsening pain since earlier in the year and had been off work completely since April 2004. She related her complaints that, despite the prescribed work restrictions for her right shoulder condition problem before going off work completely in April 2004, she was still engaged in repetitive activity like wrapping packages and tiling, which worsened her condition and her pain, resulting in arthritis in her AC joint and a small calcific deposit in her supraspinatus tendon. Dr. Vanga also submitted a July 24, 2006 report; however, this report essentially reiterated the findings and conclusions she outlined in her previous reports.

Dr. Vanga's reports did not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment-related condition and her alleged recurrence of disability. Causal relationship must be established by rationalized medical opinion evidence. Dr. Vanga's reports, however, failed to provide an explanation in support of appellant's claim that she was disabled as of January 22 and April 2, 2004. Thus, her reports did not establish a worsening of appellant's condition and therefore do not constitute probative, rationalized evidence demonstrating that a change occurred in the nature and extent of the injury-related condition.⁷ Inasmuch as Dr. Vanga's opinion is at best speculative as to the relationship between

⁵ In his February 9, 2004 report, Dr. Wang noted complaints of right shoulder pain, stated findings on examination and recommended courses of conservative treatment. However, he did not provide an opinion regarding whether appellant's alleged disability or condition was caused or aggravated by her March 2001 employment injury.

⁶ *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

⁷ *William C. Thomas*, 45 ECAB 591 (1994).

appellant's condition as of January 22 and April 2, 2004 and her March 2000 employment injury and she failed to provide any medical rationale supportive of her opinion, it is of limited probative value.⁸ Dr. Jackson's August 2004 report noted periscapular pain, radiating pain, a history of carpal tunnel symptoms and no specific episode of injury. He noted limited range of motion, difficulty with overhead lifting and positive impingement signs on examination. Dr. Jackson diagnosed right shoulder pain, nonspecific intracapsular pathology, possible continued complex regional pain syndrome. He stated that appellant was currently off work with no specific plans to return soon. Dr. Jackson did not render an opinion as to whether her alleged disability as of January 22 and April 2, 2004 was caused or aggravated by her March 2000 employment injury.

Dr. Janevski stated in his March 2006 report, that appellant had a work-related rotator cuff condition, which caused her to be off work for the past two years. However, he failed to provide a medical opinion which sufficiently described her light-job duties or explained the medical process through which appellant's condition worsened to cause the claimed recurrence of disability. His report did not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment injury and her alleged recurrence of disability.

The reports submitted by appellant failed to provide sufficient support for her claim that she was totally disabled as of January 22 and April 2, 2004. These reports did not establish a worsening of her conditions and therefore do not constitute probative, rationalized opinion evidence demonstrating that a change occurred in the nature and extent of the injury-related condition.⁹

In addition, appellant failed to submit sufficient evidence that there was 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. The November 2004 statement of accepted facts indicated that appellant's original work restrictions from 2000 to 2001 included no repetitive hand or wrist motion, no lifting over five pounds and no pushing or pulling of heavy mail carts. The Office stated that her actual duties during these periods included pushing buttons on machines, working the mail repair desk wrapping packages, doing quality checks and doing labels and filing. It noted that she was also periodically assigned to hanging empty mail sacks, an activity which apparently began several months prior to February 2001. In her March 2001 claim appellant indicated that her duties included hanging empty mail sacks aggravated her right shoulder problem; however, the Office stated that she was no longer assigned to duties involving empty mail sacks after January 2001. The contemporaneous reports from Drs. McDade, Vanga and Janevski indicate that appellant's work restrictions remained essentially in place throughout the period March 2001 to January 2004, although she was off work intermittently during that period. The Office accepted appellant's July 2003 claim for recurrence of disability, as her August 5, 2003 statement that she was performing duties, which exceeded her restrictions and aggravated her accepted shoulder condition was supported by the contemporaneous evidence of record.

⁸ *Jennifer Beville*, 33 ECAB 1970 (1982).

⁹ The Board notes that the physicians of record did not attribute any disability to appellant's accepted bilateral carpal tunnel condition and therefore this condition was not discussed in this decision.

However, in appellant's subsequent claim that she sustained recurrences of her work-related disability as of January 22 and April 2, 2004, she failed to provide similar support for her assertions. The diary accounts appellant submitted which described her work duties concerned the period June 19, 2001 to January 23, 2002. None of the witness statements that appellant submitted contained specific, probative evidence sufficient to establish that she performed work exceeding her restrictions resulting in disability as of January 22 and April 2, 2004. Appellant's daughter stated in her June 2006 statement that she witnessed her mother aggravating her right shoulder condition by exceeding her work restrictions when she worked with her in December 2001. Ms. Coombs asserted in her July 2006 statement that she witnessed appellant doing work outside of her restrictions on July 23, 2003 and January 24, 2004. The assertions pertaining to these dates are not probative, however, as the instant claim concerns periods of alleged disability for which appellant is claiming compensation as of January 22 and April 2, 2004; she was not at work on January 24, 2004. The June 2006 statement from coworker Mr. Gaines is not specific regarding which dates he allegedly witnessed appellant exceeding her work restrictions or being harassed to do so by her supervisor. Appellant failed to provide sufficient explanation or proof that she was performing duties which exceeded her work restrictions and her ability to perform the light-duty job she was working in January and April 2004.

Accordingly, as appellant has not submitted sufficient factual or medical evidence supporting her claim that she was totally disabled from performing her light-duty assignment as of January 22 and April 2, 2004 as a result of her accepted right shoulder condition, she failed to meet her burden of proof. The Office properly found in its November 18, 2004, April 7 and June 30, 2005 and December 3, 2007 decisions that appellant was not entitled to compensation based on a recurrence of her employment-related disability. The Board will affirm the December 3, 2007 Office decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she was entitled to compensation for a recurrence of disability as of January 22 and April 2, 2004 causally related to her accepted right shoulder condition.

ORDER

IT IS HEREBY ORDERED THAT the December 3, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 17, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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