

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

L.W., Appellant	)	
	)	
and	)	<b>Docket No. 08-2011</b>
	)	<b>Issued: March 19, 2009</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION CENTER, Jackson, MS,</b>	)	
<b>Employer</b>	)	
	)	

<i>Appearances:</i> Alan J. Shapiro, Esq., for the appellant Office of Solicitor, for the Director	<i>Case Submitted on the Record</i>
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**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 14, 2008 appellant, through her attorney, filed a timely appeal from the January 2 and June 18, 2008 merit decisions of the Office of Workers' Compensation Programs finding that she did not establish 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 August 21, 2007 causally related to her September 25, 2000 employment injury.

**FACTUAL HISTORY**

This case is before the Board for the second time. By decision dated December 26, 2007, the Board affirmed September 13, 2006 and May 4, 2007 Office decisions finding that appellant

did not establish an employment-related recurrence of disability on June 19, 2003.<sup>1</sup> The Board noted that appellant slipped and fell on June 19, 2003 while performing military service. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

In a report dated September 21, 2007, Dr. Jeff D. Almand, a Board-certified orthopedic surgeon, reviewed appellant's history of a fall at work in 2000 and a fall while on military service in 2003. Following appellant's falls, she experienced pain in her right hip. Dr. Almand diagnosed greater trochanteric bursitis, with possible differential diagnoses of iliopsoas bursitis, a labral or gluteal tendon tear or pain radiating from the lumbar spine.

On October 5, 2007 Dr. Edward R. Hobgood, an orthopedic surgeon, evaluated appellant for pain in the neck and right shoulder. He noted that she "apparently had a fall back in 2000 at work and has had pain since that time." Dr. Hobgood diagnosed cervical spondylosis and possible impingement of the shoulder. He recommended a magnetic resonance imaging (MRI) scan study.<sup>2</sup>

On October 12, 2007 appellant filed a recurrence of disability claim commencing August 21, 2007 causally related to her September 25, 2000 work injury.<sup>3</sup> She related that she experienced pain, depression and loose teeth in the front of her mouth. Appellant performed her usual work duties at the time of her alleged recurrence of disability.

On October 29, 2007 the Office requested further factual and medical evidence, including a detailed narrative report from her attending physician explaining the relationship between her need for further medical treatment and her accepted work injury.

In a report dated November 13, 2007, Dr. John D. Davis, IV, a Board-certified neurosurgeon, discussed appellant's history of right-sided shoulder pain subsequent to falls at work and at camp in 2000. He diagnosed right C6 radicular pain and recommended further diagnostic studies.

A cervical myelogram dated November 15, 2007 revealed cervical spondylosis with potentially significant impingement at C4-5, C5-6 and C7-T1. A cervical computerized tomography (CT) scan showed "[s]ignificant exiting nerve root impingement on the right at C4-5 and C5-6." Dr. Davis reviewed the results of the objective studies on November 20, 2007 and recommended a C4-5 and C5-6 anterior cervical decompressive discectomy and fusion.

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<sup>1</sup> Docket No. 07-1690 (issued December 26, 2007). The Office accepted that on September 25, 2000 appellant, then a 44-year-old mail processor, sustained lumbago, lumbar sprain/strain and face and lip contusions when she fell at work. On June 19, 2003 she fell in the shower while on an active duty military assignment.

<sup>2</sup> An MRI scan study of the cervical spine, obtained on October 23, 2007, revealed mild spondylosis at C4-5 and C5-6 and small central disc protrusions at C4-5 and C5-6. On October 24, 2007 Dr. Hobgood reviewed the MRI scan study findings and referred appellant for a cervical spine evaluation.

<sup>3</sup> Appellant specified that she was filing for a recurrence of a medical condition; however, at the hearing she indicated that she was off work beginning August 21, 2007. She returned to part-time work on March 19, 2008.

On November 30, 2007 the Office informed appellant that the evidence submitted was insufficient to show that her condition was due to her accepted work injury. It requested that she submitted treatment notes regarding her fall on June 19, 2003 while performing military service. Appellant did not respond.

By decision dated January 2, 2008, the Office found that appellant failed to establish a recurrence of disability beginning August 21, 2007 due to her September 25, 2000 employment injury. On January 7, 2008 her attorney requested a telephonic hearing.<sup>4</sup>

In a report dated March 5, 2008, Dr. Davis stated:

“[Appellant] reports that she fell at work in the year 2000. Today, she gives me additional history saying that she fell and hit her right shoulder, neck and side of her head on a mail container and then fell to the ground. This occurred in the year 2000 at the [employing establishment] where she was working.”

Dr. Davis discussed his diagnosis of cervical spondylosis and C5 and C6 nerve root compression on the right and her surgical decompression of the C5 and C6 nerve roots. He stated:

“[Appellant’s] history is that she fell and hit the right side of her head and right shoulder and has had problems with pain in the right neck, right shoulder and right arm all the way down to the wrist since the time of that fall. If that history is correct, then I do believe with a reasonable degree of medical certainty that the ongoing right neck and arm pain for which I have treated her surgically was a direct result of the injury that she suffered in the year 2000.”

At the telephonic hearing, held on April 1, 2008, appellant related that before her recurrence of disability on August 21, 2007 she stood extensively and lifted up to 30 to 40 pounds continuously. She experienced pain in her back, shoulders and arms. A union steward advised appellant to file a recurrence of disability. In 2003 while performing military service she fell and injured her hip and lower back. Appellant agreed with the hearing representative’s comment that it appeared that she sustained a new occupational disease due to her employment activities rather than a recurrence of disability. She worked five hours per day at the time of her alleged recurrence of disability.

On April 29, 2008 the employing establishment noted that appellant had resumed her usual work and her military reserve duties following her 2000 injury. Appellant did not experience problems until her 2003 fall while performing military service.

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<sup>4</sup> On April 24, 2008 appellant submitted the operative report from her December 6, 2007 anterior cervical decompressive discectomy and fusion at C4-5 and C5-6. In a progress report dated January 23, 2008, Dr. Davis noted that appellant had right trapezius pain and headaches following her surgery. He found that she was unable to work.

By decision dated June 18, 2008, the Office hearing representative affirmed the January 2, 2008 decision. She noted that her decision did not preclude appellant from filing an occupational disease claim.

### **LEGAL PRECEDENT**

A “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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>5</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her employment injury.<sup>6</sup> This burden includes the necessity of 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 employment factors and supports that conclusion with sound medical reasoning.<sup>7</sup>

### **ANALYSIS**

The Office accepted that appellant sustained lumbago, lumbar sprain/strain and contusions of the face and lip due to a September 25, 2000 work injury. The Board previously affirmed the Office’s finding that she did not establish a recurrence of disability beginning June 19, 2003 causally related to the September 25, 2000 employment injury. The Board noted that appellant slipped and fell on June 19, 2003 while performing military service.

On October 12, 2007 appellant filed a recurrence of disability claim commencing August 21, 2007 due to her accepted work injury. She submitted a report dated September 21, 2007 from Dr. Almand, who discussed her history of right hip pain following a fall at work in 2000 and a fall in the military in 2003. Dr. Almand diagnosed greater trochanteric bursitis and to rule out other conditions. He did not, however, specifically relate any diagnosed condition to appellant’s 2000 fall at work. Medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of diminished probative value on the issue of causal relationship.<sup>8</sup>

On October 5, 2007 Dr. Hobgood noted appellant’s history of neck and right shoulder pain following a fall at work in 2000. He diagnosed cervical spondylosis and possible

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<sup>5</sup> 20 C.F.R. § 10.5(x).

<sup>6</sup> *Carmen Gould*, 50 ECAB 504 (1999).

<sup>7</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>8</sup> *Ellen L. Noble*, 55 ECAB 530 (2004); *Conard Hightower*, 54 ECAB 796 (2003).

impingement syndrome. Dr. Hobgood did not address causal relationship; consequently his report is insufficient to meet appellant's burden of proof.<sup>9</sup>

Dr. Davis evaluated appellant on November 13, 2007 for right shoulder pain and diagnosed right C6 radiculopathy. On November 20, 2007 he reviewed a November 15, 2007 cervical myelogram and CT scan and recommended a discectomy and fusion at C4-5 and C5-6. As Dr. Davis did not address causation, his reports are of little probative value.<sup>10</sup>

In a report dated March 5, 2008, Dr. Davis diagnosed cervical spondylosis and C5-6 nerve root compression and noted that he had performed a surgical decompression of the C5 and C6 nerve roots on December 6, 2007. He indicated that appellant provided a history of a fall at work in 2000, hitting the right side of her head and shoulder. Following her fall appellant experienced pain along the right side of her neck, shoulder and arm. Dr. Davis stated, "If that history is correct, then I do believe with a reasonable degree of medical certainty that the ongoing right neck and arm pain for which I have treated her surgically was a direct result of the injury that she suffered in the year 2000." He did not, however, discuss appellant's history of a fall while in the military in 2003. Medical reports based on an incomplete or inaccurate history of injury are of little probative value.<sup>11</sup>

Moreover, at the hearing, appellant related her condition to new employment factors, including standing and extensive lifting. As discussed, a recurrence of disability does not include disability resulting from exposure to new work factors, even if it involves the same part of the body previously injured.<sup>12</sup>

### **CONCLUSION**

The Board finds that appellant has not established that she sustained a recurrence of disability on August 21, 2007 causally related to her September 25, 2000 employment injury.

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Beverly R. Jones*, 55 ECAB 411 (2004); *M.W.*, 57 ECAB 710 (2006).

<sup>12</sup> 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3b(2) (May 1997). Appellant may file an occupational disease claim if she believes that new work factors caused her disability from employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 18 and January 2, 2008 are affirmed.

Issued: March 19, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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