

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

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K.B., Appellant )  
and )  
DEPARTMENT OF VETERANS AFFAIRS, )  
VETERANS MEDICAL CENTER, )  
Sioux Falls, SD, Employer )

**Docket No. 10-1749  
Issued: June 20, 2011**

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*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 June 21, 2010 appellant filed a timely appeal from a June 15, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 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 commencing January 12, 2010.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

The case was before the Board on a prior appeal. By decision dated November 9, 2010, the Board affirmed OWCP decisions dated October 6 and November 6, 2009.<sup>2</sup> The Board found appellant did not establish employment-related disability from May 6 to 23, 2009. The Board also found the weight of the medical evidence established the accepted bilateral shoulder strains, and degeneration of cervical intervertebral disc, had resolved by November 6, 2009. The history of the case as provided in the Board's November 9, 2010 decision is incorporated herein by reference.

On February 16, 2010 appellant filed a Form CA-2a (notice of recurrence) dated February 8, 2010. She stopped working on January 12, 2010 and her pay stopped on January 24, 2010.<sup>3</sup> According to appellant, the pain from the original injury on March 28, 2007 never went away and affected her left arm and shoulder.

In a form report dated January 12, 2010, Dr. Thomas Ripperda, a physiatrist, diagnosed shoulder pain and stated, "No work until [follow-up]." In a narrative report dated February 2, 2010, he provided a history on ongoing left shoulder pain, noting appellant was status post left shoulder arthroscopic surgery and rotator cuff repair.<sup>4</sup> Dr. Ripperda listed results on examination and diagnosed left shoulder pain secondary to rotator cuff decompression and repair, adhesive capsulitis left shoulder and neck injury with subsequent surgery. In a form report dated February 2, 2010, he diagnosed adhesive capsulitis of left rotator cuff repair. Dr. Ripperda recommended appellant should not lift more than 10 pounds with her left arm, no reaching above head and no pushing or pulling with left arm.

By report dated April 6, 2010, Dr. Stephanie Broderson, a family practitioner, stated that appellant would need further evaluation of her neck due to pain and weakness. She stated that appellant could return to work with no lifting greater than 10 pounds, no overhead activities, no bending or twisting of neck. In a report dated April 23, 2010, Dr. Hamis Abassi, a neurosurgeon, diagnosed a C6-7 herniated disc. By report dated May 6, 2010, he stated that appellant continued with severe neck/shoulder pain and should be off work until "she can get her surgery completed."

In a decision dated June 15, 2010, OWCP denied the recurrence of disability claim commencing January 12, 2010. It found that the medical evidence of record did not establish causal relation.

## **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

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<sup>2</sup> Docket No. 10-525 (issued November 9, 2010).

<sup>3</sup> According to the record appellant had been working as a cashier on January 12, 2010.

<sup>4</sup> The record indicates that the left shoulder surgery was performed on June 26, 2009.

injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”<sup>5</sup>

A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>6</sup>

### ANALYSIS

With respect to her claim for a recurrence of disability commencing January 12, 2010, appellant submitted a form report from Dr. Ripperda. She was seen on that date with a diagnosis of shoulder pain. As the Board noted in its November 9, 2010 decision, the weight of the medical evidence, as represented by Dr. John Dowdle, a Board-certified orthopedic surgeon selected as a referee physician, established that the accepted shoulder strains had resolved by November 6, 2009. The Board found that Dr. Dowdle provided a well-rationalized opinion that her left rotator cuff tear was not causally related to the March 27, 2008 employment injury. To establish an employment-related disability commencing January 12, 2010 with respect to her shoulder condition, appellant has the burden to establish that the condition being treated was employment related and caused disability. Dr. Ripperda’s brief note provides no opinion on causal relationship to the March 28, 2007 injury.

In a February 2, 2010 report, Dr. Ripperda diagnosed adhesive capsulitis of the left shoulder and pain from the rotator cuff repair. The diagnosis of adhesive capsulitis is not an accepted condition and he did not provide an opinion on causal relationship to the accepted employment injury. As noted, the condition of left rotator cuff tear was found not to be employment related based on the weight of the medical evidence. Dr. Ripperda also generally referred to a neck injury and surgery without further discussion.

The remainder of the medical evidence does not establish any employment-related disability on or after January 12, 2010. Dr. Broderson referred to work restrictions in an April 6, 2010 report without discussing causal relationship to the March 28, 2007 injury. In a May 6, 2010 report, Dr. Broderson noted neck and shoulder pain, and a need for appellant to be off work until she could get her “surgery completed.” He failed to provide a complete history, a firm diagnosis or a rationalized medical opinion on employment-related disability. The Board finds that appellant did not meet her burden in this case.

On appeal, appellant stated her belief that certain documents were not reviewed thoroughly in this case. The issue of a recurrence of disability commencing January 12, 2010 is a medical question. The Board has reviewed the medical evidence that was before the Office at

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<sup>5</sup> 20 C.F.R. § 10.5(x).

<sup>6</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

the time of its final decision on appeal. For the reasons stated, the Board finds that appellant did not establish a recurrence of disability.

**CONCLUSION**

The Board finds that appellant did not establish a recurrence of disability commencing January 12, 2010.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 15, 2010 is affirmed.

Issued: June 20, 2011  
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