

continuing disability is due to her accepted employment injuries and that she is entitled to wage-loss compensation for her employment-related total disability effective September 21, 2005.

FACTUAL HISTORY

OWCP accepted that on September 26, 1999 appellant, then a 71-year-old temporary full-time seasonal visitor information technician, sustained a rotator cuff tear and strain of the right shoulder and cervical strain when she slipped and fell in an area covered with snow and ice at work.² It authorized arthroscopic acromioplasty and mini-open rotator cuff repair of the right shoulder which were performed on December 21, 1999 by Dr. James G. Randolph, an attending orthopedic surgeon.

On June 4, 2000 appellant returned to part-time work as a temporary intermittent seasonal visitor information technician with restrictions. On August 21, 2000 Dr. Randolph released her to return to full-time work with restrictions. On September 10, 2000 appellant returned to her date-of-injury position on a full-time basis with restrictions. This position was terminated by the employing establishment on September 28, 2000.³ On June 3, 2001 appellant again returned to full-time temporary work as a seasonal visitor information technician. On July 29, 2011 the position was converted into a full-time term information receptionist position.

On July 14, 2005 appellant filed a claim (Form CA-2a) for a recurrence of disability on October 30, 2004. She stopped work on that date because her term appointment as a visitor information specialist and receptionist was not extended by the employing establishment. On the reverse of the claim form, the employing establishment noted that it was unaware of a recurrence but was aware of a nonemployment-related motor vehicle accident resulting in injury to appellant's cervical spine in July 2001 and also of a nonemployment-related fall in July 2005.

In an October 31, 2005 progress note, Dr. Richard A. Knackendoffel, an attending orthopedic surgeon, listed findings on physical examination. He diagnosed partial rotator cuff tear, glenohumeral degenerative arthritis with loose chondral bodies and degenerative arthritis of the acromioclavicular (AC) joint of the right shoulder. Appellant advised Dr. Knackendoffel that her right shoulder conditions were related to her 1999 work-related injury. She fell on July 1, 2005, but she believed that her shoulder pain only developed one week after the fall. Appellant did not believe that she fell on her right shoulder. Dr. Knackendoffel stated that his review of her medical records revealed that she broke her fall with her right arm.

In a March 23, 2006 progress note, Dr. Knackendoffel listed findings on physical examination. He advised that appellant had adhesive capsulitis of the right shoulder. Appellant also had recurrent rotator cuff tear of the right shoulder that was probably related to the 1999 work injury and authorized surgery. Dr. Knackendoffel noted appellant's complaint of pain since her 1999 rotator cuff repair. He stated that she probably exacerbated her shoulder pain when she fell in her daughter's pasture on July 1, 2005, but she probably sustained a repeat tear of the right shoulder much earlier than that date. Dr. Knackendoffel also stated that perhaps the rotator cuff repair never completely healed. He concluded that appellant had developed some

² Appellant's full-time temporary seasonal visitor information technician position ended on September 30, 1999.

³ In a February 13, 2001 decision, OWCP granted appellant a schedule award for 20 percent impairment of the right upper extremity.

adhesive capsulitis since her July 1, 2005 injury which was probably the source of her pain. Dr. Knackendoffel recommended arthroscopy with manipulation under anesthesia, lysis of some adhesions and repeat arthroscopic rotator cuff repair of the right shoulder.

In a July 20, 2006 report, Dr. Knackendoffel obtained a history of the September 26, 1999 employment injuries and the July 1, 2005 fall. When he originally evaluated appellant on September 14, 2005, she demonstrated significant adhesive capsulitis which was probably producing a significant exacerbation of her original 1999 rotator cuff tear. A September 21, 2005 MRI scan demonstrated tearing of the supraspinatus and rotator cuff of the right shoulder with impingement secondary to a hypertrophic AC joint. Dr. Knackendoffel suspected that the impingement had persisted after the rotator cuff tear. The distal clavicle was not resected and probably produced continued impingement in the right shoulder. It was unclear to Dr. Knackendoffel whether the rotator cuff healed following the 1999 injury. Given appellant's history of continued treatment and pain since 1999, he suspected that the impingement had persisted after the rotator cuff tear. Dr. Knackendoffel advised that she had now developed adhesive capsulitis following the July 1, 2005 fall. He stated that this probably represented significant exacerbation of the chronic impingement of the right shoulder. Dr. Knackendoffel recommended manipulation under anesthesia and probable arthroscopic rerepair of the rotator cuff and arthroscopic Mumford procedure with excision of the distal right clavicle. He concluded that appellant's current condition was primarily due to her 1999 employment-related rotator cuff tear with some exacerbation by the July 1, 2005 fall.

On August 24, 2006 OWCP accepted that appellant sustained a recurrence of disability effective September 21, 2005. It stated that the September 21, 2005 MRI scan showed that her supraspinatus tendon of the right shoulder had been return.

In an October 2, 2006 report, Dr. Knackendoffel advised that appellant's rotator cuff tear of the right shoulder was massive and her adhesive capsulitis of the same shoulder was severe. Appellant was unable to work due to pain and limited range of motion of the right shoulder. In a February 22, 2007 progress note, Dr. Knackendoffel reiterated his prior diagnoses of persistent adhesive capsulitis and rotator cuff tear of the right shoulder and surgery recommendation.

Reports from physical therapists addressed the treatment of appellant's right shoulder adhesive capsulitis from September 26, 2006 to February 21, 2007.

On March 13, 2007 OWCP granted appellant's request to undergo arthroscopic right shoulder rotator cuff repair surgery. On May 18, 2007 it rescinded authorization for the proposed right shoulder surgery pending further medical development of appellant's case.

On April 4, 2007 appellant filed a claim for wage-loss compensation (Form CA-7) commencing November 1, 2004.

On May 21, 2007 OWCP issued a notice of proposed rescission of the acceptance of appellant's claim for a recurrence of disability effective September 21, 2005. It found that her July 1, 2005 fall and a July 15, 2001 car accident for which she underwent a cervical laminectomy in 2001 constituted intervening nonemployment-related injuries and medical treatment. OWCP further found that Dr. Knackendoffel's March 23, 2006 progress note did not support the change in his initial medical opinion with a rationalized explanation of the causal relationship between appellant's current right shoulder condition and her accepted right shoulder

condition. He did not provide any objective findings with medical rationale taking into consideration her intervening personal activities, medical history and the natural aging process. Dr. Knackendoffel's opinion regarding the nature of appellant's right shoulder tear was speculative in nature. OWCP also determined that she did not sustain a recurrence of disability on October 30, 2004 because she was not performing a light-duty position specifically assigned to accommodate her physical restrictions due to the accepted injuries. It stated that such a light-duty position was not withdrawn because appellant was a temporary employee on the date of injury and at all times thereafter.⁴

In a May 31, 2007 report, Dr. Knackendoffel advised that appellant had improved adhesive capsulitis of the right shoulder with rotator cuff tear.

By letter dated October 5, 2009, appellant, through her attorney, requested that OWCP accept adhesive capsulitis and rotator cuff tear of the right shoulder and cervical degenerative disc disease based on Dr. Randolph's January 16, 2001 report, Dr. Knackendoffel's July 20, 2006 report and a November 10, 2008 progress note from Dr. J. Dale Utt, a family practitioner.

In the January 16, 2001 report, Dr. Randolph advised that appellant had 23 percent impairment of the right upper extremity which represented 14 percent impairment of the whole person based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001). In the November 10, 2008 progress note, Dr. Utt noted appellant's complaints of shoulder and neck pain and dizziness. He listed findings on physical examination and diagnosed chronic pain, hypertension, dizziness, rotator cuff syndrome, cervical degenerative disc disease and chronic Stage III kidney disease. Dr. Utt opined that appellant was unable to perform any significant gainful employment due to her multiple impairments. Counsel contended that she was entitled to wage-loss compensation for total disability back to October 30, 2004. He also contended that the employing establishment's withdrawal of appellant's limited-duty position, effective that date, for which she was assigned due to her accepted conditions, constituted a recurrence of disability. Counsel further contended that the fact that appellant's term appointment expired on October 30, 2004 did not negate her entitlement to compensation benefits because she had continued disability causally related to her accepted employment injuries.

On November 13, 2009 OWCP advised appellant to submit a Form CA-7 for the period commencing October 30, 2004. On March 15, 2010 appellant filed a Form CA-7 for the period commencing November 1, 2004.

By letter dated April 30, 2010, OWCP advised the employing establishment that appellant's March 15, 2010 Form CA-7 constituted a recurrence of disability claim and requested the submission of factual evidence regarding her claim. It advised appellant that the evidence submitted was insufficient to establish her claim. OWCP requested that she submit additional factual and medical evidence which included a rationalized medical report from an attending physician which demonstrated knowledge of all her personal and work activities after June 4, 2000, provided a diagnosis, history of all medical treatment, medical findings and an opinion

⁴ In the May 21, 2007 notice, OWCP advised appellant that her April 4, 2007 Form CA-7, claiming compensation commencing November 1 2004, was not valid as the employing establishment did not sign the form and she did not indicate an end date for the claimed compensation.

with medical reasons on whether and how her disability as of November 1, 2004 was caused by her September 26, 1999 employment injuries.

In a May 21, 2010 narrative statement, appellant contended that she had never recovered from her accepted right shoulder injury for which she received medical treatment. She provided a history of her federal employment and medical treatment. Appellant experienced diverticulitis and shingles in 2003. She was hospitalized in August 2004 for blacking out and right shoulder pain. Appellant stated that her July 2005 fall did not involve the right shoulder.

In treatment notes dated January 16 through December 4, 2001, Dr. Randolph addressed appellant's cervical condition, medical treatment and permanent impairment of her right upper extremity.

In a May 25, 2010 letter, Elaine F. Lassner, an employing establishment human resources/injury compensation specialist, stated that appellant was a temporary seasonal employee beginning in June 1996. She worked from June through September each year. There was no evidence in either appellant's workers' compensation records or official personnel file indicating that light-duty accommodations were ever requested. Ms. Lassner stated that an accompanying description of her visitor information receptionist position listed few physical demands since it was primarily a sedentary job. There was no evidence of any agreements revising termination dates. Ms. Lassner submitted notification of personnel action forms (SF-50) which showed the flow of temporary appointments effective in June and terminations or resignations effective in September each year. She noted that in July 2001 appellant's regular appointment was converted to a term appointment after she applied and was selected for an information receptionist position. Ms. Lassner explained that a term appointment meant that appellant was guaranteed full-time employment for one year. She noted that appellant's workers' compensation file contained no medical documentation beyond November 22, 1999.

In a December 20, 2010 decision, OWCP denied the claim for a recurrence of disability from November 1, 2004 to September 21, 2005. It found no contemporaneous medical evidence establishing that appellant had disabling residuals of her September 26, 1999 employment-related conditions. OWCP determined that the evidence was insufficient to establish that the claimed recurrence of disability was due to the withdrawal of her light-duty position on October 30, 2004 as there were no agreements to revise her termination dates and the position was not made specifically to accommodate physical limitations related to her accepted injuries.

By decision dated May 17, 2011, OWCP finalized its proposed rescission of appellant's recurrence of disability claim commencing September 21, 2005. The medical evidence submitted by appellant was found to be insufficient to establish total disability on the claimed date due to her accepted injuries. OWCP stated that the intervening July 15, 2001 motor vehicle accident and resultant cervical surgery and July 2, 2005 fall broke the chain of causal relationship. As a consequence of rescinding the acceptance of the recurrence, OWCP further denied authorization for the proposed right shoulder surgery.

In a May 19, 2011 decision, OWCP denied appellant's claim for a recurrence of disability commencing September 21, 2005. It found that the medical evidence was insufficient to establish total disability causally related to her September 26, 1999 employment injuries.

LEGAL PRECEDENT -- ISSUE 1

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.⁵ 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.⁶

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-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 she cannot perform such limited-duty work. 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 limited-duty job requirements.⁷

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁸

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a rotator cuff tear and strain of the right shoulder and a cervical strain on September 26, 1999 while working as a temporary full-time seasonal visitor information technician. Following these injuries, she returned to light-duty work as a full-time term information receptionist. Appellant claimed recurrences of disability commencing November 1, 2004.

The record reflects that appellant was a seasonal employee whose term expired on October 30, 2004. In a May 25, 2010 letter accompanied by several SF-50 forms, the employing establishment stated that appellant worked from June through September each year commencing in June 1996. It related that in July 2001 her regular appointment was converted to a term appointment which meant that she was guaranteed full-time employment for one year following her selection to work as a visitor information technician. The employing establishment stated that there was no evidence of any agreements revising appellant's termination date. Appellant

⁵ 20 C.F.R. § 10.5(x).

⁶ *Id.*

⁷ *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Barry C. Peterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁸ *James H. Botts*, 50 ECAB 265 (1999).

worked in this position through October 30, 2004 when the term appointment ended. The Board has held that, when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of FECA.⁹ A recurrence of disability also does not include work stoppage caused by the termination of a temporary employment.¹⁰ In this case, both the employing establishment and appellant stated that she was a temporary employee and that her term appointment terminated on October 30, 2004. The Board finds that the evidence does not establish that she was off work due to a medical disability.

The Board further finds that the medical evidence fails to establish that appellant was disabled as a result of her September 26, 2009 employment injuries. Dr. Knackendoffel's reports found that appellant had partial rotator cuff tear, glenohumeral degenerative arthritis with loose chondral bodies, degenerative arthritis of the AC joint, chronic impingement syndrome and adhesive capsulitis of the right shoulder. His statement that her rotator cuff tear, pain and adhesive capsulitis of the right shoulder were probably related to the accepted injuries and authorized surgery is speculative in nature and unsupported by a full history of injury or rationalized medical opinion explaining the nature of the relationship between her right shoulder conditions and the accepted employment-related conditions. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.¹¹ Further, the Board has consistently held that pain is a symptom, not a compensable medical diagnosis.¹² Dr. Knackendoffel determined that appellant's right shoulder rotator cuff tear and adhesive capsulitis were caused or exacerbated by her July 1, 2005 fall, but the Board finds that he attributed the claimed recurrence of disability to an intervening injury which broke the chain of causation stemming from the accepted conditions caused by the September 26, 1999 employment injury. For these reasons, the Board finds that Dr. Knackendoffel's reports are insufficient to establish appellant's claim.

Dr. Randolph's treatment notes dated January 16 through December 4, 2001 and a January 16, 2001 report addressed appellant's cervical condition, medical treatment and permanent impairment of the right upper extremity. He did not provide a rationalized medical opinion addressing her disability for work during the claimed period causally related to the accepted injuries. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹³ The Board finds, therefore, that Dr. Randolph's treatment notes and report are insufficient to establish appellant's claim.

⁹ *Hubert A. Jones*, 57 ECAB 467 (2006); *John W. Normand*, 39 ECAB 1378 (1988).

¹⁰ *D.M.*, Docket No. 11-194 (issued October 5, 2011); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2)(a) (May 1997). The Board has also noted that an employee generally will not be considered to have experienced a compensable recurrence of disability as defined in 20 C.F.R. § 10.5(x) merely because his or her employer has eliminated the employee's light-duty position in a reduction-in-force or some other form of downsizing. *See* 20 C.F.R. § 10.509.

¹¹ *L.R. (E.R.)*, 58 ECAB 369 (2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹² *C.F.*, Docket No. 08-1102 (issued October 10, 2008); *Robert Broome*, 55 ECAB 339 (2004).

¹³ *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

Dr. Utt's November 10, 2008 progress note found that appellant was unable to work due to her chronic pain, hypertension, dizziness, rotator cuff syndrome, cervical degenerative disc disease and chronic Stage III kidney disease. However, he failed to provide medical rationale explaining how or why the diagnosed conditions were caused by the accepted September 26, 1999 employment injuries.¹⁴ Further, Dr. Utt did not identify any period of total disability due to appellant's accepted employment-related injuries.

The reports from appellant's physical therapists are of no probative value because a physical therapist is not a physician as defined under FECA.¹⁵ The Board finds, therefore, that these reports are insufficient to establish appellant's claim.

On appeal, counsel argued that the withdrawal of appellant's limited-duty position effective October 30, 2004 constituted a recurrence of disability. He further argued that she has continuing disability due to her accepted employment injuries. As stated, the record demonstrates that appellant was a seasonal employee whose appointment ended on October 30, 2004. The record substantiates that she stopped work because her term appointment expired, not because of her accepted injuries. Further, the medical evidence failed to establish that appellant was disabled from work as a result of the September 26, 1999 injuries. Appellant failed to meet her burden of proof in this case and, thus, OWCP properly denied her claims for a recurrence of disability.

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8128 of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.¹⁶ The Board has upheld OWCP's authority to reopen a claim at any time on its own motion under section 8128 of FECA and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.¹⁷ The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.¹⁸ Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provision, where there is good cause for so doing, such as mistake or fraud. It is well established that, once OWCP accepts a claim, it has the burden of justifying the termination or modification of compensation benefits. This holds true where OWCP later

¹⁴ See *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

¹⁵ See 5 U.S.C. § 8101(2); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

¹⁶ 5 U.S.C. § 8128.

¹⁷ *Eli Jacobs*, 32 ECAB 1147 (1981); see also 20 C.F.R. § 10.610.

¹⁸ *Doris J. Wright*, 49 ECAB 230 (1997); *Shelby J. Rycroft*, 44 ECAB 795 (1993).

decides that it erroneously accepted a claim. In establishing that its prior acceptance was erroneous, OWCP is required to provide a clear explanation of the rationale for rescission.¹⁹

ANALYSIS -- ISSUE 2

As stated, OWCP accepted that on September 26, 1999 appellant sustained employment-related rotator cuff tear and strain of the right shoulder and a cervical strain. Appellant claimed a recurrence of disability as of September 21, 2005. OWCP did accept that she was entitled to compensation for temporary total disability for the claimed date and, therefore, it is its burden to rescind acceptance and must provide a clear explanation of the rationale for the rescission.

OWCP explained that the medical evidence did not support a recurrence of disability as of September 21, 2005. As stated, 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.²⁰ The Board finds that the medical evidence is not of sufficient probative value on the issue presented.

A September 21, 2005 MRI scan showed that appellant had a return supraspinatus tendon of the right shoulder. Dr. Knackendoffel stated in an October 31, 2005 progress note that, despite appellant's belief that she did not fall on her right shoulder on July 1, 2005, his review of her medical records revealed that she broke her fall on that date with her right arm. In a March 23, 2006 progress note, he found that her right shoulder pain following the accepted September 26, 1999 injuries and authorized surgery was exacerbated by the July 1, 2005 injury. The Board finds that Dr. Knackendoffel noted that appellant's claimed disability was due to an intervening injury that negated the causal relationship between the accepted conditions and her condition as of September 21, 2005. Dr. Knackendoffel's subsequent opinion in the March 23, 2006 progress note, that appellant's recurrent rotator cuff tear of the right shoulder was probably related to the accepted injuries perhaps because the rotator cuff repair never completely healed is speculative in nature and he did not provide any medical rationale explaining the change in his opinion.²¹ In light of the foregoing, the Board finds that appellant's claim does not meet the definition of a recurrence of disability.

The Board finds that OWCP properly explained that there was no probative medical evidence establishing a recurrence of disability as of September 21, 2005 causally related to the accepted September 26, 1999 employment injuries. Therefore, OWCP met its burden to justify rescission in this case.

On appeal, counsel contended that appellant was entitled to wage-loss compensation for her employment-related total disability effective September 21, 2005. The Board finds, however, that, for the reasons explained above, OWCP met its burden of proof to rescind acceptance of appellant's recurrence of disability claim for September 21, 2005.

¹⁹ *R.M.*, Docket No. 07-1066 (issued February 6, 2009); *John W. Graves*, 52 ECAB 160 (2000).

²⁰ 20 C.F.R. § 10.5(x).

²¹ See cases cited, *supra* note 11.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a recurrence of disability commencing November 1, 2004 causally related to her accepted September 26, 1999 employment injuries. The Board further finds that OWCP properly rescinded an acceptance of appellant's claim for a recurrence of disability effective September 21, 2005.

ORDER

IT IS HEREBY ORDERED THAT the May 19 and 17, 2011 and December 20, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 16, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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