United States Department of Labor
Employees' Compensation Appeals Board

K.S., Appellant	)	
and	)	**Docket No. 09-2092**
	)	**Issued: July 22, 2010**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Los Angeles, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 17, 2009 appellant filed a timely appeal from the February 23, 2009 merit decision of the Office of Workers' Compensation Programs denying her recurrence of disability claim. 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 met her burden of proof to establish that she sustained a recurrence of total disability from April 24 to May 9, 2008 due to her May 17, 2006 work injury.

FACTUAL HISTORY

The Office accepted that on May 17, 2006 appellant, then a 57-year-old nurse, sustained adhesive capsulitis of her left shoulder due to her work duties on that date. Appellant stopped work on June 18, 2006 and returned to work on July 17, 2006 in a limited-duty nursing position

on a full-time basis.[1] In accordance with the recommendations of her attending physicians, the position did not require her to lift, push, pull or engage in overhead reaching with her left shoulder. The Office paid wage-loss compensation for periods of disability.

On February 14, 2007 Dr. James A. Shankwiler, an attending Board-certified orthopedic surgeon, stated that appellant reported persistent moderate-to-dull aching along the anterior aspect of her left shoulder. On examination appellant could actively forward flex her left shoulder about 150 degrees, abduct 140 degrees and externally rotate up to 20 degrees. Her left shoulder could be passively brought up to 160 degrees of forward flexion and could be passively externally rotated to 35 degrees with discomfort at all extremes of motion. Dr. Shankwiler found that appellant had positive impingement and impingement reinforcement at the left shoulder. He diagnosed adhesive capsulitis of the left shoulder with underlying residual rotator cuff tendinopathy and indicated that appellant could continue her nursing work with breaks from repetitive reaching, grasping and use of the left arm as necessary, no lifting more than five pounds with the left arm and no engaging in overhead activity with the left arm.

In October 2007 appellant began working in a limited-duty position which restricted her from lifting more than five pounds and performing work above shoulder level with her left arm. She was allowed to take breaks from performing computer work every 20 minutes.[2]

On November 20, 2007 Dr. Shankwiler stated that appellant reported working in the daycare center at the employing establishment where she occasionally transferred patients. Appellant indicated that for the most part she was able to perform this work with minimal discomfort. Dr. Shankwiler stated that on physical examination appellant was able to actively forward flex her left shoulder to 165 degrees, abduct to 160 degrees and externally rotate to 70 degrees. Passive motion of her left shoulder was to 170 degrees of forward flexion with positive impingement and impingement reinforcement. Dr. Shankwiler diagnosed improved adhesive capsulitis of appellant's left shoulder with underlying rotator cuff tendinopathy and compensatory impingement of her right shoulder and cervicalgia.[3] He stated that appellant should continue to be restricted from working above her shoulder level and lifting more than 10 pounds and that she should be able to take breaks from repetitive reaching, grasping and use of the left arm.

[1] The findings of June 2006 magnetic resonance imaging scan testing of appellant's left shoulder showed mild rotator cuff tendinopathy without tear.

[2] It appears that part of the job required appellant to perform her restricted nursing duties in an adult daycare center of the employment establishment. The job involved admitting new patients, entering encounter codes for the care provided, producing periodic nursing notes, supervising the nursing assistants and the medical clerk in the absence of the charge nurse, participating in a weekly interdisciplinary team meeting, handling patient case management for assignment patients, leading patients in group activities and supervising patients for safety. The duties did not require "excessive walking, sitting, lifting or pulling."

[3] It should be noted that the Office has not accepted that appellant sustained a work-related right shoulder or neck condition.

In early 2008, Dr. Shankwiler recommended that appellant not work above her shoulder level and should take breaks every 20 minutes from working on the computer.[4] On March 3, 2008 he noted that she had been under his care for adhesive capsulitis of the left shoulder with underlying rotator cuff tendinopathy and a history of compensatory impingement of her right shoulder and associated cervicalgia. Dr. Shankwiler stated, "[Appellant] has made appropriate progress over time with physical therapy, rest and avoidance of inciting activities."[5]

Appellant stopped work on April 24, 2008 and claimed that she sustained a recurrence of total disability from April 24 to May 9, 2008 due to the May 17, 2006 work injury.[6]

In an April 24, 2008 report, Dr. Shankwiler stated that appellant reported that she drove about 45 minutes to get to work and about 90 minutes to get home from work and felt this activity caused increasing discomfort in her neck. Appellant also reported being "required to do some pushing and pulling activities on a regular basis" and that she was "having increasing discomfort and limitation in her neck as a result of stress on the job." Dr. Shankwiler stated that on motion testing of the shoulders she had active forward flexion of 160 degrees, abduction of 150 degrees and external rotation of 60 degrees on the right. Appellant had active forward flexion of 160 degrees, abduction of 140 degrees and external rotation of 60 degrees on the left. Passive motion was to 170 degrees of forward flexion in both shoulders. Dr. Shankwiler found that positive impingement and impingement reinforcement were present in the left shoulder and that increased tone was present in the cervical paraspinal musculature. Gentle cervical compression testing caused pain in the posterior triangles of the neck, but there was no gross Lhermitte's sign. Dr. Shankwiler diagnosed improved adhesive capsulitis of appellant's left shoulder with underlying rotator cuff tendinopathy, improved compensatory impingement of her right shoulder and cervicalgia. He advised that she could continue to work in the daycare center as she had been doing with restrictions from working above shoulder level and lifting more than 10 pounds with her left arm. Dr. Shankwiler stated that appellant should have breaks from repetitive reaching, grasping and use of her left arm as necessary.[7]

In an April 24, 2008 note, Dr. Shankwiler indicated that appellant had been under his care for an orthopedic condition and stated that she was able to return to work on May 12, 2008. He recommended that she not work above her shoulder level and not push, pull or lift more than five pounds.[8] Dr. Shankwiler noted that appellant should take breaks every 20 minutes from working on the computer and otherwise take breaks as necessary.

[4] Dr. Shankwiler alternated between recommending that appellant not lift more than 5 pounds and recommending that she not lift more than 10 pounds.

[5] Dr. Shankwiler also indicated that appellant should not perform bedside work, but he did not identify the specific duties that bedside work would entail.

[6] Appellant returned to work for the employing establishment on May 18, 2008.

[7] Dr. Shankwiler also indicated that appellant should not engage in bedside patient duty and should drive less than 20 minutes for work duties, if possible.

[8] Dr. Shankwiler did not provide a diagnosis on the form but indicated that appellant's condition was related to her May 17, 2006 injury.

On June 3, 2008 the Office requested that appellant submitted additional factual and medical evidence to support her claim. In a June 20, 2008 report, Dr. Shankwiler detailed physical examination findings similar to those contained in his April 24, 2008 report.[9] He did not make any reference to the period of total disability claimed by appellant, April 24 to May 9, 2008.

In a July 2, 2008 letter, appellant asserted that her limited-duty position required her to perform physical activities beyond those delineated by the job description. She was required to push and pull patients in wheelchairs around the building, lift patients from sitting positions in wheelchairs to standing positions when they went to the toilet, push and pull chairs for patients to sit in and clean patients who soiled themselves and change their clothes. Appellant asserted that the position required excessive walking, lifting, pushing and pulling and that she had to spend more time driving to and from work than previously required.

In a July 23, 2008 decision, the Office denied appellant's claim for a recurrence of total disability from April 24 to May 9, 2008 due to her May 17, 2006 work injury. It found that she did not establish that her limited-duty requirements changed such that she sustained a recurrence of total disability for this period. Appellant also did not submit sufficient medical evidence to establish such a work-related recurrence of total disability.

In July 23, August 27 and October 5, 2008 reports, Dr. Shankwiler advised that appellant could continue to work with the restrictions previously provided. He diagnosed improved adhesive capsulitis of appellant's left shoulder with underlying rotator cuff tendinopathy, improved compensatory impingement of her right shoulder, cervicalgia and right hand swelling of ill-defined etiology with history of right long trigger finger. In July 23 and August 27, 2008 notes, Dr. Shankwiler noted that appellant was able to work on July 23 and August 27, 2008, respectively. In an August 27, 2008 form report, he recommended work restrictions. Appellant also resubmitted medical reports previously considered by the Office.

In an October 10, 2008 report, Dr. Shankwiler reiterated that appellant had been under his care for adhesive capsulitis of her left shoulder with underlying rotator cuff tendinopathy and compensatory impingement of her right shoulder with associated cervicalgia. He stated:

> "On April 24, 2008, [appellant] had increasing pain and limitation in her ability to perform her activities of daily living, as well as her job requirements. The patient asked at that time to be restricted from return to work for a two-week period of time to allow for resolution of her symptomatology since it was felt to be medically necessary for appropriate care and treatment of her exacerbation at that time. [Appellant] did quite well after this two[-]week period of rest and was able to return back to modified duty as expected. Please afford her all due courtesy and consideration for extensive coverage for this period of work that she was off due to the fact that we felt it medically necessary to restrict her return to work at that time secondary to exacerbation of her symptomatology."

[9] In a June 30, 2008 form report, Dr. Shankwiler recommended work restrictions which were similar to those previously provided.

In a November 26, 2008 letter, appellant contended that she was required to push and pull wheelchairs and lift patients such that she exceeded the physical requirements of her limited-duty work. In an October 5, 2008 letter, Isaiah Robinson, a supervisor, stated that appellant came to him on February 25, 2008 and complained that she was experiencing shoulder and body pain as a result of pushing and pulling patients. He stated that he told appellant "to stop pushing and pulling any patient in order to avoid any further aggravation."

In a February 23, 2009 decision, the Office affirmed its July 23, 2008 decision.

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 of record establishes that 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 she cannot perform such light duty. 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.[10]

ANALYSIS

The Office accepted that appellant sustained adhesive capsulitis of her left shoulder on May 17, 2006. Appellant returned to limited-duty work and claimed that she sustained a recurrence of total disability from April 24 to May 9, 2008 due to her May 17, 2006 work injury. At the time of her claimed recurrence of total disability, she was working in a limited-duty position that restricted her from lifting more than five pounds and performing work above shoulder level with her left arm. Appellant was allowed to take breaks from performing computer work every 20 minutes.

On appeal, appellant contends that her limited-duty position required her to perform physical activities beyond those delineated by the job description. She claimed that she was required to push and pull patients in wheelchairs around the building, lift patients from sitting positions in wheelchairs to standing positions when they went to the toilet, push and pull chairs for patients to sit in and clean patients who soiled themselves and change their clothes. Appellant asserted that other staff members were not always present to attend to patients' urgent needs. The Board finds that she did not submit sufficient evidence to establish that a change in the nature and extent of her limited-duty job requirements caused her to sustain a recurrence of total disability from April 24 to May 9, 2008. In an October 5, 2008 letter, Mr. Robinson, a supervisor, stated that appellant came to him on February 25, 2008 and complained that she was experiencing pain as a result of pushing and pulling patients. He advised that he told her "to stop pushing and pulling any patient in order to avoid any further aggravation." This statement does not establish a recurrence of disability due to a change in position requirements. It merely reflects appellant's assertion regarding her work duties and does not contain any degree of specificity regarding the nature and extent of the alleged work she performed. Lacking such

[10] *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

specificity, it does not establish that the reported activities conflicted with the physical restrictions of her limited-duty job.

The Board further finds that appellant did not submit sufficient medical evidence to establish that her work-related condition worsened such that she was totally disabled from April 24 to May 9, 2008 due to her May 17, 2006 work injury. In an April 24, 2008 report, Dr. Shankwiler, an attending Board-certified orthopedic surgeon, stated that appellant reported that she drove about 45 minutes to get to work and about 90 minutes to get home from work and believed this activity caused discomfort in her neck. Appellant also reported being "required to do some pushing and pulling activities on a regular basis" and that she was "having increasing discomfort and limitation in her neck as a result of stress on the job." Dr. Shankwiler reported range of motion findings for appellant's shoulders and diagnosed improved adhesive capsulitis of her left shoulder with underlying rotator cuff tendinopathy, improved compensatory impingement of her right shoulder and cervicalgia.[11] He advised that she could continue to work in the daycare center as she had been doing with restrictions from working above shoulder level and lifting more than 10 pounds with her left arm. Dr. Shankwiler added that appellant should have breaks from repetitive reaching, grasping and use of her left arm as necessary.[12] In an April 24, 2008 separate note, he indicated that she had been under his care for an orthopedic condition and stated that she was totally disabled until May 12, 2008.[13]

Although Dr. Shankwiler indicated that appellant was totally disabled from April 24 to May 11, 2008, his reports do not establish how her work-related condition had worsened such that she sustained a recurrence of total disability as of April 24, 2008 due to her accepted injury. The findings on examination that Dr. Shankwiler observed in April 2008, including extensive ability to move the left shoulder and modest pain in the left shoulder, are similar to the periodic findings he made during the prior year he followed appellant's condition. He did not clearly document any worsening of the injury-related condition and the medical reports in the record do not otherwise establish such a worsening. Dr. Shankwiler did not provide adequate medical rationale explaining why appellant's disability was related to the May 17, 2006 work injury. He

[11] Dr. Shankwiler stated that on motion testing of the shoulders appellant had active forward flexion of 160 degrees, abduction of 150 degrees and external rotation of 60 degrees on the right. She had active forward flexion of 160 degrees, abduction of 140 degrees and external rotation of 60 degrees on the left. Passive motion was to 170 degrees of forward flexion in both shoulders. Dr. Shankwiler indicated that positive impingement and impingement reinforcement were present in the left shoulder and that increased tone was present in the cervical paraspinal musculature.

[12] Dr. Shankwiler also indicated that appellant should not engage in bedside patient duty and should drive less than 20 minutes for work duties, if possible.

[13] In a form report dated April 24, 2008, Dr. Shankwiler indicated that appellant could return to limited-duty work on May 12, 2008 and recommended that when she returned to work she should not work above her shoulder level and not push, pull or lift more than five pounds. He indicated that she should take breaks every 20 minutes from working on the computer and otherwise take breaks as necessary. Dr. Shankwiler did not provide a diagnosis on the form but indicated that appellant's condition was related to her May 17, 2006 injury. The Board notes that Dr. Shankwiler did not provide a specific description of what he meant by bedside duty and did not explain how residuals of the May 17, 2006 work injury prevented appellant from driving for more than 20 minutes. He also did not explain why she might need breaks in addition to those she was allowed to take after working 20 minutes on the computer.

did not describe her work injury in any detail or explain how it caused a period of total disability almost two years later.[14] Dr. Shankwiler suggested that cervicalgia and right shoulder impingement contributed to appellant's need to stop work, but these conditions have not been accepted as work related and the medical evidence of record does not otherwise show they are work related. To the extent that he attributed disability to her current work activities, this does not support a recurrence of disability.

In an October 10, 2008 report, Dr. Shankwiler stated that appellant told him on April 24, 2008 that she had increasing pain and limitation in her ability to perform her activities of daily living, as well as her job requirements. Appellant asked at that time to be restricted from return to work for a two-week period of time to allow for resolution of her symptomatology since it was felt to be medically necessary for appropriate care and treatment of her exacerbation at that time. Dr. Shankwiler indicated that appellant did quite well after this two-week period of rest and was able to return back to modified duty as expected. He asked that this time off work be covered by Office compensation. Dr. Shankwiler did not, however, provide any further explanation of why appellant sustained a work-related recurrence of disability on April 24, 2008. His recommendation that appellant stop work appears to have principally been based on appellant's reported symptoms and her request to stop work rather than on objective findings on examination and diagnostic testing.[15]

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of total disability from April 24 to May 9, 2008 due to her May 17, 2006 work injury.

[14] A recurrence of disability is defined as the inability to work caused by a spontaneous change in a medical condition which results from a previous injury or illness without an intervening injury or new exposure in the work environment that caused illness. *Donald T. Pippin*, 54 ECAB 631 (2003). *See* 20 C.F.R. § 10.5(x).

[15] Appellant submitted other medical reports of Dr. Shankwiler, but they do not pertain to the claimed period of total disability from April 24 to May 9, 2008.

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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