

sprain and displacement of cervical intervertebral disc without myelopathy. On March 20, 1996 it authorized an anterior cervical discectomy and fusion at C4-5 which was performed on March 28, 1996 by Dr. Stanley Pelofsky, an attending Board-certified neurologist. Following appellant's employment injuries and total disability from March 28 to May 17, 1996, she performed limited-duty work as a modified mail processing clerk.¹

On July 23, 2008 appellant filed a CA-2a form alleging that she sustained a recurrence of disability commencing July 22, 2008 due to her April 10, 1995 employment injuries. She noted an increase in pain and a knot on her left shoulder. An attending physician advised appellant that her left shoulder condition was due to her employment injuries.

By letter dated September 8, 2008, the Office advised appellant that the evidence submitted was insufficient to establish a recurrence of total disability claim. It requested additional factual and medical evidence.

A September 16, 2008 disability certificate from Dr. Claudia E. Cea, a Board-certified family practitioner, excused appellant from work September 8 through 17, 2008. Dr. Cea indicated that appellant could return to work on September 17, 2008 with restrictions.

An August 25, 2008 magnetic resonance imaging (MRI) scan report of the cervical spine by Dr. Geoffrey A. Day, a Board-certified radiologist, found anterior cervical fusion at C4-5 and moderate to severe spinal stenosis at C6-7 and to a lesser degree at C5-6 due to probable herniated nucleus pulposus at both levels in the left paracentral region. Asymmetric left lateral recess stenosis was found at C5-6 and C6-7. Dr. Day stated that these findings could potentially be associated with appellant's clinical symptoms. He also found minimal broad-based annular disc bulging at C3-4 without significant spinal lateral recess or neural foraminal stenosis.

In a November 20, 1996 medical report, Dr. Pelofsky advised that appellant was doing well following her recent anterior cervical microdiscectomy and fusion at C4-5. He found no evidence of active radiculopathy or myelopathy. An MRI scan revealed postoperative changes at C4-5 but, there was no evidence of left-sided disc herniation at C6-7. Dr. Pelofsky opined that appellant could continue performing limited-duty work without difficulty.

In a June 30, 1996 report, Dr. C. Randall Jenkins, a Board-certified physiatrist, listed his findings on physical examination and diagnosed right cervical trapezius, scapular pain and paresthesias of the right forearm and degenerative discs at C3-4, C5-6 and C6-7. He stated that appellant was status post anterior cervical discectomy and fusion at C4-5. Dr. Jenkins noted her complaint of significant cervical, trapezius and parascapular myofascial pain. He stated that she had a new onset of right arm paresthesias which indicated perhaps a nerve root irritation. Dr. Jenkins, however, advised that his only finding on neurological examination was hypesthesia in the right little finger.

¹ In a November 14, 1997 decision, the Office denied appellant's July 7, 1997 claim (Form CA-2a) for a recurrence of disability. It found the evidence insufficient to establish that she sustained a recurrence of disability commencing July 7, 1997 causally related to her April 10, 1995 employment injuries. By decision dated January 25, 2002, the Office denied appellant's claim for a schedule award. The evidence was insufficient to establish that she sustained permanent impairment to a scheduled member of the body.

By decision dated October 15, 2008, the Office denied appellant's recurrence of disability claim. It found the medical evidence of record insufficient to establish that her disability commencing July 22, 2008 was due to her April 10, 1995 employment injuries.

On November 11, 2008 appellant requested a review of the written record by an Office hearing representative. In a September 25, 2008 report, Dr. Pelofsky advised that appellant sustained cervical degenerative disc disease. He indicated with an affirmative mark that the diagnosed condition was caused by the April 10, 1995 employment injuries. Dr. Pelofsky stated that appellant was totally disabled for four to six weeks commencing September 24, 2008. In a December 3, 2008 report, he opined that she was totally disabled four to six weeks commencing September 24, 2008 due to the April 10, 1995 employment injuries.

In an August 14, 2008 report, Dr. Donald R. Barney, an osteopath, reviewed a history of appellant's April 10, 1995 employment injuries, medical treatment and family and social background. On physical examination, he reported limited range of motion of the cervical spine and left shoulder and tenderness in the acromioclavicular (AC) joint bilaterally. Dr. Barney diagnosed cervical neuropathy secondary to traumatic injury to the cervical spine, right shoulder bursitis, rotator cuff tear, left shoulder bursitis and rotator cuff syndrome. He opined that appellant's shoulder and neck problems were related to her work as a clerk which involved heavy lifting and an injury which caused a severe strain on her neck and shoulders. Dr. Barney further opined that she developed stress, anxiety and anger as a result of her employment injuries. Also, on August 14, 2008, he ordered occupational therapy and treatment.

On January 13, 2009 Dr. Pelofsky reiterated his prior diagnosis of cervical degenerative disc disease. He ordered physical therapy.

In a February 18, 2009 report, Dr. Barney reviewed a history of appellant's employment injuries, medical treatment and family and social background. He listed his findings on physical examination and advised that she continued to have restricted range of motion of the cervical spine and shoulder. There was tenderness in the cervical spine to palpation and in the AC joint bilaterally in the left shoulder. There was also crepitus in the left shoulder. Dr. Barney again diagnosed cervical neuropathy secondary to traumatic injury to the cervical spine, right and left shoulder bursitis, rotator cuff tear and rotator cuff syndrome. Also, on February 18, 2009 he ordered occupational therapy.

By decision dated March 4, 2009, an Office hearing representative affirmed the October 15, 2008 decision, finding that appellant failed to establish that she sustained a recurrence of disability commencing July 22, 2008 causally related to her April 10, 1995 employment injuries.²

² Following the issuance of the Office's March 4, 2009 decision, the Office received additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office with a formal written request for reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³ 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.⁴

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 total 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.⁵

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁶

ANALYSIS

The Office accepted that appellant sustained left shoulder strain, cervical sprain and displacement of cervical intervertebral disc without myelopathy on April 10, 1995 and authorized an anterior cervical discectomy and fusion. Following these injuries, appellant returned to limited light-duty work. She claimed a recurrence of total disability commencing July 22, 2008 causally related to her accepted employment injuries. Appellant must demonstrate either that her condition has changed such that she could not perform the activities required by her modified job or that the requirements of the limited light-duty job changed. The Board finds that the record contains no evidence that the limited light-duty job requirements were changed or withdrawn or that her employment-related condition has changed such that it precluded her from performing limited light-duty work.

Dr. Cea's September 16, 2008 disability certificate stated that appellant was totally disabled for work from September 8 through 17, 2008. She did not address whether appellant's

³ 20 C.F.R. § 10.5(x).

⁴ *Id.*

⁵ *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁶ *James H. Botts*, 50 ECAB 265 (1999).

disability was causally related to the April 10, 1995 employment injuries. The Board finds that Dr. Cea's report is insufficient to establish appellant's claim.

Dr. Day's diagnostic report regarding appellant's cervical condition is similarly insufficient to establish her claim for a recurrence of total disability. This evidence does not address the issue of her disability for work commencing July 22, 2008 or how any disability was causally related to the April 10, 1995 employment injuries.

Dr. Pelofsky's November 20, 1996 report found no evidence of active radiculopathy or myelopathy following appellant's authorized cervical surgery. He stated that, although postoperative changes were found at C4-5 based on a MRI scan, there was no evidence of left-sided disc herniation at C6-7. Dr. Pelofsky addressed the initial injury accepted in this case and not the claimed recurrence of total disability commencing July 22, 2008. This report is not relevant to the issue of whether appellant's disability for the claimed period was causally related to the April 10, 1995 employment injuries. Dr. Pelofsky's January 13, 2009 report stated only that appellant sustained cervical degenerative disc disease and ordered physical therapy. Again, he failed to provide any opinion addressing appellant's disability for work commencing July 22, 2008. The Board finds that these reports are insufficient to establish appellant's claim. In a September 25, 2008 report, Dr. Pelofsky indicated with an affirmative mark that appellant's cervical degenerative disc disease was caused by the April 10, 1995 employment injuries. He advised that she was totally disabled four to six weeks commencing September 24, 2008. Reports which only address causal relationship with a check mark without more by way of medical rationale explaining how the incident caused the injury are sincerely insufficient to establish causal relationship and are of diminished probative value.⁷ Dr. Pelofsky did not explain how the diagnosed condition and total disability were caused or contributed to by the April 10, 1995 employment injuries.⁸ The Board finds that his report is insufficient to establish that appellant sustained an additional cervical condition and total disability caused or aggravated by the accepted employment injuries.

Dr. Jenkins' June 30, 1996 report found that appellant sustained right cervical trapezius, scapular pain and paresthesias of the right forearm and degenerative disc disease at C3-4, C5-6 and C6-7. He advised that she had a new onset of right arm paresthesias which could indicate nerve root irritation although he only found hypesthesia in the right little finger during his neurological examination. Dr. Jenkins did not provide any opinion addressing appellant's disability for work commencing July 22, 2008. The Board finds that his report is insufficient to establish her claim.

Dr. Barney's August 14, 2008 and February 18, 2009 reports reviewed a history of appellant's April 10, 1995 employment injuries, medical treatment and family and social background. He stated that she sustained cervical neuropathy secondary to traumatic injury to

⁷ See *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

⁸ See *Gloria J. McPherson*, 51 ECAB 441 (2000) (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).

the cervical spine, right shoulder bursitis, rotator cuff tear, left shoulder bursitis and rotator cuff syndrome. Dr. Barney opined that appellant's shoulder and neck problems were related to her work as a clerk, which involved heavy lifting and an injury that caused a severe strain on her neck and shoulders. He further opined that she developed stress, anxiety and anger as a result of her employment injuries. As noted, a recurrence of disability is defined as a spontaneous change in the accepted medical condition. Dr. Barney, however, attributed appellant's present condition to her lifting duties as a clerk. He did not address the issue of how the accepted April 10, 1995 employment injuries spontaneously caused or aggravated the diagnosed conditions or caused disability for the period claimed.⁹

Dr. Barney's August 14, 2008 and February 18, 2009 prescriptions ordered occupational therapy and treatment. He did not provide any opinion addressing appellant's disability for work commencing July 22, 2008. The Board finds that Dr. Barney's reports are insufficient to establish appellant's claim.

Appellant has not met her burden of proof in establishing that there was a change in the nature or extent of the injury-related conditions or a change in the nature and extent of the limited light-duty requirements which would prohibit her from performing the limited light-duty positions she assumed after she returned to work.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a recurrence of total disability commencing July 22, 2008 causally related to her April 10, 1995 employment-related injuries.

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2009 and October 15, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 8, 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