

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

---

**D.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Phoenix, AZ, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 11-1111  
Issued: March 6, 2012**

*Appearances:*

*John E. Goodwin, Esq., for the appellant*

*No appearance, for the Director*

Oral Argument January 12, 2012

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge

ALEC J. KOROMILAS, Judge

MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On April 1, 2011 appellant filed a timely appeal from a March 29, 2011 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 established a recurrence of disability commencing January 1, 2010.

**FACTUAL HISTORY**

Appellant filed a claim for injury on October 5, 1995. OWCP accepted the claim for right shoulder sprain/strain and aggravation of cervical disc disease with radiculopathy. Appellant returned to work in a part-time light-duty position. An attending neurologist,

---

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

Dr. Jeffrey Steier, indicated on December 5, 2003 that appellant could work four to six hours per day.

In a work restriction evaluation (Form OWCP-5) dated March 9, 2006, Dr. Steier found that appellant could sit, with repetitive wrist movements, for two to four hours per day. As to how many hours appellant could work, Dr. Steier listed four to eight hours. On March 14, 2006 appellant accepted a full-time light-duty job offer as a modified maintenance support clerk. The description of the job duties included monitoring the facility security system. The stated physical requirements included lifting of up to 10 pounds, and two hours of intermittent standing, walking and reaching above shoulder. In a duty status report (Form CA-17) dated December 6, 2007, the employing establishment indicated that the modified maintenance support clerk included 5 pounds of lifting for 30 minutes per day, 12 pounds of pulling/pushing for .01 hours, and 1 pound of reaching above shoulder for .01 hours.<sup>2</sup> No other work activities were noted.

On December 2, 2009 the employing establishment offered appellant a new light-duty job. The duties were described as six to eight hours of “pars/waste mail, main office box section [and] manuals 030.” The job offer included a written description of waste mail and manual mail duties and provided physical requirements similar to the requirements accompanying the March 14, 2006 job offer of record.<sup>3</sup> The effective date of the job was January 1, 2010.

In an OWCP-5c dated December 28, 2009, Dr. Steier advised that appellant had a 10-pound lifting restriction, and was limited to one hour per day of reaching and reaching above shoulder. He diagnosed severe cervical dystonia.

In a notice of recurrence (Form CA-2a) dated January 28, 2010, appellant claimed compensation as of January 4, 2010. He indicated on the claim form that the employing establishment had withdrawn his prior light-duty job in the security office.

By letter dated February 10, 2010, the employing establishment asked Dr. Steier to review the December 2, 2009 job offer and address whether appellant could perform the job duties. On February 25, 2010 Dr. Steier responded that appellant could not perform the offered job.

In a decision dated September 30, 2010, OWCP denied the claim for a recurrence of disability. It found the evidence did not establish a material worsening of the employment-related condition or a change in the light-duty job requirements.

Appellant requested a hearing before an OWCP hearing representative, which was held on February 8, 2011. The employing establishment submitted a March 2, 2011 response to the hearing transcript, stating that appellant’s previous light-duty job was closed for

---

<sup>2</sup> A May 13, 2008 Form CA-17 provides the same job requirements.

<sup>3</sup> With respect to fine manipulation and simple grasping, the December 2, 2009 offer referred to the left hand only, while the prior offer did not distinguish left or right hand.

administrative reasons. The job duties were accurately described and speculation that appellant would have to case mail for eight hours was unsupported. The employing establishment stated that appellant was working under the same restrictions since 2006. Appellant, through his representative, submitted a response dated March 20, 2011. He argued that the evidence established that the nature and extent of the light-duty job requirements had changed.

By decision dated March 29, 2011, the hearing representative affirmed the September 30, 2010 OWCP decision. The hearing representative found the medical evidence did not establish any employment-related disability as of January 1, 2010 and that the new modified position had the same restrictions as the prior job.

### **LEGAL PRECEDENT**

OWCP's regulations define the term recurrence of disability as follows:

“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>

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either 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.<sup>5</sup> To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.<sup>6</sup>

### **ANALYSIS**

A claimant who is working in a light-duty position following an employment injury may establish a recurrence of total disability if the medical evidence shows a change in the nature and

---

<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>6</sup> *Maurissa Mack*, 50 ECAB 498 (1999).

extent of the employment-related condition that is disabling, or if there is a change in the light-duty job that is outside appellant's work restrictions.

Appellant did not argued that a change in his employment-related condition occurred as of January 1, 2010. He contends that there was a change in the light-duty job that establishes a recurrence of disability as of January 1, 2010.<sup>7</sup> In this regard the factual evidence establishes that appellant had been working a modified maintenance support clerk position in a security office since 2006. This position was no longer available to him as it was administratively closed.<sup>8</sup> Appellant was offered an entirely new position that involved handling of "waste" mail, going through trays of nixie mail, casing letters are other related activity. The written job duties of the offered position indicated that six to eight hours of the activities described as "pars/waste mail, main office box section [and] manuals 030."

OWCP found that the new position had exactly the same requirements as the prior position, as the stated physical requirements were the same in the December 2, 2009 job offer as in the March 14, 2006 offer. It did not, however, adequately consider all the relevant evidence of record on this issue. The actual physical requirements of the position held since 2006 are not clear from the record. The physical requirements of the security office position were reported by the employing establishment in duty status reports issued after appellant accepted the position on March 14, 2006. This evidence reflects that the security office job had limited reaching above shoulder to less than one hour per day and occasional lifting of five pounds. The new position had reaching above shoulder of up to two hours a day with occasional lifting of 10 pounds. OWCP did not fully explain whether the original written physical requirements of the position appellant had been performing since March 14, 2006 accurately represented the requirements of the job. Before it can be determined if there is a change in the nature and extent of the light-duty job, there must be adequate findings with respect to the prior job duties.

In addition, the offered position did not appear to be within the current medical restrictions of record. Dr. Steier's OWCP-5c dated December 28, 2009 limited appellant to one hour of reaching above shoulder and the physical requirements of the new position were up to two hours per day. OWCP considered the medical evidence insufficient to establish a recurrence of disability as it did not show a material worsening of the employment-related condition. The hearing representative also found that Dr. Steier did not specifically state that appellant could not perform the new position but appellant was claiming that there was a change in the nature and extent of the light-duty job requirements and he submitted current medical evidence. If there is a new position with new job duties that are inconsistent with the current medical restrictions, then OWCP needs to make a proper finding as to whether the medical restrictions are employment related.

---

<sup>7</sup> Appellant's representative argued that there was a procedural error with respect to 20 C.F.R. § 10.618(e) which provides an opportunity for a claimant to receive the employer's comments to an oral hearing transcript and have 20 days to provide additional comments. Appellant did review the employer's comments and submitted a response prior to the March 29, 2011 decision.

<sup>8</sup> The employing establishment asserts the job was not "withdrawn," but it is not clear how the employing establishment would define that term. The prior job was clearly no longer available to appellant.

The case will be remanded to OWCP for further adjudication on the recurrence of disability issues presented. After such further development as OWCP deems necessary, it should issue an appropriate decision.

**CONCLUSION**

The Board finds that the case must be remanded to OWCP for proper findings and an appropriate decision as to the recurrence of disability claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 29, 2011 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: March 6, 2012  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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