



performance of duty. OWCP accepted the claim, assigned file number xxxxxx757, for right shoulder strain.

Appellant filed a notice of recurrence of disability beginning December 9, 1999 due to the January 29, 1999 work injury. OWCP adjudicated the case as an occupational disease claim. It accepted displacement of the cervical intervertebral disc with myelopathy, brachia neuritis or radiculitis, right myalgia and myositis and neuralgia, neuritis and radiculitis. OWCP combined file number xxxxxx757 into master file number xxxxxx117.

Appellant returned to limited-duty employment on December 13, 1999 but sustained periodic recurrences of disability. By decision dated May 8, 2006, OWCP reduced her compensation to zero after finding that her actual earnings as a modified mail processing clerk effective October 1, 2005 fairly and reasonably represented her wage-earning capacity.<sup>2</sup> It subsequently accepted that appellant sustained a brief recurrence of disability from November 18 to December 1, 2008.

On November 10, 2009 appellant filed a notice of recurrence of disability on October 23, 2009 causally related to her employment injury. She related that she experienced pain in the right side of her neck after the duties of her rehabilitation job changed such that she performed more repetitive activities.

On November 16, 2009 OWCP requested additional factual and medical information regarding the alleged recurrence of disability, including an explanation of whether her modified duty was outside her physician's restrictions. In response, appellant submitted form reports dated November and December 2009 from a nurse practitioner.

Appellant returned to work on December 2, 2009. On December 5, 2009 the employing establishment sent her home because there was no work available within her restrictions. OWCP paid appellant compensation beginning December 5, 2009.

In a January 6, 2010 telephone call, appellant informed OWCP that in October 2009 some of her rehabilitation job duties were assigned to others and she received other assignments that were within her restrictions.

By decision dated January 7, 2010, OWCP found that appellant had not established a recurrence of disability from October 24 to December 1, 2009. It determined that the medical evidence was insufficient to establish disability as she had not submitted any medical evidence from a physician. OWCP noted that appellant had not alleged that work within her restrictions was taken away but instead that she experienced right arm problems performing her limited-duty assignments. It informed her that she may want to file a claim for a new injury.

---

<sup>2</sup> In a decision dated March 18, 2005, OWCP reduced appellant's compensation based on its finding that her modified mail clerk position beginning December 11, 2004 fairly and reasonably represented her wage-earning capacity. By decision dated March 15, 2007, it granted her a schedule award for an eight percent permanent impairment of the right upper extremity.

In a report dated January 5, 2010, received by OWCP on January 12, 2010, Dr. R. Andrew Robertson, a Board-certified anesthesiologist, related that he treated appellant for right shoulder and neck pain. He stated, “She suffered an exacerbation of symptoms recently and was unable to perform her duties at the [employing establishment] from [October 24 to December 1, 2009].”

On October 24, 2009 Dr. Robertson reviewed appellant’s complaints of pain in her right neck extending down the shoulder.<sup>3</sup> He stated, “She continues to suspect that she cannot continue her current job, and I agree.” Dr. Robertson diagnosed long-standing right cervicalgia.

In a progress note dated November 19, 2009, Dr. Robertson discussed appellant’s complaints of pain on the right side of the neck and noted that “she had an exacerbation with increased activity at work and took some time off.”<sup>4</sup> He diagnosed persistent right cervicalgia and related “Currently [appellant] is doing moderately well, but I suspect she will experience exacerbation again with return to her usual work duties.” Dr. Robertson released her to return to work on December 1, 2009.

On November 26, 2010 appellant requested reconsideration of the January 7, 2010 decision.<sup>5</sup> She submitted a report dated February 2, 2010 from Dr. Robertson, who advised:

“I have been seeing [appellant] for several years for chronic right neck and shoulder pain from an original injury in 1999. She recently suffered an exacerbation of that pain due to her work duties. I do believe that this is an exacerbation of the original injury, and not a new condition. [Appellant’s] pain has persistently recurred every time she resumes her usual duties, and I believe this was the case when she was unable to perform her duties at all from [October 24] through [December 1, 2009].”

By decision dated February 10, 2011, OWCP denied modification of its January 7, 2010 decision. It found that the medical evidence was not rationalized and thus insufficient to show that she sustained an employment-related recurrence of disability. OWCP further found that appellant had not shown modification of the April 4, 2006 wage-earning capacity determination.

---

<sup>3</sup> On February 24, 2010 OWCP referred appellant to Dr. Alois E. Gibson, a Board-certified orthopedic surgeon, for a second opinion examination regarding whether she had continued employment-related disability. In a report dated March 16, 2010, Dr. Gibson diagnosed degenerative disc disease of the cervical spine aggravated by work activities and soft tissue irritation of the right scapula. He found that she could not perform her usual employment but could work with restrictions. Dr. Gibson did not address whether appellant sustained a recurrence of disability from October 24 to December 1, 2009 but instead whether she continued to experience disability due to her accepted employment injury.

<sup>4</sup> Appellant submitted additional reports from a nurse practitioner dated August to October 2009.

<sup>5</sup> By decision dated May 24, 2010, OWCP found that appellant received an overpayment of \$391.99 for the period January 2 to 29, 2010 because it paid her compensation at the augmented rate when she did not have dependents.

On appeal appellant related that she had continued to experience symptoms even while performing her limited-duty employment. Her symptoms increased on October 24, 2009 and her physician found that she should remain off work.

### **LEGAL PRECEDENT**

Where 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 establishes that the employee 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 to show that he or she cannot perform such light duty. As part of this burden, 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 job requirements.<sup>6</sup>

OWCP regulations provide that 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.<sup>7</sup> 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, (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>8</sup>

### **ANALYSIS**

OWCP accepted that appellant sustained right shoulder strain, displacement of the cervical intervertebral disc with myelopathy, brachia neuritis or radiculitis, right myalgia and myositis and neuralgia, neuritis and radiculitis due to factors of her federal employment. On May 8, 2006 it found that her actual earnings as a modified mail processing clerk effective October 1, 2005 fairly and reasonably represented her wage-earning capacity and reduced her compensation to zero. Appellant stopped work on October 23, 2009 and filed a notice of recurrence of disability. She related that she sustained pain in the right side of her neck when she began performing more repetitive duties in her modified position. Appellant advised that the additional repetitive duties were within her work restrictions. She returned to work on December 2, 2009.

There exists an established wage-earning capacity determination. Appellant has alleged disability only for a brief, specific period, October 23 to December 1, 2009. Consequently, the

---

<sup>6</sup> *Richard A. Neidert*, 57 ECAB 474 (2006); *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>7</sup> 20 C.F.R. § 10.5(x).

<sup>8</sup> *Id.*

issue is whether she has established a recurrence of disability for this period, rather than whether the wage-earning capacity should be modified.<sup>9</sup>

Appellant has not alleged a change in the nature and extent of her light-duty job requirements such that she performed work outside of her limitations. Instead, she attributed her recurrence of disability to a change in the nature and extent of her employment-related conditions. Appellant must thus provide medical evidence to establish that she was disabled due to a worsening of her accepted work-related conditions.<sup>10</sup>

On January 5, 2010 Dr. Robertson related that he was treating appellant for right shoulder and neck pain. He asserted that she was disabled from work October 24 to December 1, 2009 due to an increase in symptoms. Dr. Robertson did not, however, provide any findings on examination or rationale in support of his conclusion. Medical conclusions unsupported by rationale are of diminished probative value.<sup>11</sup> Additionally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.<sup>12</sup>

On October 24, 2009 Dr. Robertson noted that appellant experienced right neck pain radiating into the shoulder and diagnosed right cervicgia. He related that she "suspect[ed] that she cannot continue her current job, and I agree." Dr. Robertson, however, did not provide any specific period of disability or attribute any disability due to the accepted work injury. Consequently, his report is of little probative value.<sup>13</sup>

In a November 19, 2009 report, Dr. Robertson found that appellant had sustained an exacerbation of her right neck pain due to increased work activities. He indicated that she had improved and released her to resume work on December 1, 2009. Dr. Robertson attributed appellant's exacerbation to additional work activities. A recurrence of disability, however, is a work stoppage caused by "a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."<sup>14</sup> Thus, to the extent that Dr. Robertson found that appellant's condition was aggravated by employment duties, any disability resulting from the alleged aggravation would be considered a new injury and not a recurrence as defined by the regulations.

---

<sup>9</sup> See *Katherine T. Kreger*, 55 ECAB 633 (2004).

<sup>10</sup> See *Jackie D. West*, *supra* note 6.

<sup>11</sup> *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

<sup>12</sup> *Laurie S. Swanson*, 53 ECAB 517 (2002).

<sup>13</sup> See *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of little probative value on the issue of causal relationship); *Carol A. Lyles*, 57 ECAB 265 (2005) (whether a particular injury caused an employee disability from employment is a medical issue which must be resolved by competent medical evidence).

<sup>14</sup> 20 C.F.R. § 10.5(x).

On February 2, 2010 Dr. Robertson advised that appellant had recently experienced an exacerbation of right neck pain due to work duties such that she was unable to work from October 24 to December 1, 2009. He related that it was not a new injury but instead a result of the original injury. As discussed, Dr. Robertson attributed appellant's disability to new work factors, and a recurrence does not include disability resulting from exposure to new work factors, even if it involves the same part of the body previously injured.<sup>15</sup> Consequently, his report is insufficient to meet her burden of proof.

Appellant also submitted reports from a nurse practitioner; however, a nurse is not a "physician" under FECA and thus cannot render a medical opinion.<sup>16</sup>

On appeal appellant argues that she experienced recurrences due to her original injury even while performing light duty. She notes that her physician found that she was unable to work beginning October 24, 2009. Appellant, however, has not submitted reasoned medical evidence showing that she sustained a change in the nature and extent of her injury-related condition from October 24 to December 1, 2009.

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

### **CONCLUSION**

The Board finds that appellant has not established that she sustained a recurrence of disability from October 24 to December 1, 2009 causally related to her accepted employment injury.

---

<sup>15</sup> 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3b(2) (May 1997).

<sup>16</sup> *Vincent Holmes*, 53 ECAB 468 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 10, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 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