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

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| **B.D., Appellant** | ) | |
| **and** | ) | **Docket No. 10-296** |
| | ) | **Issued: November 4, 2010** |
| **U.S. POSTAL SERVICE, POST OFFICE, Nashville, TN, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On November 6, 2009 appellant filed a timely appeal from the October 8, 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 commencing August 9, 2009 due to her June 11, 2002 employment injury.

### ***FACTUAL HISTORY***

The Office accepted that on June 11, 2002 appellant, then a 36-year-old mail handler, sustained left shoulder and upper arm sprains due to lifting heavy sacks and boxes of mail at work.[1] In a June 21, 2002 work restrictions form, an attending physician with an illegible

[1] Appellant's regular job as a mail handler required her to lift up to 70 pounds.

signature indicated that appellant could intermittently lift 20 pounds, but that she could not push, pull or reach above her left shoulder with her left arm.

Appellant began working in a limited-duty mail handler position about two weeks after her accident. The job involved patching mail and was designed to be within the work restrictions recommended by her physicians. Appellant was restricted from lifting more than 20 pounds. In July 2008 she began working in a full-time position which required lifting up to 50 pounds for up to seven hours per day, sitting for up to seven hours per day and walking for up to seven hours per day.

In an August 6, 2008 report, Dr. Michael Tew, an attending Board-certified orthopedic surgeon, noted that appellant reported pain in the back of her neck, shoulders, trapezius areas and sometimes in her entire arms.[2] On examination, appellant had tenderness and trigger points in her trapezius and parascapular muscles on both sides, but that she had no tenderness "about the left or right shoulder." She had satisfactory range of motion of her neck and excellent range of motion of her shoulders. Appellant's rotator cuff strength was excellent bilaterally, active compression and labral shear tests were negative, and she had no pain in the abducted and externally-rotated positions bilaterally. Subscapularis tests were all negative, no glenohumeral or subacromial crepitus was present and neurovascular examination was grossly intact. Dr. Tew noted that x-rays of appellant's shoulders showed no abnormality aside from some mild degenerative change in the acromioclavicular joints. He diagnosed chronic myofascial pain in her neck and shoulders and indicated that he had nothing further to offer her from a treatment standpoint.

Dr. Tew referred appellant to Dr. Steven Musick, an osteopath Board-certified in physical medicine and rehabilitation. On December 17, 2008 Dr. Musick advised that appellant primarily complained of neck pain but also had bilateral shoulder and upper arm pain. He noted on examination that she exhibited full range of motion of her shoulders, no obvious myospasm and normal neurological findings in her extremities, but had mild tenderness in her cervical midline posteriorly and mild myofascial soft tissue tenderness in her bilateral upper trapezius and medial superior scapular border. In the diagnosis portion of his report, Dr. Musick stated, "Overall, symptom complex is compatible with chronic myofascial pain disorder to the cervical and scapulothoracic region…. Shoulder pain bilaterally, likely related to myofascial pain diagnosis." In July 2009 he noted that a magnetic resonance imaging (MRI) scan testing from March 2009 showed degenerative disc bulging between C3 and C5 and stated that appellant's cervical stenosis was not obviously related to her work.

On August 5, 2009 Dr. Musick noted that appellant reported increased pain across her posterior upper back and trapezius region, greater on the left than on the right. He listed in the diagnosis portion of his report, "Nonwork[-]related diagnosis of C4-5 disc herniation slightly indenting in the cord without cord signal changes and without clinical myelopathy. [Appellant] does have moderate left and right neuroforaminal stenosis." Dr. Musick stated that appellant had previously reported right greater than left trapezius pain and posited that the current symptoms "would make you think that the left C4-5 disc herniation at C5 nerve root narrowing may be

[2] Dr. Tew stated that another physician had diagnosed bilateral carpal tunnel syndrome and that appellant had two carpal tunnel surgeries on the left arm and one on the right arm.

caus[ing] some of her left trapezius [pain] out to the shoulder pain." He found that appellant could not lift, push or pull more than 20 pounds or engage in overhead work and stated that she should "limit her standing to 1 hour with 5 to 10 minute rest break with sitting work activities."

Appellant stopped work on August 9, 2009 and filed a claim alleging a recurrence of total disability commencing that day due to her June 11, 2002 employment injury. On August 25, 2009 the Office requested that she submit additional factual and medical evidence in support of her claim.

In a September 1, 2009 statement, appellant asserted that she was sent home on August 9, 2009 by Larry Hutchinson, a supervisor, due to a new policy which had been in effect for six months. She did not want to have to work beyond the work restrictions recommended by her attending physician.[3]

The Office asked the employing establishment to provide information about appellant's work stoppage on August 9, 2009 and her claim that it was caused by a new policy. In an October 5, 2009 letter, Linda Melton, a supervisor of distribution operations, stated that in July 2008 appellant began working in a full-time position which required lifting up to 50 pounds for up to seven hours per day, sitting for up to seven hours per day and walking for up to seven hours per day. On August 9, 2009 appellant handed her work restrictions which included new restrictions such as not performing overhead work and not lifting, pushing or pulling more than 20 pounds. Ms. Melton noted that these limitations were more restrictive than those previously recommended and that she consulted with Mr. Hutchison about the matter. Appellant responded in the affirmative when asked if she was filing a "new claim." Ms. Melton stated that no less restrictive limited-duty work was available for appellant.

In a September 4, 2009 form report, Dr. Musick stated that appellant should not lift, push or pull more than 20 pounds or engage in overhead lifting. The record contains a fax sheet transmitted on September 28, 2009 from Dr. Musick's office. The unsigned sheet contains the notation, "Per Dr. Musick no forklift driving, may worsen neck pain." In a September 24, 2009 statement, Daniel Crabtree, a union steward, stated that he had not received notice of the "policy change" mentioned by appellant.[4]

In an October 8, 2009 decision, the Office denied appellant's claim on the grounds that she did not submit sufficient evidence to establish that she sustained a recurrence of total disability commencing August 9, 2009 due to her June 11, 2002 employment injury.

## ***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

[3] Appellant also telephoned the Office on August 25, 2009 and advised that she was sent home because the employer had no work within her restrictions.

[4] The Office spoke to Mr. Hutchinson on October 8, 2009 and noted that he denied advising appellant of any "new policy" as alleged.

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.[5]

## ***ANALYSIS***

The Office accepted that on June 11, 2002 appellant sustained left shoulder and upper arm sprains due to lifting heavy sacks and boxes of mail at work. In July 2008 appellant began working in a full-time position which required lifting up to 50 pounds for up to seven hours per day, sitting for up to seven hours per day and walking for up to seven hours per day. She stopped work on August 9, 2009 and filed a claim alleging that she sustained a recurrence of total disability commencing August 9, 2009 due to her June 11, 2002 employment injury.

The Board finds that appellant did not submit sufficient evidence to establish that she sustained a recurrence of total disability commencing August 9, 2009 due to her June 11, 2002 employment injury.

Appellant claimed that on August 9, 2009 the employing establishment sent her home because it no longer had work available for her within her work restrictions. The employing establishment advised that the same modified duties appellant had performed since July 2008 remained available to her and that she had not shown that the newly presented work restrictions were necessitated by her employment-related medical condition. The Board finds that appellant has not submitted sufficient medical evidence to establish a change in the nature and extent of her light-duty job requirements such that she sustained a recurrence of total disability commencing August 9, 2009.

In an August 5, 2009 report, Dr. Musick, an attending osteopath Board-certified in physical medicine and rehabilitation, advised that appellant reported increased pain across her posterior upper back and trapezius region, greater on the left than on the right and reported findings on physical examination. He noted in the diagnosis portion of his report, "Nonwork[-] related diagnosis of C4-5 disc herniation slightly indenting in the cord without cord signal changes and without clinical myelopathy. [Appellant] does have moderate left and right neuroforaminal stenosis." Dr. Musick indicated that this nonwork cervical condition might be causing her left trapezius and left shoulder pain. He found that appellant could not lift, push or pull more than 20 pounds or engage in overhead work and stated that she should "limit her standing to 1 hour with 5 to 10 minute rest break with sitting work activities."

Dr. Musick did not provide any opinion that appellant's need for greater work restrictions was necessitated by residuals of her June 11, 2002 work injury. He did not address whether the medical conditions related to her June 11, 2002 work injury had worsened to the point that she could not perform her modified work duties. In fact, Dr. Musick suggested that appellant needed greater work restrictions due to a nonwork-related cervical condition. He did not discuss appellant's June 11, 2002 work injury in any detail or explain how it caused total disability on or

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

after August 9, 2009 as alleged.[6] It should be noted that the record lacks bridging medical evidence for a period of about six years between mid 2002 and mid 2008 and appellant did not submit a rationalized medical report linking the June 11, 2002 injury to disability on or after August 9, 2009. Therefore, appellant has not shown a change in the nature and extent of her injury-related condition.

On appeal appellant argued that the Office denied her due process because it characterized her claim as a "new recurrence." However, she has not identified any new work factors as causing a new injury and her claim was appropriately characterized as a claim for a recurrence of total disability commencing August 9, 2009 due to her June 11, 2002 employment injury.[7]

## ***CONCLUSION***

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of total disability commencing August 9, 2009 due to her June 11, 2002 employment injury.

[6] In a September 4, 2009 form report, Dr. Musick stated that appellant should not lift, push or pull more than 20 pounds or engage in overhead lifting. He did not indicate what condition necessitated these work restrictions. The record contains a fax sheet transmitted on September 28, 2009 from Dr. Musick's office which contains the notation, "Per Dr. Musick no forklift driving, may worsen neck pain." However, the document is not signed and does not contain any further detail.

[7] In her October 5, 2009 letter, Ms. Melton, a supervisor, noted that appellant responded in the affirmative when asked if she was filing a "new claim," but she did not indicate that appellant provided any additional details about the nature of such a "new claim." On appeal appellant also claimed that the Office engaged in willful omission of documents, but she did not adequately explain what particular documents were omitted when the Office considered her claim. She repeated the assertion that her employer stopped providing appropriate work on August 9, 2009 but she did not provide any additional support for this argument.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 8, 2009 is affirmed.

Issued: November 4, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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