

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

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**H.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Brookville, OH, Employer**

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**Docket No. 09-1312  
Issued: January 20, 2010**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 22, 2009 appellant, through her representative, filed a timely appeal from the February 19, 2009 merit decision of the Office of Workers' Compensation Programs, which affirmed the denial of her recurrence claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

**ISSUE**

The issue is whether appellant sustained a recurrence of disability on August 19, 2008 causally related to her March 19, 2007 employment injury.

**FACTUAL HISTORY**

On March 19, 2007 appellant, then a 36-year-old full-time window clerk, sustained an injury in the performance of duty while lifting a package over the counter and twisting to the left. An April 10, 2007 magnetic resonance imaging (MRI) scan showed a right paracentral disc protrusion with an associated annular tear at the L4-5 level. The Office accepted her claim for an

annular tear. Appellant received compensation for disability and eventually returned to full-time limited duty.

A May 12, 2008 MRI scan showed no significant change in the L4-5 disc from April 2007.

On August 18, 2008 Dr. Suresh Gupta, a Board-certified anesthesiologist and a specialist in pain medicine, saw appellant for complaints of low back pain. Appellant reported no recent events. Dr. Gupta noted nausea due to increased pain. Physical findings consisted solely of her pain level: 9.5 on a scale of 10. Appellant stated that she was not getting any relief from the drug patches. She added that she was working full time. Dr. Gupta imposed a bending and lifting restriction of 20 pounds and limited her work schedule to 30 hours per week.

On September 1, 2008 appellant filed a claim for increased disability beginning August 19, 2008. She began working only six hours a day and claimed compensation for the resulting two hours of wage loss.

On September 24, 2008 Dr. Gupta stated that the recent work restrictions “are a direct result of the work[-]related injury that occurred on March 19, 2007, for which we are treating [appellant] for the allowed conditions of this claim.”

In a decision dated October 23, 2008, the Office denied appellant’s recurrence claim beginning August 19, 2008. It found that Dr. Gupta did not provide a well-reasoned medical opinion with supportive objective findings to establish that appellant was partially disabled for work beginning August 19, 2008.

Appellant requested a review of the written record by an Office hearing representative. On November 16, 2008 she stated that her coworkers’ hours were cut in half and she was doing more than her usual work and her back was continuing to hurt worse. Appellant stated that she did things outside of her restrictions. In her opinion, her condition worsened due to the work she was doing.

An October 13, 2008 discography showed a fragmented disc at L2-3, an annular tear at L3-4 and a posterior bulge at L4-5.

In a decision dated February 19, 2009, the Office hearing representative affirmed the denial of appellant’s recurrence claim. The hearing representative found that the medical evidence did not establish any change in the accepted condition as of August 19, 2008, nor did it establish any additional medical condition causally related to the March 19, 2007 employment injury.

## LEGAL PRECEDENT

The Federal Employees' Compensation Act pays compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>1</sup> "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.<sup>2</sup>

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>3</sup> An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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 the employment injury and who supports that conclusion with sound medical reasoning.<sup>4</sup>

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of disability and to show that she cannot perform such limited-duty work. 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 limited-duty job requirements.<sup>5</sup>

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.<sup>6</sup> The Board has held that when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that she hurt too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>7</sup> Employees may not self-certify their disability and entitlement to compensation.<sup>8</sup>

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<sup>1</sup> 5 U.S.C. § 8102(a).

<sup>2</sup> 20 C.F.R. § 10.5(f).

<sup>3</sup> *Id.* at § 10.5(x).

<sup>4</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

<sup>5</sup> *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>6</sup> *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

<sup>7</sup> *John L. Clark*, 32 ECAB 1618 (1981).

<sup>8</sup> *Fereidoon Kharabi*, 52 ECAB (2001).

## ANALYSIS

Appellant claims compensation beginning August 19, 2008 for partial disability in her limited-duty assignment. She thus has the burden of proof to show a change in the nature and extent of her injury-related condition or a change in the nature and extent of her limited-duty job requirements.

The medical evidence does not show a change in the nature and extent of the accepted medical condition. The April 2007 MRI scan showed a right paracentral disc protrusion with an associated annular tear at the L4-5 level, which the Office accepted. The May 2008 MRI scan showed no significant change. The October 2008 discography showed a posterior bulge at that level. Objective findings on diagnostic testing do not show a change or worsening of the accepted annular tear at L4-5 prior to the reduction of appellant's work hours on August 19, 2008.

The August 18, 2008 report of Dr. Gupta, appellant's pain specialist, is critical because it was on this date that he restricted her work hours. Appellant came to Dr. Gupta that day complaining of low back pain, but she reported no recent events. She did not tell Dr. Gupta that her coworkers' hours were cut in half. Appellant did not tell him that she was doing more than her usual work. She did not tell him she did things at work outside her restrictions. Dr. Gupta reported no objective signs of disability on physical examination. Indeed, he reported no physical findings at all apart from a pain level of 9.5 out of 10. It appears that Dr. Gupta restricted appellant's work hours solely on the basis of her reported complaint of pain. This is not a proper basis for the payment of compensation, as it amounts to a self-certification by appellant of her disability for work.

Dr. Gupta stated on September 24, 2008 that appellant's recent work restrictions were a direct result of the March 19, 2007 work injury, but he did not explain. He discussed no objective findings and no changes in the nature and extent of the L4-5 annular tear. Dr. Gupta made no attempt to establish that disability beginning August 19, 2008 was due to a spontaneous change in the accepted condition, without intervening injury or new exposure to the work environment that caused the condition. His lack of medical rationale greatly diminishes the value of his opinion on causal relationship.<sup>9</sup>

Appellant has not established a change in the nature and extent of her limited-duty job requirements. Three months after her partial disability began, she alleged that her coworkers' hours were cut in half and that she was doing more than her usual work. However, the record contains no confirmation from her supervisor or other supporting documentation to establish any change in the nature and extent of the limited-duty job requirements. Even if the Office were to obtain confirmation that appellant was required to do more than her usual work prior to August 19, 2008, the record still lacks a reasoned medical opinion from Dr. Gupta attributing her partial disability beginning that date to a specific change in job requirements or to appellant not always working within specific restrictions.

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<sup>9</sup> Medical conclusions unsupported by rationale are of little probative value. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

Because appellant has not shown a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements, the Board finds that she has not met her burden of proof to establish a recurrence of disability on August 19, 2008 causally related to her March 19, 2007 employment injury. The Board will therefore affirm the Office hearing representative's February 19, 2009 decision.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on August 19, 2008 causally related to her March 19, 2007 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 19, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 20, 2010  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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