



wage-earning capacity, effective February 23, 2003, the date he returned to work.<sup>1</sup> On December 15, 2005 the Board denied appellant's petition for reconsideration. The law and the facts of the previous Board decisions are incorporated herein by reference.

On April 2, 2007 appellant submitted a Form CA-2a, claim for recurrence of disability, alleging that his lower back, neck and left shoulder hurt when he lifted heavy books and boxes at work. He noted that he had continued to seek medical treatment since the initial injury. Appellant did not stop work and his supervisor stated that he had returned to full duty on March 4, 2003. By letter dated November 19, 2007, the Office informed appellant of the evidence needed to support recurrence claim.

In treatment notes dated from September 1, 2005 to November 12, 2007, Dr. Erlinda E. Belvis, a Board-certified psychiatrist, noted appellant's report that he was being harassed at work, described his emotional condition and advised that his affect and mood were depressed. In reports dated February 6, 2007, she noted that appellant claimed he injured his hand in the August 2, 1991 injury and also complained of shoulder and back pain that could have been aggravated by lifting at work. Dr. Belvis diagnosed chronic cervical and lumbar back pain and shoulder pain secondary to the August 1991 employment injury. On May 7, 2007 she reported that appellant had been lifting mail at work and his current condition could be a new injury instead of an exacerbation of his past injury. In reports dated August 3 and November 12, 2007, Dr. Belvis noted that appellant continued to have shoulder problems and continued to be depressed.

In a March 7, 2007 report, Dr. Salvador P. Baylan, a Board-certified physiatrist, diagnosed left shoulder impingement syndrome and provided restrictions to appellant's physical activity. On April 3, 2007 he advised that appellant should remain off work until April 20, 2007 due to an acute exacerbation of low back pain. In reports dated April 20 and June 19, 2007, Dr. Baylan diagnosed left rotator cuff tear, advised that appellant could work eight hours a day with left shoulder restrictions and noted that a surgical consult was pending.

By decision dated January 18, 2008, the Office denied appellant's recurrence claim, finding the medical evidence insufficient to establish that his current condition or disability were caused by the August 2, 1991 employment injury.

On February 15, 2008 appellant requested reconsideration. He stated that a report from Dr. Baylan was enclosed. This report, however, is not found in the case record. In a March 10, 2008 decision, the Office denied appellant's reconsideration request.

### **LEGAL PRECEDENT -- ISSUE 1**

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment

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<sup>1</sup> Docket No. 05-496 (issued September 15, 2005). Appellant, then a 36-year-old city carrier, sustained employment-related sprains of the lumbar region and neck, postconcussion syndrome, left knee strain and depression when he was injured in a motor vehicle accident on August 2, 1991.

that caused the illness.”<sup>2</sup> A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish 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 the employment injury and supports that conclusion with sound medical reasoning.<sup>3</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>4</sup>

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>5</sup> Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized medical opinion of whether there is a causal relationship between the claimant’s diagnosed condition and the compensable 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 -- ISSUE 1**

The Board finds that appellant has not established that he sustained a recurrence of disability on February 6, 2007 caused by the accepted August 2, 1991 employment injury. The issue of whether a claimant’s disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>7</sup> Medical opinion evidence must be 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>8</sup>

The accepted conditions in this case are sprains of the neck and lumbar region, a left knee strain, depression and postconcussion syndrome. Appellant contends that an additional condition, a left shoulder injury, was caused by the August 2, 1991 employment injury. In several reports Dr. Belvis, an attending psychiatrist, noted that appellant was complaining of shoulder pain secondary to the August 2, 1991 injury. However, she also advised that this was a

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<sup>2</sup> 20 C.F.R. § 10.5(x); *R.S.*, 58 ECAB \_\_\_\_ (Docket No. 06-1346, issued February 16, 2007).

<sup>3</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>4</sup> *See Ronald C. Hand*, 49 ECAB 113 (1997); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

<sup>5</sup> *Jennifer Atkerson*, 55 ECAB 317 (2004).

<sup>6</sup> *I.J.*, *supra* note 3; *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>8</sup> *Roy L. Humphrey*, 57 ECAB 238 (2005).

new injury caused by heavy lifting at work. Medical opinions that are speculative or equivocal in character are of diminished probative value.<sup>9</sup> The reports of Dr. Belvis are therefore insufficient to establish that appellant's claimed shoulder condition was caused by the August 2, 1991 employment injury. While appellant has an accepted emotional condition, Dr. Belvis did not advise that he was totally disabled due to this condition.

Dr. Baylan noted on an April 3, 2007 disability slip that appellant should be off work until April 20, 2007 due to an acute exacerbation of low back pain. However, he did not provide any explanation regarding the cause of the condition or disability or relate it in any way to the August 2, 1991 employment injury. Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>10</sup> Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>11</sup>

The record in this case does not contain a medical report providing a rationalized medical opinion that appellant's claimed recurrence of disability was caused by the accepted injuries.<sup>12</sup> As appellant did not submit sufficient medical evidence, he did not meet his burden of proof to establish that he sustained a recurrence of disability. The Office properly denied his claim.<sup>13</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of the Federal Employees' Compensation Act<sup>14</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.<sup>15</sup> Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>16</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>17</sup>

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<sup>9</sup> *D.D.*, 57 ECAB 734 (2006).

<sup>10</sup> *Tammy L. Medley*, 55 ECAB 182 (2003).

<sup>11</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>12</sup> *Cecelia M. Corley*, 56 ECAB 662 (2005).

<sup>13</sup> *Tammy L. Medley*, *supra* note 10.

<sup>14</sup> 5 U.S.C. §§ 8101-8193.

<sup>15</sup> 5 U.S.C. § 8128(a).

<sup>16</sup> 20 C.F.R. § 10.608(a).

<sup>17</sup> *Id.* at § 10.608(b)(1) and (2).

Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

In his February 15, 2008 request for reconsideration, appellant stated that an enclosed report from Dr. Baylan was sufficient to establish that his left shoulder condition was caused by the August 2, 1991 employment injury. He did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).<sup>19</sup>

With respect to the third above-noted requirement under section 10.606(b)(2), appellant stated that an additional report from Dr. Baylan was enclosed. However, such report is not found in the case record. The underlying issue in this case is whether appellant established that he sustained a recurrence of disability of the August 2, 1991 employment injury. This requires the submission of medical evidence establishing that his current condition and/or disability was caused by the employment injury. Appellant submitted no such evidence. As he did not submit relevant and pertinent new evidence not previously considered by the Office, properly denied his reconsideration request.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability causally related to the August 2, 1991 employment injury and that the Office properly refused to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>18</sup> *Id.* at § 10.608(b).

<sup>19</sup> *Id.* at § 10.606(b)(2).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated March 10 and January 18, 2008 are affirmed.

Issued: May 14, 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