

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

M.M., Appellant	)	
	)	
and	)	<b>Docket No. 11-1172</b>
	)	<b>Issued: February 16, 2012</b>
	)	
U.S. POSTAL SERVICE, POST OFFICE, Levittown, PA, Employer	)	
	)	

*Appearances:*  
Thomas R. Uliase, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On April 13, 2011 appellant filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) merit decision dated December 21, 2010. 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 as of June 29 or July 15, 2005 causally related to his accepted cervical and thoracic injuries.

**FACTUAL HISTORY**

This is the fourth appeal before the Board. Appellant, a 30-year-old letter carrier, injured his neck and back on September 18, 2001 while trying to avoid an aggressive dog. OWCP accepted his claim for neck sprain, thoracic sprain and degeneration of a cervical intervertebral disc.

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

OWCP referred appellant for a second opinion examination by Dr. Anthony W. Salem, Board-certified in orthopedic surgery. In a report dated March 19, 2002, Dr. Salem noted that appellant had multiple levels of chronic, longstanding degenerative changes in his cervical, thoracic and lumbar spine. He opined, however, that the changes were unrelated to the September 18, 2001 work injury and that appellant's subjective complaints far outweighed the objective findings. Dr. Salem found that appellant's diagnosed conditions were not related to employment factors and that his injury-related disability should have lasted for a very short period of time.

On April 10, 2002 appellant underwent an anterior cervical discectomy and cervical fusion procedure at C6-7. The procedure was performed by Dr. Todd J. Albert, Board-certified in orthopedic surgery and appellant's treating physician.

In order to determine appellant's current condition, OWCP referred appellant to Dr. Donald F. Leatherwood, Board-certified in orthopedic surgery. In a January 28, 2003 report, Dr. Leatherwood advised that appellant had originally injured his neck and right shoulder on January 8, 1999 when he slipped and fell on a sidewalk while carrying about a heavy mailbag. He noted that appellant underwent a prior acromioplasty procedure in 1999 which improved his condition and significantly increased his range of motion. Dr. Leatherwood noted, however, that the surgery did not entirely eliminate appellant's symptoms. He stated that appellant had not fully recovered as of September 18, 2001, when his work-related injury substantially increased his neck and shoulder symptoms. Dr. Leatherwood noted that Dr. Albert's April 2002 cervical fusion procedure was successful and had relieved about 30 percent of appellant's problem, though he continued to experience neck pain. Based on appellant's history, examination and available data, he had achieved a good result from both the 1999 right shoulder acromioplasty and his 2002 cervical fusion procedure. Dr. Leatherwood stated that both surgeries were work related.

On February 17, 2004 Dr. Ashrawi Sharan, Board-certified in orthopedic surgery, performed surgery on appellant to implant a spinal cord stimulator.

In a report dated March 25, 2004, Dr. Shailen Jalali, Board-certified in orthopedic surgery, stated that appellant had responded well to the spinal cord stimulator. He noted that the stimulator, which appellant used nearly 24 hours per day, had reduced pain by 50 percent. Dr. Jalali advised that appellant continued to have some neck pain, which he rated as being a 5 on a scale of 1 to 10. He also noted that appellant continued to experience brachioplexopathy with its associated and neuropathic and myofascial pain presentation.

In a June 1, 2004 report, Dr. Leatherwood noted that the spinal cord stimulator operation was somewhat successful and had ameliorated the pain in appellant's neck and back. He stated, however, that the stimulator had not relieved the problem entirely. After reviewing the history, examination, and the available data, appellant's current status was post work-related injury. Dr. Leatherwood stated that appellant had reached a state of maximum medical improvement in regard to his overall condition.

Dr. Leatherwood recommended that appellant continue to use the spinal stimulator given its effectiveness. He opined that he could perform full-time sedentary work and completed a work capacity evaluation in which he outlined work restrictions of no climbing; no repetitive,

simple grasping, pushing/pulling or fine manipulation with the upper extremities; no lifting exceeding 30 pounds; and occasional driving, bending at the waist, reaching above the shoulder, kneeling, crawling for more than one-third of the workday.

On March 4, 2005 the employing establishment offered appellant a job as a modified mail clerk, for eight hours per day, based on the restrictions outlined by Dr. Leatherwood.

By letter dated April 20, 2005, OWCP advised appellant that a suitable position was available and that, pursuant to section 8106(c)(2), he had 30 days to either accept the job or provide a reasonable, acceptable explanation for refusing the offer. It advised him that it would be terminating his compensation based on his refusal to accept the position. OWCP stated that, if appellant refused the job or failed to report to work within 30 days without reasonable cause, it would terminate his compensation pursuant to 5 U.S.C. § 8106(c)(2).<sup>2</sup>

In a disability slip dated May 2, 2005, Dr. Sharan stated that appellant would be able to return to full-time sedentary work as of May 23, 2005. In response to a March 31, 2005 OWCP query, received by OWCP on May 6, 2005, Dr. Leatherwood advised that the employing establishment's modified job offer was within appellant's work restrictions and that he was capable of performing the duties of the position.

In an April 5, 2005 report, received by OWCP on May 6, 2005, Dr. Adam Sobel, Board-certified in orthopedic surgeon, indicated that appellant would be undergoing surgery for spinal cord stimulator revision on April 7, 2005. In a report dated April 15, 2005, received by OWCP on May 12, 2005, Dr. Sharan advised that he had performed the remedial spinal cord stimulator surgery on April 7, 2005.

By letter dated May 16, 2005, OWCP advised appellant that he had 15 days in which to accept the position, or it would terminate his compensation.

On May 17, 2005 appellant rejected the job offer. He stated that his treating physician, Dr. Jalali, wanted to ensure that his spinal stimulator was working properly in light of his recent surgery. Appellant contended that the duties of the modified position were unclear and advised that Dr. Jalali would be submitting a report addressing why he needed additional time before returning to work.

By decision dated June 2, 2005, OWCP terminated appellant's compensation benefits on the grounds that he refused an offer of suitable work.

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<sup>2</sup> 5 U.S.C. § 8106(c)(2).

By letter dated June 6, 2005, appellant requested an oral hearing. On June 25, 2005 he returned to work at the modified clerk position, for eight hours per day.<sup>3</sup>

In a disability slip dated June 30, 2005, Dr. Jalali stated: “[Appellant] has restriction to part-time four hours per day, sedentary job, 10[-]pound weight restriction.”

On July 5, 2005 the employing establishment advised that, pursuant to Dr. Jalali’s June 30, 2005 note and in accordance with his restrictions, it was placing appellant on a four-hour-per-day work schedule, from 2:00 p.m. to 6:00 p.m., as of July 6, 2005.

On July 19, 2005 appellant filed a Form CA-2a claim for benefits, alleging that he sustained a recurrence of disability on June 29, 2005 which was causally related to his accepted cervical and thoracic conditions.<sup>4</sup>

On August 1, 2005 appellant filed a Form CA-2a claim for benefits, alleging that he sustained a recurrence of disability on July 15, 2005 which was causally related to his accepted cervical and thoracic conditions.<sup>5</sup>

By letter to appellant dated September 13, 2005, OWCP requested additional factual and medical information in support of his recurrence of disability claim.

By decision dated November 2, 2005, an OWCP hearing representative set aside the June 7, 2005 termination decision finding that OWCP prematurely invoked the penalty provisions of section 8106. The hearing representative found that OWCP failed to give appellant a reasonable opportunity after issuing its notice of April 20, 2005 to accept or refuse the job offer.

By decision dated December 12, 2005, OWCP vacated the November 2, 2005 decision and reinstated the June 2, 2005 termination decision. The director found that OWCP met its statutory obligation on May 16, 2005 when it provided appellant with 15 days to accept the offered position. The case would proceed to adjudication at an upcoming hearing, which was held on December 20, 2005.

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<sup>3</sup> By letter dated July 25, 2005, the employing establishment stated that appellant initially returned to work on June 25, 2005 for eight hours per day. It asserted that he expressed a great deal of resistance against returning to the workplace and filed a Form CA-2a claim for recurrence of disability four days after his return. The employing establishment stated that all of its supervisors were aware of appellant’s work restrictions and all of them adhered to these restrictions.

<sup>4</sup> On the form, appellant stated that the injury occurred when he reached up to grab some certified letters on a high shelf. The employing establishment stated, however, that he acted of his own volition in reaching for the letters. It stated that management was on notice to ensure that appellant would do no work which exceeded his work restrictions and was therefore not responsible for his alleged injury on the date in question.

<sup>5</sup> By letter dated August 18, 2005, the employing establishment stated that it had received a Form CA-2a from appellant’s attorney for an injury that allegedly occurred on July 15, 2005. It noted that it had not received any medical evidence to support any such alleged incident. The employing establishment further noted that, although appellant’s attorney requested a full recurrence as of July 15, 2005, its records indicated that appellant worked until July 27, 2005, when his treating physician placed him on disability.

By decision dated January 12, 2006, OWCP denied appellant's recurrence of disability claims, finding that he failed to submit sufficient medical evidence to establish that his disability for work of June 29 or July 15, 2005 was caused or aggravated by the September 18, 2001 employment injury.

By letter dated January 20, 2006, appellant requested an oral hearing, which was held on May 10, 2006.

By decision dated March 1, 2006, OWCP affirmed the June 2, 2005 termination decision.

By decision dated July 31, 2006, an OWCP hearing representative affirmed the January 12, 2006 decision denying the recurrence of disability claims.

In an order dated June 14, 2007, the Board reversed the March 1, 2006 termination decision.<sup>6</sup> The Board found that OWCP's May 16, 2005 letter giving appellant an additional 15 days to accept or reject the employing establishment's job offer was issued only 26 days after OWCP's April 20, 2005 letter giving him 30 days to accept or reject the position; therefore, the May 16, 2005 letter violated 20 C.F.R. § 10.516 of OWCP's regulations.<sup>7</sup>

In a report dated February 9, 2007, received by OWCP on July 27, 2007, Dr. Kimmel, an osteopath, recommended that appellant discontinue his work activities at the employing establishment on July 27, 2005 due to complaints of severe pain in his neck, upper and lower back pain, right shoulder and right hand. He stated:

"This recommendation occurred following [appellant] having reported severe pain [due to his] return to work. In fact, he was already decreased to a four[-]hour workday by his pain management physician, Dr. Jalali, after being placed in an eight[-]hour workday which severely aggravated his preexisting musculoskeletal problems. Appellant reported that even working the four[-]hour day, he developed a severe, debilitating flare up. The examination on that day demonstrated muscle spasm, tenderness, and restricted range of motions. At that point, he restarted physical therapy and followed up with [Dr. Jalali and Dr. Sharan]."

In a September 12, 2007 order,<sup>8</sup> the Board set aside the January 12 and July 31, 2006 OWCP decisions denying the recurrence of disability claims. Due to the June 14, 2007 order reversing OWCP's March 1, 2006 termination decision, that decision no longer provided an adequate basis for denying appellant's claims of disability as of June 29 and July 27, 2005. On remand OWCP was to consider all the medical evidence relevant to the recurrence claim.

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<sup>6</sup> Docket No. 06-1901 (issued June 14, 2007).

<sup>7</sup> By letter dated June 26, 2007, OWCP advised appellant that, pursuant to the Board's June 14, 2007 order, he would be paid compensation for the period June 12 to June 24, 2005, based on his return to work at the employing establishment as of June 25, 2005.

<sup>8</sup> Docket No. 07-1052 (issued September 12, 2007).

By decision dated October 23, 2007, OWCP denied modification of its previous decisions denying appellant's recurrence of disability claims.

By letter dated October 26, 2007, appellant's attorney requested an oral hearing, which was held on February 26, 2008.

By decision dated May 15, 2008, OWCP set aside the October 23, 2007 decision to determine whether the April 5, 2005 surgery was authorized.

By decision dated July 1, 2008, OWCP accepted the April 7, 2005 surgery as work related. It denied appellant's claims for a recurrence of disability, finding that he failed to submit sufficient medical evidence to establish that his disability was caused or aggravated by the September 18, 2001 employment injury.

By letter dated July 8, 2008, appellant's attorney requested an oral hearing, which was held on November 20, 2008.

In an April 18, 2008 report, received by OWCP on September 10, 2008, Dr. Jalali summarized his treatment of appellant since before 2003, at which time he diagnosed brachial plexopathy. He found that appellant was a candidate for spinal cord stimulation therapy due to the chronic nature of his neck and thoracic conditions. Appellant was referred to Dr. Sharan for permanent implantation of the spinal cord stimulator system, which he underwent on February 17, 2004. Following this procedure, he experienced a 50 percent reduction in his pain, which enabled him to discontinue treatment with prescription drugs. When Dr. Jalali examined appellant in February 2005, he noted that the stimulator apparently was no longer working. Appellant was scheduled for a spinal cord stimulator revision procedure on April 7, 2005. During Dr. Jalali's examination on May 5, 2005 appellant was not able to achieve his previous level of pain relief. On May 20, 2005 appellant informed Dr. Jalali that he was being asked to return to work; and the physician released appellant to return to work on light duty, which he began on June 25, 2005.

Appellant related that, on June 29, 2005, while casing mail, he felt pain in his neck and shoulder area. He was then asked by his employer to handle different types of mail, which would require him to reach over his head. Appellant asserted that this activity caused him to experience sharp pain in his right arm, back and neck. Due to this incident, his work hours were reduced to four hours a day. From July 6, 2005 appellant worked light duty for four hours a day until July 15, 2005, when he stepped off of a stool and felt pain through his entire thoracic region, extending up into the back of his head. He went home that day but returned to work the following day. Appellant continued to work light duty until July 27, 2005, at which time he stopped work and his physician placed him on disability. Dr. Jalali stated that appellant had been unable to return to work due to increased complaints of upper back and neck pain.

Dr. Jalali opined that the June 29 and July 15, 2005 incidents worsened appellant's pain condition. He advised that the activities appellant was performing at work placed his body in positions which exacerbated his condition and worsened his pain symptoms. Dr. Jalali stated that appellant's subsequent period of disability was directly related to these two incidents. He advised that appellant continued to experience brachial plexopathy with associated neuropathic and myofascial pain symptoms, in addition to cervical facet disease, disc degeneration and spinal

stenosis in the cervical region. Dr. Jalali concluded that appellant was completely disabled, with ongoing pain complaints, and would not be able to return to any type of gainful employment.

By decision dated February 17, 2009, an OWCP hearing representative affirmed the July 1, 2008 decision.

In an order dated April 28, 2010,<sup>9</sup> the Board set aside OWCP's July 1, 2008 and February 17, 2009 decision. The Board noted that OWCP had stated that it had reviewed several reports issued in May and June 2005 from Dr. Jalali, but the record did not include the reports. The Board remanded for reconstruction of the record and a *de novo* decision.

In the May 5, 2005 report, Dr. Jalali stated that, despite the recent battery revision, appellant continued to experience neck, upper back and shoulder pain rated as a 7 on a scale of 1 to 10. He still had symptoms of brachial plexopathy with significant myofascial pain and trigger point sites. Dr. Jalali also stated that appellant's spinal cord stimulator might require slight reprogramming.

In the May 17, 2005 report, Dr. Jalali administered trigger point injections to appellant, which seemed to ameliorate his condition. Appellant was scheduled for a spinal cord stimulator reprogramming session with Dr. Sharan within a day or two, because it was not covering all painful areas. Dr. Jalali advised that appellant experienced muscle spasms in his neck and shoulder areas, primarily the latissimus dorsi trapezius and thoracic paravertebral muscles.

By decision dated July 21, 2010, OWCP denied modification of its previous decisions denying appellant's recurrence of disability claims.

By letter dated July 27, 2010, appellant's attorney requested an oral hearing, which was held on November 4, 2010. Counsel contended that, although Dr. Sharan released appellant to return to work in May 2005, appellant in fact was not capable of performing full-time limited-duty work. Dr. Jalali stated on June 30, 2005 that appellant could only do sedentary work for four hours a day, with no lifting exceeding 10 pounds. Counsel noted that appellant was ultimately taken off work at the end of July due to his worsening condition, and noted that Dr. Jalali stated in an April 18, 2008 report that appellant continued to experience difficulties even after his final stimulator revision. Dr. Kimmel placed him on disability on July 27, 2007 due to the worsening of his condition.

By decision dated December 21, 2010, an OWCP hearing representative affirmed the July 21, 2010 decision.

### **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

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<sup>9</sup> Docket No. 09-1300 (issued April 28, 2010).

previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>10</sup>

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position, or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the employment-related condition or a change in the nature and extent of the light-duty job requirements.<sup>11</sup>

### ANALYSIS

The Board finds that appellant failed to submit sufficient medical opinion which relates his condition or disability as of June 29 or July 15, 2005 to his accepted cervical and thoracic conditions. For this reason, appellant has not discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment conditions.

In an April 20, 2005 report, Dr. Sharan, who performed the April 7, 2005 procedure implanting appellant's spinal cord stimulator, stated that he was getting good relief. On May 2, 2005 he noted that the stimulator was working properly, that appellant was getting good relief, and that he would be able to return to full-time sedentary work as of May 23, 2005. On appeal, however, appellant's attorney argues that Dr. Jalali's May 2005 and April 18, 2008 reports presented medical evidence sufficient to establish that appellant sustained a recurrence of disability as of June 29 and July 15, 2005. Counsel notes that Dr. Jalali indicated in his April 18, 2008 report that the spinal cord stimulator did not work appropriately in May 2005. He asserts that Dr. Jalali, in his May 5, 17 and 20, 2005 reports, stated that he would check with Dr. Sharan to determine if reprogramming should be done, that he believed a reprogramming was required, that an examination was scheduled on June 4, 2005 and that appellant should only return to work when the stimulator was functioning properly. In Dr. Jalali's May 20, 2005 report, he noted that appellant would shortly be returning to work but cautioned that his return to work should be delayed until the stimulator was optimally programmed. Counsel noted that in Dr. Jalali's June 30, 2005 report, issued the day after appellant returned to work, he advised that appellant had significant pain, was experiencing muscle spasms, and reduced his work hours from eight to four. Appellant eventually stopped working on July 27, 2005, asserting that he was unable to perform the modified job.

Dr. Sharan and Dr. Jalali's April and May 2005 reports provided findings on examination and a diagnosis of appellant's condition from April through June 2005 but did not provide a probative, rationalized medical opinion sufficient to establish that his claimed disability as of June 29 and July 15, 2005 was causally related to his accepted cervical and thoracic conditions. Dr. Jalali stated that, while appellant could not return to his usual work as a letter carrier, he could do sedentary work; Dr. Sharan had opined that appellant was able to perform sedentary work,

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<sup>10</sup> 20 C.F.R. § 10.5(x).

<sup>11</sup> *Barry C. Peterson*, 52 ECAB 120, 125 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

which he was working when he accepted the employing establishment's modified job, within the work restrictions imposed by Dr. Leatherwood and Dr. Sharan. Therefore, based upon a review of the contemporaneous medical reports from appellant's treating physicians, the evidence is insufficient to establish that appellant sustained a recurrence of disability on June 29 and July 15, 2005.

Dr. Jalali submitted a report dated April 18, 2008 in which he reviewed his treatment of appellant during May and June 2005. He noted that on May 5, 2005 appellant was not able to achieve his previous level of pain relief. On May 20, 2005 Dr. Jalali released appellant to return to work on light duty. While appellant returned to work on June 25, 2005, he asserted that he felt pain in his neck and shoulder area while casing mail and reaching above his head to grab mail on June 29, 2005. As a result the employing establishment reduced his work hours to four hours a day and reassigned him to less demanding duties, as of July 6, 2005. Appellant continued to work light duty for four hours per day until July 15, 2005, when he got off of a stool and felt excruciating pain in his entire thoracic back area, extending up into the back of his head. He went home that day but returned to work until July 27, 2005, at which time he was unable to continue working and Dr. Kimmel placed him on disability. Dr. Jalali stated that the June 29 and July 15, 2005 incidents worsened appellant's pain condition. He advised that the activities appellant was performing at work placed his body in positions which exacerbated his condition and worsened his pain symptoms. Dr. Jalali opined that appellant's subsequent period of disability was directly related to these two incidents. However, this report failed to establish that appellant's work duties caused a worsening of his condition, and therefore did not constitute probative, rationalized evidence demonstrating that a change occurred in the nature and extent of the injury-related condition.<sup>12</sup>

Dr. Jalali's opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.<sup>13</sup> He did not describe appellant's work duties in any detail or they would have been competent to cause an aggravation of the claimed cervical and thoracic conditions as of June 29 and July 15, 2005. In addition, appellant's attorney acknowledges that Dr. Jalali's April 18, 2008 report, summarizing the events which occurred when appellant returned to work in June 2005 describes a new injury, not a recurrence of disability. Therefore Dr. Jalali's reports do not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment-related conditions and his alleged recurrence of disability.

The record also contains a February 9, 2007 report from Dr. Kimmel, who recommended that appellant stop working on July 27, 2005 due to complaints of severe neck, right shoulder, and upper and lower back pain. Dr. Kimmel noted that, although appellant had already reduced his work hours from eight to four, he subsequently developed a severe, debilitating flare up of symptoms, including muscle spasm, tenderness and restricted range of motion. However, appellant stated in his August 1, 2005 claim that his recurrence of disability began on July 15, 2005. Thus it was unclear as to whether Dr. Kimmel had an accurate history of appellant's condition. His report was therefore of limited probative value for the reason that it is generalized in nature and equivocal in that it only noted summarily that appellant's conditions

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<sup>12</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>13</sup> *Id.*

were causally related to his accepted cervical and thoracic conditions. Finally, Dr. Kimmel's report, like Dr. Jalali's April 18, 2008 report, appears to describe a new injury, not a recurrence of disability. Causal relationship must be established by rationalized medical opinion evidence. The reports submitted by appellant failed to provide an explanation in support of his claim that he was partially disabled as of June 29, 2005 and totally disabled due to his accepted cervical and thoracic conditions as of July 15, 2005. Thus, these reports did not establish a worsening of appellant's condition, and therefore do not constitute probative, rationalized evidence demonstrating that a change occurred in the nature and extent of the injury-related condition.<sup>14</sup>

The Board finds that appellant failed to submit evidence showing that there was a change in the nature and extent of appellant's limited-duty assignment such that he no longer was physically able to perform the requirements of his light-duty job. The record demonstrates that appellant returned to work on June 25, 2005 on light duty. Although the employing establishment reduced his work hours from eight to four per day on July 6, 2005, and he stopped working as of July 27, 2005, appellant has not submitted sufficient factual evidence to support a claim that a change occurred in the nature and extent of his limited-duty assignment during the periods claimed. The record demonstrates that appellant accepted a light-duty position within the restrictions outlined by Drs. Leatherwood and Sharan, for eight hours per day, on June 25, 2005. In its July 25, 2005 letter, the employing establishment stated that he was reluctant to return to the workplace and filed a Form CA-2a claim for recurrence of disability four days after his return. Notwithstanding his apparent reluctance, the record indicates that appellant was able to work at this position until June 29, 2005, when he alleged that he had to leave work due to neck, back and right shoulder pain. The employing establishment stated that all of its supervisors were aware of his work restrictions and that all of them adhered to these restrictions. In his July 19, 2005 claim for a recurrence of disability, appellant stated on the form that the injury occurred when he reached up to grab some certified letters on a high shelf. The employing establishment stated, however, that he acted of his own volition in reaching for the letters. It stated that management was on notice to ensure that appellant would do no work which exceeded his work restrictions and was therefore not responsible for his alleged injury on the date in question.<sup>15</sup> In addition, as noted above, appellant appears to be describing a new injury in this incident, rather than a recurrence of disability.

The employing establishment made accommodations for this injury, reduced appellant's work hours from eight to four at this sedentary position on July 6, 2005. Although appellant alleged in his claims for recurrence and at the hearing that his accepted cervical and thoracic conditions were aggravated by the duties of this job, he submitted no documentation to support this assertion. In its August 18, 2005 letter, the employing establishment noted that appellant filed another Form CA-2a claim on August 1, 2005 for a recurrence of disability, which allegedly occurred on July 15, 2005. It stated, however, that its records indicated that he actually worked until July 27, 2005, when his treating physician placed him on disability.<sup>16</sup> This

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<sup>14</sup> *Id.*

<sup>15</sup> The evidence submitted by an employing establishment on the basis of their records will prevail over the assertions from the claimant unless such assertions are supported by documentary evidence. *See generally Sue A. Sedgwick*, 45 ECAB 211, 218 n.4 (1993); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computation of Compensation*, Chapter 2.900(b)(3) (September 1990).

<sup>16</sup> *Id.*

assertion is corroborated by Dr. Kimmel's February 9, 2007 report, in which he indicated that he took appellant off work on July 27, 2005. Based on the above evidence of record, therefore, appellant has failed to meet his burden to establish that there was a change in the nature and extent of his limited-duty assignment such that he no longer was physically able to perform the requirements of his light-duty job.

Appellant failed to submit sufficient evidence to meet his burden of proof in establishing that he sustained a recurrence of his employment-related disability as of June 29 and July 15, 2005. OWCP properly found that appellant was not entitled to compensation based on a recurrence of disability. The Board will affirm the December 21, 2010 OWCP decision.

**CONCLUSION**

The Board finds that appellant has not met his burden to establish that he was entitled to compensation for a recurrence of disability as of June 29 and July 15, 2005 causally related to his accepted cervical and thoracic conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 21, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: February 16, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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