

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

A.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Dallas, TX, Employer**

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**Docket No. 12-402
Issued: June 26, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

On November 17, 2011 appellant filed an application for review of the September 22, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for a recurrence of disability. The appeal was docketed as No. 12-402.¹ Having reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for a decision.

OWCP accepted appellant's February 5, 2008 occupational disease claim for costochondritis and placed appellant on the periodic rolls. Appellant returned to work with restrictions on August 7, 2008.² On October 10, 2008 she filed a claim for lost wages

¹ This case was previously before the Board. In a September 9, 2009 decision, the Board set aside OWCP's September 29, 2008 overpayment decision and remanded the case for further development. Docket No. 09-177 (issued September 9, 2009). In a decision dated April 13, 2011, the Board reversed OWCP's February 8, 2010 decision as to the termination of appellant's medical benefits and set aside and remanded the case for further development as to her entitlement to compensation after September 26, 2008. Docket No. 10-1521 (issued April 13, 2011).

² On August 13, 2008 appellant's accepted a light-duty assignment as a modified mail processing clerk, based on restrictions provided by her treating physician, Dr. Jill Waggoner, who is Board-certified in family medicine. Restrictions included: lifting no more than 10 pounds, 2 hours per day; standing and walking no more than 3 hours per day; pulling and pushing a maximum of 2 hours per day; and simple grasping, fine manipulation, reaching above the shoulder and driving a maximum of 4 hours per day.

commencing September 26, 2008, which OWCP developed as a claim for recurrence of total disability.

OWCP found a conflict in medical opinion between Dr. Waggoner, who opined that appellant was not capable of performing her light-duty job, and its second opinion physician, Dr. James Hood, a Board-certified orthopedic surgeon, who opined that she had no work limitations due to her accepted condition. It referred her to Dr. Bernie L. McCaskill, a Board-certified orthopedic surgeon, in order to resolve the conflict.

In an April 13, 2011 decision, the Board found that Dr. McCaskill's opinion was insufficiently rationalized to resolve the conflict in medical opinion. Accordingly, the Board remanded the case for further development as to whether she sustained a recurrence of disability on September 26, 2008.³

On remand, OWCP referred appellant, together with a statement of accepted facts and questions for determination, to Dr. Lige B. Rushing, a Board-certified internist, for a referee examination. Dr. Rushing was asked to provide an opinion as to whether appellant was capable of performing her regular duties as a mail processing clerk beginning September 1, 2008. He was not asked to offer an opinion on appellant's ability to perform the duties of her light-duty job. By decision dated September 22, 2011, OWCP denied appellant's recurrence claim on the grounds that the evidence did not establish that her condition had objectively worsened so that she could no longer work.

When an employee who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she 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 of showing that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements or a change in the nature and extent of the injury-related condition such that she is unable to perform the duties of the light-duty job.⁴

Dr. Rushing was selected to serve as an impartial medical examiner to resolve a conflict in medical opinion regarding whether appellant sustained a recurrence of disability commencing September 26, 2008. The relevant issue, therefore, was whether appellant's injury-related condition had worsened such that she was unable to perform the duties of the light-duty job. OWCP, however, did not ask Dr. Rushing to provide an opinion regarding appellant's ability to perform the modified assignment. Rather, it asked him whether appellant was capable of performing the duties of a regular mail carrier. OWCP did not comply with the Board's April 13, 2011 decision to obtain a rationalized opinion as to whether appellant sustained a recurrence of disability on September 26, 2008.

³ See *supra* note 1.

⁴ *Terry R. Hedman*, 38 ECAB 222 (1986).

The case will be remanded to OWCP to obtain a report from Dr. Rushing or another expert regarding whether appellant's injury-related condition had worsened as of September 26, 2008 such that she was unable to perform the duties of the light-duty job. Following this and any other development deemed necessary, OWCP will issue an appropriate decision in the case.

IT IS HEREBY ORDERED THAT the September 22, 2011 decision of the Office of Workers' Compensation Programs is set aside, and the case remanded for further development consistent with this order of the Board.

Issued: June 26, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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