

FACTUAL HISTORY

OWCP accepted that on August 21, 2010 appellant, then a 44-year-old transportation security officer, sustained a thoracic sprain, unspecified right shoulder sprain and right chest wall contusion due to a fall at work. Appellant fell backwards off a leaner stool which suddenly lowered, hit her right shoulder and back on the wall behind her and slid down to the floor. During an August 27, 2010 medical examination, she complained of upper back, right rib area and right shoulder pain but specifically denied having neck pain.

After a period of total disability, appellant returned to work in a light-duty position at the employing establishment. She was restricted from lifting more than five pounds, engaging in overhead work and torquing or twisting with the right upper extremity. Appellant required a 15-minute break every 2 hours. She stopped work and claimed a recurrence of total disability on December 15, 2010 due to her August 21, 2010 work injury.²

In a December 6, 2010 report, Dr. Rick F. Pospisil, an attending Board-certified orthopedic surgeon, stated that appellant complained of pain in her right shoulder and neck. He indicated that she had a functioning diagnosis of cervical sprain/strain and impingement of the right shoulder with shoulder sprain. Dr. Pospisil stated that appellant's "impairment status remains temporarily totally disabled for two weeks."

In a December 14, 2010 form report, Dr. Archie R. Mays, an attending Board-certified orthopedic surgeon, stated that appellant complained that the level of her neck pain was 3 out of 10. He diagnosed overuse syndrome of the right arm, internal derangement of the right shoulder, lateral epicondylitis of the right elbow, right carpal tunnel syndrome and lumbosacral spain/strain and indicated that he instructed appellant to remain off work for two weeks. In another December 14, 2010 form report, Dr. Mays diagnosed cervical sprain/strain, lateral epicondylitis of the right elbow and right carpal tunnel syndrome and determined that she should remain off work until December 23, 2010.

In a December 28, 2010 letter, OWCP requested that appellant submit additional medical evidence in support of her claim for a recurrence of total disability.

Appellant submitted a February 24, 2011 report in which Dr. Hormoz Zahiri, an attending Board-certified orthopedic surgeon, reported findings of the examination of her neck and upper extremities. Dr. Zahiri diagnosed post-traumatic myofascial headaches, myoligamentous sprain/strain syndrome of the cervical spine, myoligamentous sprain/strain of the thoracic spine and bursitis, rotator cuff tendinitis and impingement syndrome of the right shoulder. He deferred an opinion on appellant's work status to Dr. Mays.

Appellant submitted additional form reports in which Dr. Mays recommended various work restrictions. The reports were dated January 11, February 3, 17, 28, March 3, 31, April 14 and 28, 2011. Dr. Mays placed restrictions on appellant's lifting, usually indicating that she

² Appellant filed additional claims alleging that she continued to be unable to perform her light-duty work.

could not lift more than five pounds.³ He also variously recommended such restrictions as no engaging in overhead work, no repetitive use of the right arm, no prolonged standing, no upward and downward gazing with the neck and no repetitive bending and stooping.⁴ Dr. Mays diagnosed such conditions as overuse syndrome of the right upper extremity, lateral epicondylitis of the right elbow, right carpal tunnel syndrome, internal derangement of the right shoulder, lumbosacral sprain/strain and right shoulder sprain/strain.

In a May 16, 2011 decision, OWCP denied appellant's claim finding that she did not submit sufficient medical evidence to establish that she sustained a recurrence of total disability on or after December 15, 2010 due to her August 21, 2010 work injury. It noted that the medical evidence appeared to attribute her disability to conditions that were not accepted as work related.

LEGAL PRECEDENT

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 to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show 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 injury-related condition or a change in the nature and extent of the light-duty job requirements.⁵

ANALYSIS

OWCP accepted that appellant sustained a thoracic sprain, unspecified right shoulder sprain and right chest wall contusion due to a fall at work. Appellant returned to light-duty work for the employing establishment but later claimed that she sustained a recurrence of total disability on after December 15, 2010 due to her August 21, 2010 work injury.⁶ The Board finds that she did not submit sufficient medical evidence to establish her claim.

Appellant submitted a December 6, 2010 report in which Dr. Pospisil, an attending Board-certified orthopedic surgeon, diagnosed cervical sprain/strain and impingement of the right shoulder with shoulder sprain and indicated that she remained temporarily totally disabled for two weeks. Dr. Pospisil's report does not establish that she sustained a work-related recurrence of total disability beginning in December 2010 because he did not provide a clear opinion that her disability was caused by her August 21, 2010 work injury. The conditions of

³ In his January 11, 2011 note, Dr. Mays indicated that appellant could not lift more than 20 pounds. On March 31, 2011 he stated that she could not push or pull more than 10 pounds.

⁴ In several of the notes, Dr. Mays recommended that appellant take a 15-minute break every 2 hours and that she try to work with her right arm close to her body as she experienced pain when stretching her right arm while holding weight.

⁵ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁶ In her light-duty position, appellant was restricted from lifting more than five pounds, engaging in overhead work and torquing or twisting with the right upper extremity. She needed to take a 15-minute break every 2 hours.

cervical sprain/strain and impingement of the right shoulder have not been accepted by OWCP as related to the August 21, 2010 work injury or other work factors. When appellant was initially examined after her August 21, 2010 injury, she specifically denied having neck pain. She did not report having neck pain until October 2010.

In a December 14, 2010 form report, Dr. Mays, an attending Board-certified orthopedic surgeon, diagnosed overuse syndrome of the right arm, internal derangement of the right shoulder, lateral epicondylitis of the right elbow, right carpal tunnel syndrome and lumbosacral spain/strain. He indicated that he instructed appellant to remain off work for two weeks. In another December 14, 2010 form report, Dr. Mays recommended that she remain off work through December 23, 2010. The December 14, 2010 reports of Dr. Mays do not establish a work-related recurrence of total disability beginning in December 2010 because he did not provide a clear opinion that appellant's disability was caused by her August 21, 2010 work injury or other work factors. None of the medical conditions diagnosed by him have been accepted as work related.⁷

Dr. Mays also produced additional form reports, dated between January and April 2011, in which he recommended various light-duty work restrictions. Although some of these work restrictions were somewhat more restrictive than those that appellant worked under when she stopped work on December 15, 2010, he did not provide a clear opinion that the new work restrictions were necessitated by residuals of appellant's August 21, 2010 work injury or other work factors. Dr. Mays continued to diagnose numerous conditions that were not accepted as work related, including overuse syndrome of the right upper extremity, lateral epicondylitis of the right elbow, right carpal tunnel syndrome and internal derangement of the right shoulder. Therefore, these reports do not show that appellant sustained a recurrence of total disability on or after December 15, 2010 due to her August 21, 2010 work injury.

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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of total disability on or after December 15, 2010 due to her August 21, 2010 work injury.

⁷ In a February 24, 2011 report, Dr. Zahiri, an attending Board-certified orthopedic surgeon, reported findings of the examination of appellant's neck and upper extremities. However, he indicated that he was deferring an opinion on her work status to Dr. Mays.

ORDER

IT IS HEREBY ORDERED THAT the May 16, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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