

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

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**P.M., Appellant** )

**and** )

**DEPARTMENT OF VETERANS AFFAIRS,** )  
**VETERANS ADMINISTRATION MEDICAL** )  
**CENTER, Washington, DC, Employer** )

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**Docket No. 10-1912**  
**Issued: June 16, 2011**

*Appearances:*  
*Appellant, pro se*<sup>1</sup>  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 14, 2010 appellant filed a timely appeal of a June 25, 2010 Office of Workers' Compensation Programs' merit decision denying a recurrence claim. Pursuant to the Federal Employees' Compensation Act<sup>2</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a recurrence of disability on October 28, 2009 causally related to her accepted December 15, 2005 employment injury.

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<sup>1</sup> Appellant filed an appeal on July 8, 2010 of the June 25, 2010 Office decision through a signed and dated appeal request form. Although the appeal request form was submitted with a cover letter from Clarissa T. Edwards, *Esq.*, appellant did not provide a signed statement designating Ms. Edwards as her representative. Ms. Edwards did not submit a brief or argument in support of appellant's claim. Therefore, the Board will proceed with the *pro se* appeal filed by appellant. 20 C.F.R. § 501.3.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On January 17, 2006 appellant, then a 48-year-old nurse, filed a traumatic injury claim alleging that she sustained left upper arm and shoulder pain after lifting a patient in the performance of duty on December 15, 2005.

In a medical report dated January 24, 2006, appellant's attending physician Dr. Gordon Theisz, a Board-certified family practitioner, diagnosed rotator cuff tendinitis. He noted that appellant had experienced left shoulder pain for two years and that she recently hurt her shoulder lifting a patient. Dr. Theisz stated that she had recovered from the lifting injury, but continued to experience the preexisting stiffness in her shoulder. A magnetic resonance imaging (MRI) scan report dated January 13, 2006 found a small calcification suggesting calcific tendinitis within the distal supraspinatus tendon and possible small partial tear of the adjacent tendon.

On April 23, 2007 Dr. Theisz examined appellant as her left shoulder pain was flaring after lifting patients. He diagnosed rotator cuff tendinitis. Dr. Theisz examined appellant on April 17, 2009 and stated that over the last several months her pain had increased and that she was experiencing lateral shoulder pain exacerbated by overhead activities. He diagnosed left rotator cuff calcific tendinosis.

Dr. Jeffrey H. Berg, a Board-certified orthopedic surgeon, examined appellant on May 22, 2009 and diagnosed left rotator cuff calcific tendinosis. In a note of the same date, he stated that her condition was triggered by lifting an obese patient at work.

Appellant filed a recurrence of disability on October 28, 2009 and alleging that she continued to experience left shoulder pain after the December 15, 2005 employment incident. In a letter dated December 1, 2009, the Office requested additional factual and medical evidence in support of appellant's claim. It allowed 30 days for a response. Appellant responded on December 7, 2009 and stated that her left arm pain had been worsening over the past few years. She stated that she had no prior problem or injury with her left arm or shoulder prior to December 15, 2005. Dr. Berg recommended left shoulder surgery on November 13, 2009.

By decision dated January 6, 2010, the Office accepted appellant's claim for left shoulder tendinitis. In a separate decision of the same date, it denied her claim for continuation of pay (COP).<sup>3</sup>

In a letter dated January 6, 2010, the Office informed appellant of the additional information necessary to establish her claim for recurrence of disability and allowed 30 days for a response. Appellant submitted medical reports from Dr. Berg diagnosing left rotator cuff calcific tendinosis. She resubmitted her December 7, 2009 letter.

By decision dated February 16, 2010, the Office denied appellant's claim for recurrence of disability finding that she failed to submit sufficient factual and medical evidence to establish

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<sup>3</sup> As this decision was issued more than 180 days prior to the date of appellant's appeal to the Board, the Board has no jurisdiction to consider this issue on appeal. 20 C.F.R. § 501.3(e).

that she had sustained a recurrence of disability causally related to her December 15, 2005 employment injury.

Appellant submitted a progress report dated January 10, 2006 from Dr. Theisz noting her report of ankle pain, foot pain, knee pain and shoulder pain. Dr. Theisz stated that her diffuse muscle and joint pain had been a problem for two years. He stated in the next paragraph that the pain started one year previously and that the precipitating event was lifting, “but the actual mechanism of injury is unknown, was lifting a patient. Reinjured several weeks ago.” Dr. Theisz diagnosed diffuse arthralgia and rotator cuff tendinitis.

Dr. Berg completed a report on August 13, 2007 and stated that appellant described an injury two years ago when she lifted up a patient at work and had immediate pain. He diagnosed left calcific tendinitis, possible rotator cuff tear.

Appellant requested reconsideration on March 8, 2010. In a form report dated February 19, 2010, Dr. Berg diagnosed left calcific tendinitis and indicated with a checkmark “yes” that, he believed that the condition was caused or aggravated by an employment activity.

The Office denied modification of the February 16, 2010 denial of recurrence by decision dated June 25, 2010. It found that the evidence submitted in support of appellant’s request for reconsideration was not sufficient to establish that her recurrence of disability occurred as alleged.

### **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. 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>4</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing October 28, 2009 and her December 15, 2005 employment injury.<sup>5</sup> This burden includes the necessity of furnishing 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 employment factors and supports that conclusion with sound medical reasoning.<sup>6</sup>

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<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>6</sup> *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

## ANALYSIS

The Office accepted that appellant sustained left shoulder tendinitis as a result of her December 15, 2005 employment injury. However, it found that the medical evidence was not sufficiently detailed and well reasoned to establish that appellant's current condition of left rotator cuff calcific tendinosis was due to her employment injury.

Appellant submitted several reports from Dr. Theisz in support of her initial claim for left shoulder injury. In his reports dated January 10 and 24, 2006, Dr. Theisz indicated that she had experienced left shoulder pain for some time prior to her December 15, 2005 employment injury. He variously stated that appellant had experienced shoulder pain for one or two years prior to the employment injury. Dr. Theisz indicated that she had reinjured her left shoulder lifting a patient on December 15, 2005. In his January 24, 2006 report, he found that appellant had recovered from the lifting injury, but continued to experience the preexisting stiffness in her shoulder. These reports cannot meet appellant's burden of proof to establish that her current condition is due to her accepted employment injury as Dr. Theisz found that she had recovered from the December 15, 2005 employment injury on January 24, 2006. Instead of supporting the claim for a recurrence of disability related to the accepted December 15, 2005 employment injury, Dr. Theisz attributed appellant's current shoulder condition, to a condition preexisting the employment injury. As he did not document a spontaneous change in a medical condition which had resulted from the accepted injury his report cannot meet appellant's burden of proof.

On August 13, 2007 Dr. Berg examined appellant and provided a history of lifting a patient at work two years previously. On May 22, 2009 he stated that her condition was the result of lifting an obese patient at work. In a form report dated February 19, 2010, Dr. Berg diagnosed left calcific tendinitis and indicated with a checkmark "yes" that he believed that the condition was caused or aggravated by an employment activity. While these reports are supportive of appellant's claim for recurrence of disability, the reports do not contain a sufficiently detailed factual history of injury to meet her burden of proof. Dr. Berg did not provide a date of employment injury and did not address the preexisting left shoulder conditions described by Dr. Theisz. While he provided an opinion that appellant's current condition was due to her employment, the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the employment is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>7</sup>

The Board finds that appellant has failed to meet her burden of proof in establishing a recurrence of disability as she has failed to submit a medical report based on a complete medical history explaining how and why the accepted lifting injury and resulting accepted condition of left shoulder tendinitis resulted in her current diagnosis of left calcific tendinitis, the need for surgery and the resulting disability. Without such a comprehensive medical report appellant has failed to meet her burden of proof to establish a recurrence of disability causally related to her accepted December 15, 2005 employment injury.

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<sup>7</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

Appellant may submit new evidence or argument with a written request for reconsideration to the Office within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that the medical evidence in the record is not sufficiently detailed and rationalized to meet appellant's burden of proof in establishing a recurrence of disability due to her December 15, 2005 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 25, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

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