



November 2, 2003. On July 26, 2004 he underwent right shoulder surgery consisting of subacromial decompression acromioplasty, arthroscopic debridement of a partial rotator cuff tear and arthroscopic synovectomy performed by Dr. Darryl M. Kan, his attending orthopedic surgeon.

In an April 4, 2005 report, Dr. Kan reviewed a functional capacity evaluation (FCE) which found that appellant could lift 70 pounds occasionally but was unable to do reaching with the screening wand or lift suitcases independently. He had difficulty raising his arm fully overhead, reaching out to the side and reaching across his body. Dr. Kan provided findings on physical examination and determined that appellant could return to work on April 11, 2005 within the restrictions listed in the FCE.

On April 6, 2005 the employing establishment offered appellant a light-duty transportation security screener position within his physical restrictions. On April 7, 2005 appellant accepted the job offer.

On April 15, 2005 Dr. Kan noted that a magnetic resonance imaging (MRI) scan revealed an intact right shoulder rotator cuff and superior labrum. He noted improved range of motion of the shoulder. Dr. Kan stated that appellant could continue working under the established work restrictions.

Appellant resigned from the employing establishment effective April 18, 2005, claiming physical disability.

On April 25, 2005 the employing establishment again offered appellant the light-duty position. On April 26, 2005 appellant rejected the job offer on the grounds that he was physically unable to perform the position.

On July 29, 2005 the Office advised appellant that the job offer made on April 25, 2005 was deemed to be suitable employment consistent with his work limitations as provided by Dr. Kan in his April 4 and 15, 2005 reports. The employing establishment confirmed that the position remained available. The Office allowed appellant 30 days in which to accept the position or provide his reasons for refusal. It advised appellant that an employee who refuses an offer of suitable work without reasonable cause is not entitled to compensation. On August 19, 2005 appellant stated that he resigned his position because of physical disability. He stated that he believed he was entitled to compensation.

On January 29, 2007 appellant underwent a new FCE. On February 28, 2007 Dr. Kan reviewed the FCE and agreed with the work restrictions of medium level duty with occasional lifting to 80 pounds, carrying, pushing and pulling up to 50 pounds and no shoulder lifting over 15 pounds.

On March 15, 2007 the Office asked the employing establishment if it could modify the job offer to conform to the work restrictions provided by Dr. Kan. The employing establishment advised the Office that it could not offer appellant a position because he had resigned.

By decision dated January 23, 2008, the Office denied appellant's claim for a recurrence of total disability on the grounds he failed to establish that he was unable to perform his light-

duty job due to a change in the nature and extent of his accepted right shoulder conditions or a change in his light-duty job requirements.

On February 21, 2008 appellant requested an oral hearing that was held on October 7, 2008. By decision dated December 1, 2008, an Office hearing representative affirmed the January 23, 2008 decision.<sup>1</sup>

### **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 total 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.<sup>2</sup> 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.<sup>3</sup>

### **ANALYSIS**

Appellant has the burden to provide medical evidence establishing that he was totally disabled due to a worsening of his accepted right shoulder impingement and right rotator cuff derangement, or a change in his job duties such that he was unable to perform his light-duty work. He alleged that his recurrence of total disability was caused by an inability to perform his light-duty job requirements. However, the record shows that appellant's attending physician, Dr. Kan, found that he could perform light-duty work within the restrictions established by a FCE. The medical evidence does not establish that appellant was totally disabled due to a worsening of his accepted right shoulder conditions. There is no evidence that the light-duty job

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<sup>1</sup> The Board notes that, while this appeal was pending, the Office issued decisions dated November 25 and April 7, 2009 adjudicating appellant's claim for a schedule award. The issue in these decisions is a different issue than the issue on appeal to the Board. Because this decision does not change the status of the decision on appeal, the November 25 and April 7, 2009 schedule award decisions are not null and void. See *Douglas E. Billings*, 41 ECAB 880 (1990) (holding that the only decisions of the Office which are null and void, because they were issued while the case was on appeal to the Board, are those decisions that change the status of the decision on appeal).

<sup>2</sup> *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, nonperformance 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."

<sup>3</sup> *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *Maurissa Mack*, 50 ECAB 498, 503 (1999).

requirements changed such that the job requirements were no longer within the restrictions provided by Dr. Kan based on the FCE and appellant was unable to perform the position.

The Board finds that appellant failed to establish that he was totally disabled due to a change in the nature and extent of his employment-related right shoulder impingement and right rotator cuff derangement, or a change in the nature and extent of his light-duty job requirements. Therefore, the Office properly denied his claim for a recurrence of total disability.

On appeal appellant asserts that he was physically unable to perform the light-duty position offered by the employing establishment. However, he provided no medical evidence in support of his assertion.

### **CONCLUSION**

The Board finds that appellant failed to establish that he sustained a recurrence of total disability causally related to his January 9, 2003 employment-related right shoulder impingement and right rotator cuff derangement.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 1, 2008 is affirmed.

Issued: February 3, 2010  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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