

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

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**K.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Staten Island, NY, Employer**

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**Docket No. 10-655  
Issued: January 21, 2011**

*Appearances:*  
*Thomas S. Harkins, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 11, 2010 appellant filed a timely appeal from a July 20, 2009 merit decision of the Office of Workers' Compensation Programs. 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 sustained a recurrence of disability on October 2, 2004 causally related to her accepted cervical condition.

**FACTUAL HISTORY**

This case was previously before the Board. Appellant's claim was accepted for a cervical strain sustained on September 30, 1999. She returned to work at limited duty as a modified letter carrier. Appellant's position was modified on several occasions to conform to her work restrictions.

On October 13, 2004 appellant filed a (Form CA-2a) claim alleging that she sustained a recurrence of disability commencing October 2, 2004 causally related to her accepted cervical

condition. In reports dated November 8 and December 6, 2004, Dr. Stephen A. Kulick, Board-certified in psychiatry and neurology, advised that she underwent magnetic resonance imaging (MRI) scans of her cervical spine and upper extremities. He recommended physical therapy and that she remain off work until her condition was reassessed.

In a January 14, 2005 decision, the Office denied appellant's recurrence claim. By decision dated April 3, 2006, it denied modification of the January 14, 2005 Office decision. In a March 27, 2007 decision,<sup>1</sup> the Board affirmed the Office's April 3, 2006 decision. The facts of this case as set forth in the Board's March 27, 2007 decision are incorporated by reference.

Appellant sought reconsideration on March 5, 2008, contending that the Office had erred by accepted only a cervical strain as a result of the September 30, 1999 injury. In a February 14, 2008 report, Dr. Kulick noted that he first treated her on November 8, 2004 and that he obtained a history of the 1999 injury. Appellant complained of radicular and cervical pain and was examined on February 1, 2005, at this time she had neck pain radiating into the upper extremities, left more than right, with numbness and tingling in the upper extremities, left more than right and occasional weakness in the left upper extremity. Dr. Kulick stated that a March 21, 2005 cervical MRI scan showed a left C4-5 paracentral disc herniation with moderate impression on the left central aspect of the thecal sac and C5-6 disc herniation with a ventral impression upon the thecal sac, in addition to C6-7 disc herniation impinging the thecal sac and straightening of the cervical spine secondary to muscle spasm. On March 30, 2005 he reviewed cervical films from 1999 and stated that they confirmed a cervical C4-5 disc herniation; he also reviewed the 2004 cervical MRI scan, which revealed C4-5, C5-6, C6-7 disc protrusions.

Dr. Kulick advised that as of July 27, 2005 appellant was no longer able to deliver mail due to multiple disc protrusions. He recommended treatment by epidural steroid injections; but appellant deferred. Dr. Kulick stated that her condition remained essentially unchanged throughout examinations conducted periodically from October 21, 2005 through November 14, 2007. He concluded that appellant's C4-5, C5-6 and C6-7 disc herniations and her muscular pain and spasm were causally related to the September 30, 1999 employment injury and that she had an exacerbation of these preexisting symptoms in October 2004. Dr. Kulick asserted that she was totally disabled from her usual job as a letter carrier and had reached maximal benefit from physical therapy and medication. Given the multiplicity of her cervical disc herniations, surgical intervention would involve an extensive laminectomy, with anterior cervical disc decompression and fusion, plates and rods and screws, to which appellant did not want to subject herself.

In a July 20, 2009 decision, the Office denied appellant's claim, finding that she failed to establish that her disability as of October 2, 2004 was caused or aggravated by the accepted cervical condition.

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<sup>1</sup> Docket No. 06-1361 (issued March 27, 2007).

## LEGAL PRECEDENT

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of disability. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.<sup>2</sup>

Causal relationship is a medical issue to be established by rationalized medical opinion evidence from a physician.<sup>3</sup> The opinion of the physician must be based on a complete and accurate factual and medical history, one of reasonable medical certainty, and support by rationale explaining how the specific employment factor identified caused or contributed to the claimed condition or disability.<sup>4</sup>

## ANALYSIS

In September 1999, appellant sustained injury accepted by the Office for a cervical strain. The record establishes that she returned to modified duty under medical restrictions that were periodically revised by her attending physician. Appellant stopped work on October 5, 2004, claiming a recurrence of total disability as of October 2, 2004 due to her accepted injury.

Appellant has not established a change in the nature and extent of her injury-related condition. The medical evidence of record is not sufficient to establish that her accepted cervical strain caused or contributed to her claimed disability as of October 2, 2004. For this reason, appellant failed to establish a recurrence of disability as a result of her accepted injury.

The February 14, 2008 report of Dr. Kulick provided background on his treatment of appellant since November 8, 2004. Dr. Kulick diagnosed cervical disc herniations at C4-C5-C6 and C7 for which appellant was totally disabled for work. He related that diagnostic testing from 1999 listed an impression of a herniated cervical disc at C4-5, for which she receive physical therapy. With regards to her disability commencing October 2004, Dr. Kulick noted that a month prior to treatment, appellant “developed recurrence of symptoms of neck pain radiation into the upper extremities and weakness in the left upper extremity as well as numbness and tingling in both upper extremities.” He advised that she was unable to work. Dr. Kulick stated that a March 21, 2005 cervical MRI scan showed a left C4-5 paracentral disc herniation, a C5-6 disc herniation and a C6-7 disc herniation impinging the thecal sac and straightening of the cervical spine secondary to muscle spasm. He also stated that MRI scan results from 1999 and 2004 revealed C4-5, C5-6 and C6-7 disc protrusions.

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<sup>2</sup> *Terry Hedman*, 38 ECAB 222 (1986).

<sup>3</sup> *See Larry D. Dunkin*, 56 ECAB 220 (2004).

<sup>4</sup> *See Donald W. Wenzel*, 56 ECAB 390 (2005).

The Board notes that Dr. Kulick did not describe the nature of the modified-duty work performed by appellant from September 1999 to October, 2004 before she stopped work. Dr. Kulick did not adequately explain why a cervical sprain or the condition accepted in this case was sufficient to cause appellant to become disabled, as alleged; or how a muscle tissue injury would exacerbate or contribute to the diagnosed herniations of the cervical spine. The relationships described by Dr. Kulick focused primarily on the similarity of the symptoms experienced by appellant in 1999 to those for which he treated her in 2004.

Causal relationship must be established by rationalized medical opinion evidence. Dr. Kulick's February 14, 2008 report does not adequately explain how the nature of appellant's accepted condition materially changed or cause disability as of October 2, 2004. His report is somewhat speculative on causal relationship as he listed an impression relating the cervical disc conditions to the 1999 injury and an exacerbation of her preexisting symptoms in 2004. Dr. Kulick report is not sufficient to establish a change in the nature and extent of the injury-related condition.<sup>5</sup>

The Board finds that the evidence also fails to establish that there was a change in the nature and extent of appellant's limited-duty assignments such that she was no longer physically able to perform the requirements of her modified-duty job. Following the 1999 injury, appellant returned to modified duty as of October 1, 1999 with restrictions related to her cervical condition. She did not submit sufficient factual evidence to establish that the modified job exceeded her work restrictions.

On appeal, counsel contends that the Office should accept those conditions diagnosed beyond the cervical strain; as noted, however, it is appellant's burden of proof to establish causal relation for conditions not accepted as employment related.

### **CONCLUSION**

The Board finds that appellant did not establish a recurrence of disability commencing October 2, 2004 causally related to her accepted cervical strain.

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<sup>5</sup> *William C. Thomas*, 45 ECAB 591 (1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 20, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 21, 2011  
Washington, DC

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

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

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