

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

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**V.R., Appellant** )

**and** )

**DEPARTMENT OF HOMELAND SECURITY,** )  
**TRANSPORTATION SECURITY** )  
**ADMINISTRATION, Newark, NJ, Employer** )

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**Docket No. 10-1739**  
**Issued: May 25, 2011**

*Appearances:*

*James D. Muirhead, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge

On June 18, 2010 appellant, through her attorney, filed a timely appeal from a February 8, 2010 merit decision of the Office of Workers' Compensation Programs which denied her claim for recurrence and a May 19, 2010 decision which denied her request for reconsideration. The Board assigned Docket No. 10-1739 to the appeal.

The Board, having duly reviewed the case record submitted by the Office, notes that on July 8, 2005 appellant, then a 49-year-old transportation security screener, filed a traumatic injury claim alleging that on July 6, 2005 she sustained a right neck sprain as a result of lifting a bag. On October 31, 2005 the Office accepted her claim for right shoulder and arm sprain. She had surgery on March 22, 2006 and the Office placed her on the periodic rolls. On May 15, 2008 appellant returned to work in a limited-duty capacity as an exit lane monitor.<sup>1</sup>

On June 26, 2009 appellant filed a claim alleging that she sustained a recurrence of her original injury on February 25, 2009. She alleged that she was being reassigned from her administrative position back to the limited-duty airport position due to retaliation for having

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<sup>1</sup> The record reflects that at some later date appellant was moved from the airport position to an administrative position outside the airport.

missed work due to an injury she received on February 25, 2009, where she was struck by a falling beam at a train station on the way to work.<sup>2</sup> Appellant was offered, by letter dated March 20, 2009, an exit lane monitor position but on March 27, 2009 she refused the reassignment and stopped work.

By decision dated September 9, 2009, the Office denied appellant's claim for a recurrence of total disability commencing February 25, 2009 as she had failed to establish either a change in the nature or extent of her disability or light-duty assignment.

Following a request for reconsideration the Office, by decision dated February 8, 2010, denied modification of the September 9, 2009 decision on the grounds that she was not in the performance of duty on February 25, 2009 as she was traveling to her workplace and sustained an off-premises injury that was unrelated to the accepted injury of July 6, 2005.

Again, after a request for reconsideration, the Office denied her claim on May 19, 2010 without considering the merits of her claim.

The Board finds that this case is not in posture for a decision. The Office has failed to properly adjudicate appellant's claim for recurrence. Appellant alleged that her light-duty position was changing when she was transferred from the administrative position back to an exit lane monitor position at the airport. The March 20, 2009 job offer states: "This is an addendum to the original job offer that was made to you and you accepted on May 15, 2008. Effective March 29, 2009 your *new* limited duty location and RDO's will be as follows: Terminal A checkpoint 1 from 1200-2030 hours with M/T as your RDO's." (Emphasis added.) While the addendum supports appellant's allegation that her light-duty position was changing, it is unclear from the record as to what position she held at the time she claimed a recurrence on February 25, 2009. The Office handled this claim first as a recurrence, then as a traumatic injury claim and finally again as a recurrence. At no point has it accurately addressed appellant's claim that her light-duty administrative position was changed when she was offered the "new" airport position. The Office's September 9, 2009 and May 19, 2010 decisions do not properly focus on the true issue. Consequently, the case will be remanded for the Office to properly adjudicate the issue of whether there was a change in appellant's light-duty assignment or a change in the nature and extent of her condition that caused a recurrence of total disability on February 25, 2009.<sup>3</sup> Following this and such other development as deemed necessary, the Office shall issue a *de novo* decision.

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<sup>2</sup> In an April 6, 2009 medical report, Dr. Oscar Sandoval, a psychiatrist, indicated that appellant had been working at the main office 1085 Morris Avenue, 2<sup>nd</sup> floor, under the supervision of Darshana Shah for the past nine months reviewing the information data processed by multiple coworkers throughout the airport for eight hours on a computer. He diagnosed a head concussion and opined that appellant was not emotionally able to perform the job duties required at the airport.

<sup>3</sup> In *Terry L. Hedman*, 38 ECAB 222 (1986), the Board stated that 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 requirements." See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrence*, Chapter 2.1500.2 (March 2011). See also 20 C.F.R. §§ 10.104, 10.121.

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated May 19 and February 8, 2010 be set aside and the case remanded for further development consistent with this order of the Board.

Issued: May 25, 2011  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board