



to light duty on March 24, 2006. Initial medical reports indicated that cervical spine x-rays revealed no fractures, subluxation, spondylosis or spondylolisthesis. Left shoulder x-rays showed concentric reduction of the left glenohumeral joint with no bone lesions or fractures and no obvious degenerative changes. The Office accepted appellant's claim for cervical sprain/strain and left shoulder and arm sprain/strain.

In reports dated May 24, 2006 to February 6, 2007, Dr. David Muldowny, a Board-certified orthopedic surgeon, diagnosed subacromial bursitis and degenerative disc disease of the cervical spine. He advised that appellant could work with restrictions.

The Office paid appellant intermittent wage-loss compensation between January 9 and April 9, 2007 for attending medical appointments. Appellant stopped work on April 15, 2007. She received disability compensation beginning April 15, 2007. Reports from Dr. Muldowny dated between June 7 and November 13, 2007 advised that appellant was unable to return to work. Reports dated December 3, 2007 and January 14, 2008 from Dr. Daniel Hodges, a Board-certified physiatrist and associate of Dr. Muldowny, indicated that she was unable to work.

On January 10, 2008 the Office referred appellant with a statement of accepted facts to Dr. Raymond Fletcher, a Board-certified orthopedic surgeon, for a second opinion. In a February 12, 2008 report, Dr. Fletcher diagnosed permanent aggravated cervical spondylosis with residual impairment resulting from appellant's work injury. He opined that appellant was able to work full-time light duty.

In reports dated January 27 and March 31, 2008, Dr. Hodges diagnosed neck and left shoulder sprain, displacement of cervical intervertebral disc and left C6-7 radiculopathy. He advised that appellant was unable to work for an undetermined period of time.

On March 12, 2008 the Office referred appellant to Dr. Gordon Nutik, a Board-certified orthopedic surgeon, for a referee evaluation to resolve the conflict in medical opinion between Drs. Fletcher and Hodges. In an April 2, 2008 report, Dr. Nutik opined that her condition was consistent with chronic strain and underlying aggravated cervical degenerative disease. He noted some evidence of exaggeration. Dr. Nutik advised that appellant's low back condition was not a work-related condition. He noted that residuals of her work injury did not cease and that she was able to work full time with permanent restrictions. In a work capacity evaluation form dated April 2, 2008, Dr. Nutik indicated that appellant could not perform her usual job but could work eight hours per day with permanent restrictions including sitting up to six hours per day. He also restricted standing, reaching and repetitive wrist and elbow movements up to two hours per day. Dr. Nutik also noted that appellant had low back pain that was unrelated to the accepted conditions.

On May 15, 2008 the employing establishment offered appellant a limited-duty position as a ticket document checker<sup>1</sup> based on Dr. Nutik's work restrictions. Appellant accepted this position and returned to work on June 2, 2008.

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<sup>1</sup> The job description for a ticket document checker indicates that appellant is "[r]esponsible for ensuring that no individuals are able to circumvent the travel document checking area or enter the screening checkpoint without having their travel documents and ID's checked. Standing or sitting and minimal use of wrist."

In a June 3, 2008 statement, appellant requested that the Office expand her claim to accept her low back condition as a result of the March 23, 2006 work injury.

On June 12, 2008 appellant filed a recurrence of disability claim beginning June 6, 2008. She stopped work on June 6, 2008 and did not return. Appellant's claim form stated that the recurrence was caused by repetitive motion to the neck and arm which triggered upper back spasms and arm numbness. She also indicated that she had more pain in her upper back, elbow and head after returning to work. Appellant also alleged that her duties were inconsistent with her work restrictions, as she had to constantly lift her arm while standing and repeatedly looking down for eight hours per day. The employing establishment advised that appellant's limited-duty consisted of sitting at a podium checking travel documents with an option of sitting or standing. It noted that she viewed about 1,000 documents in an eight-hour shift, that documents were placed on podium and that appellant's duties involved slight arm movement to return documents to passengers.

Appellant submitted a March 27, 2006 nurse's note and a May 4, 2006 physical therapy report. In a June 23, 2008 report, Dr. Hodges noted her complaint of continued neck and back pain as well as pain of the left shoulder, arm, elbow, wrist and bilateral hip. He indicated that appellant's pain was aggravated by walking, bending, sitting, standing and lifting. Examination revealed limited cervical range of motion, some tenderness in the trapezial levator groups particularly into the rhomboid musculature, low back pain on hypertension and pain radiating into the right lower extremity. Dr. Hodges diagnosed an on-the-job injury with multilevel cervical changes, left medial nerve entrapment neuropathy and induced progressive mechanical low back pain. He advised that appellant remain off work. In reports dated August 6, 2008, Dr. Hodges noted diminished lumbar range of motion and the need to rule out occult right knee pathology. He also reiterated that appellant was unable to work.

On September 4, 2008 the Office advised appellant of the factual and medical evidence necessary to establish his recurrence claim and allowed her 30 days to submit such evidence.

In a September 10, 2008 report, Dr. Hodges reiterated his diagnosis of an on-the-job injury with multilevel cervical changes, progressive mechanical low back pain, persistent right knee pain and possible meniscal tear. Appellant also submitted physical therapy documents.

In an October 17, 2008 decision, the Office denied appellant's recurrence of disability claim finding the evidence insufficient to establish that her current medical condition and disability were due to the accepted work injury. It also noted that she was still entitled to medical treatment.

In an undated statement, appellant asserted that she had been denied medical treatment as the Office had not accepted that her lower back condition was caused by the accepted traumatic injury. She also submitted statements that predated the claimed recurrence of disability.

On October 26, 2008 appellant, through her representative, requested a telephone hearing which was held on February 24, 2009. In a December 11, 2008 letter to her representative, she asserted that her low back condition related to her March 23, 2006 work injury and should be an accepted condition. In a September 10, 2008 work status report, Dr. Hodges advised that

appellant was unable to work pending treatment. In reports dated December 10, 2008 and March 18, 2009, he diagnosed on-the-job injury with multiple cervical and progressive back complaints, persistent right knee pain and possible meniscal tear and left median nerve entrapment neuropathy. In a March 18, 2009 status report, Dr. Hodges noted that appellant had a work injury, indicated that her condition had not changed and advised that she was unable to work.

On January 27, 2009 Dr. F. Allen Johnston, a Board-certified orthopedic surgeon, noted that appellant sustained a work-related injury on March 23, 2006. He advised that she complained of low back and right thigh symptoms. Dr. Johnston indicated that appellant injured her low back in an initial work injury but that her upper back and neck area were more symptomatic early on with more low back problems presently. He also indicated that her symptoms worsened with walking, bending and lifting. Examination revealed fairly good range of motion and minimal left-sided paraspinous muscles and buttock tenderness. Dr. Johnston noted that x-rays of the lumbar spine revealed facet arthropathy mostly at L4-5 and L5-S1 and disc space narrowing at L5-S1. X-rays of the right hip revealed some mild spurring off the acetabular lips and x-rays of the knee were unremarkable. Pelvic x-rays were unremarkable other than small osteophytes on right acetabular lips. Dr. Johnston found chronic low back pain with right trochanteric bursitis, L4-5 annular tear with mild to moderate hypertonic facet joint arthropathy and bilateral L4-5 foraminal narrowing more on the left with L5-S1 disc protrusion with substantial dehydration and disc space narrowing.

In a March 27, 2009 letter, appellant asserted that the Office did not properly handle her claim and ignored her back condition which should be accepted. She also indicated that she received improper medical treatment.

In an April 6, 2009 statement, the employing establishment indicated that appellant was given a limited-duty assignment based on her work restrictions that should not have exacerbated her accepted conditions. The employing establishment disputed her assertion that she was required to perform repetitive movements all day, constantly standing for eight hours per day while repeatedly looking down and lifting her arm to check documents. Instead, it noted that appellant could either sit or stand during her shift and that she only had one peak time lasting one hour and a half with the remainder of her eight-hour shift consisting of a small and intermittent flow of passengers. The employing establishment also noted that she was allowed a 30-minute lunch break and a 15-minute break every 2 hours with the option of additional breaks if needed.

On April 28, 2009 Dr. Muldowny diagnosed cervical spondylosis and herniated disc of the cervical spine.

In a May 20, 2009 decision, an Office hearing representative affirmed the October 17, 2008 decision finding that appellant failed to establish a recurrence of disability as the medical evidence only supported that she suffered from residuals of unrelated and unaccepted conditions. She also advised that the medical evidence did not support that appellant's lumbar complaints were due to the March 23, 2006 work injury.

## 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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”<sup>2</sup>

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 light-duty job requirements.<sup>3</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>4</sup>

## ANALYSIS

Appellant returned to work in a limited-duty assignment as a ticket document checker on June 2, 2008. She claims a recurrence of disability beginning June 6, 2008 due to her March 23, 2006 employment injury. Appellant therefore 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.

In his January 27, 2009 report, Dr. Johnston stated that appellant injured her low back in a work injury where her upper back and neck were more symptomatic early on. He diagnosed chronic low back pain with right trochanteric bursitis, L4-5 annular tear with mild to moderate hypertonic facet joint arthropathy and bilateral L4-5 foraminal narrowing more on the left with L5-S1 disc protrusion with substantial dehydration and disc space narrowing. However, Dr. Johnston does not clearly indicate that appellant is disabled from working her modified position nor did he otherwise address why disability beginning June 6, 2008 was due to a spontaneous change in a medical condition that resulted from her prior work injury without an intervening injury or new exposure to the work environment that caused the illness.<sup>5</sup> Moreover, he does not indicate an accurate understanding of her original March 23, 2006 injury as did not note a familiarity with how the original injury occurred or that her low back condition is not an

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<sup>2</sup> *R.S.*, 58 ECAB 362 (2007); *see* 20 C.F.R. § 10.5 (x).

<sup>3</sup> *K.S.*, 60 ECAB \_\_\_ (Docket No. 08-2105, issued February 11, 2009).

<sup>4</sup> *K.C.*, 60 ECAB \_\_\_ (Docket No. 08-2222, issued July 23, 2009).

<sup>5</sup> *See R.S.*, *supra* note 2 (where establishing a recurrence of disability claim requires an inability to work due to a spontaneous change in a medical condition which has resulted from a previous injury).

accepted condition in the present claim.<sup>6</sup> Likewise, Dr. Johnston did not provide any medical rationale to explain the reasons why any low back condition, which was not diagnosed contemporaneously with the March 23, 2006 work injury, would be due to the work injury.<sup>7</sup>

Dr. Hodges' reports dated June 23 and August 6, 2008 advised that appellant was disabled from work after diagnosing an "on[-]the[-]job injury" with multilevel cervical changes, left medial nerve entrapment neuropathy, induced progressive low back pain and diminished lumbar range of motion. However, neither of these reports provided medical reasoning to support that her back condition was a spontaneous change in a medical condition related to the accepted neck, left shoulder and left arm conditions. Dr. Hodges also failed to provide any evidence of bridging symptoms.<sup>8</sup> He provided other reports, as noted, that also noted that appellant had an "on[-]the[-]job injury" but he did not relate that disability beginning June 6, 2008 was due to a spontaneous change attributable to the March 23, 2006 work injury. Dr. Hodges also did not provide any medical rationale to explain the reasons why any low back condition would have been due to the March 23, 2006 work injury.

Dr. Muldowny's April 28, 2009 report merely diagnosed cervical spondylosis and herniated disc of the cervical spine. He did not indicate that appellant was disabled from work due to this condition and he did not address whether this condition was caused or aggravated by the accepted work injury. As noted, medical evidence without an opinion on causal relationship is of little probative value. Other medical reports submitted by appellant do not support that disability beginning June 6, 2008 was due to the March 23, 2006 work injury

Appellant also submitted reports from a nurse and physical therapy. However, neither are considered a physician under the Federal Employees' Compensation Act and therefore neither are competent to provide a medical opinion.<sup>9</sup>

Consequently, the medical evidence is insufficient to establish that appellant sustained recurrence of disability on June 6, 2008 due to her March 23, 2006 work injury.

Appellant may also establish a recurrence of disability by showing a disabling change in the nature and extent of her limited-duty job requirements. On June 22, 2008 she accepted a limited-duty assignment as a ticket document checker based on her current medical limitations. Appellant argues that this job aggravated her neck condition, as it required her to constantly

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<sup>6</sup> See *M.W.*, 57 ECAB 710 (2006) (medical conclusions based on an inaccurate or incomplete factual history are of diminished probative value).

<sup>7</sup> Where a claimant claims that a condition not accepted or approved by the Office was due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence. *T.M.*, 60 ECAB \_\_\_\_ (Docket No. 08-975, issued February 6, 2009).

<sup>8</sup> See *Mary A. Ceglia*, 55 ECAB 626 (2004) (to establish that the claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between appellant's present condition and the accepted injury must support the physician's conclusion of a causal relationship).

<sup>9</sup> See 5 U.S.C. §8101(2) (defining the term "physician"); see also *Charley V.B. Harley*, 2 ECAB 208 (1949) (the Board held that medical opinion, in general, can only be given by a qualified physician).

stand and look down to check passenger documents. She also argues that this position required constant repetitive arm lifting for eight hours per day. However, the evidence does not support appellant's account of the requirements for her limited-duty assignment. For example, on the recurrence claim, the employing establishment advised that her job was flexible and required only minimal arm movement. After the hearing, the employing establishment provided a detailed description of appellant's duties explaining that the position did not require constant repetitive movements for eight hours per day as the peak time for checking documents only lasted one and a half hours and that this duration of time fell within Dr. Nutick's restrictions for sitting, standing and repetitive movement. Also, as the remaining six and a half hours of her shift had a light and intermittent flow of passengers, she was not constantly looking down and repeatedly lifting her arm to check documents. Moreover, the nature of appellant's job gave her the option to sit or stand during her shift. She could also alternate use of her left and right arm so that neither required repetitive movement. Additionally, the employing establishment indicated that appellant was allowed breaks every two hours and could have additional breaks as needed. Appellant also did not submit any evidence to support her assertions regarding the movement required by the light-duty job. As a result, the factual evidence does not establish a disabling change in the nature and extent of appellant's limited-duty job requirements.

For these reasons, appellant has not met her burden of proof to establish that she sustained a recurrence of disability on June 6, 2008 due to a disabling change in the nature and extent of her injury-related condition or a disabling change in the nature and extent of her limited-duty job requirements.

### **CONCLUSION**

The Board finds that appellant has not sustained a recurrence of disability beginning on June 6, 2008 causally related to her accepted employment injury.<sup>10</sup>

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<sup>10</sup> The Board notes that appellant submitted new evidence after the Office issued its decision. However, the Board may only review evidence that was in the record at the time the Office issued its final decision. *See* 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated May 20, 2009 and October 17, 2008 are affirmed.

Issued: June 24, 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