



two percent impairment of the left arm due to an accepted fracture of the left olecranon process and an open fracture of the left ulnar shaft sustained in a June 16, 2008 occupational motor vehicle accident. The law and facts of the case as set forth in the Board's prior decision and order are incorporated by reference.

On July 28, 2011 appellant filed a notice (Form CA-2a) claiming a recurrence of disability commencing July 18, 2011. She returned to full duty in 2009 following the June 16, 2008 accident.<sup>3</sup> Appellant asserted that her arm had "been broke[n] since returning to work, per second opinion" but that the physician did not schedule a follow-up appointment after surgery. She noted that she experienced "continuous arm pain then fell." Appellant stopped work on September 18, 2011 and remained off work through September 1, 2011 and continuing.

In an August 3, 2011 letter, OWCP advised appellant of the type of additional evidence needed to establish her claim. It requested a rationalized medical opinion substantiating a continued fracture, explaining how she had been able to work with a broken arm and why she did not seek treatment after September 14, 2009. OWCP afforded appellant 30 days to submit additional evidence.<sup>4</sup>

Appellant submitted a September 25, 2008 thermographic imaging report and chart notes dated from September 27 to December 23, 2008 from Dr. Timothy A. Annis, a chiropractor. These documents do not refer to x-rays or to a spinal subluxation. Appellant also submitted documents showing that she worked as a full-duty rural carrier.

By decision dated September 7, 2011, OWCP denied appellant's claim for recurrence of disability finding that the evidence submitted did not establish her disability for work on or after July 18, 2011. It found that Dr. Annis was not a physician under FECA. Moreover, appellant's accepted injuries concerned her left arm, not her spine. OWCP noted that appellant had returned to full duty without restrictions by the time of the claimed recurrence of disability.

### **LEGAL PRECEDENT**

OWCP's implementing regulations define a recurrence of disability as "an inability to work after an employee has returned to work, 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>5</sup> When an employee claims a recurrence of disability due to an accepted employment-related injury, she has the burden of

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<sup>3</sup> Dr. G. Alan Binkley, an attending Board-certified orthopedic surgeon, released appellant to full duty with no restrictions as of May 6, 2009. Both appellant and the employing establishment checked boxes indicating that she was not performing modified duty.

<sup>4</sup> OWCP also made references to corroborating a change in light duty job requirements or a worsening of the accepted condition, elements of a claimant's burden of proof when claiming a recurrence of disability occurring while on light duty. The Board notes that this is harmless error, as OWCP also requested that appellant submit rationalized medical evidence regarding the claimed disability.

<sup>5</sup> 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician, who on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician's opinion on causal relation.<sup>6</sup> An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.<sup>7</sup>

### ANALYSIS

OWCP accepted that appellant sustained a fracture of the left olecranon process and an open fracture of the left ulnar shaft sustained in a June 16, 2008 occupational motor vehicle accident. Appellant returned to full duty as a rural letter carrier in 2009. She claimed a recurrence of disability commencing July 18, 2011. Appellant thus has the burden of providing sufficient evidence, including rationalized medical evidence, to establish the causal relationship asserted.<sup>8</sup>

In support of her claim, appellant submitted chart notes and a thermographic scan report from 2008 prepared by Dr. Annis, an attending chiropractor. These forms do not indicate that Dr. Annis obtained x-rays, diagnosed a spinal subluxation or rendered treatment relative to a spinal subluxation. Therefore, he is not a physician as defined under FECA.<sup>9</sup> Section 8101(2) of FECA provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2). The Board notes that these forms also do not address the accepted injury or the period in question.

OWCP advised appellant by August 3, 2011 letter to submit rationalized medical evidence regarding the nature of the claimed disability. Appellant did not submit any medical evidence addressing her accepted injury. Therefore, OWCP properly denied her claim for 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.

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<sup>6</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>7</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>8</sup> *Ricky S. Storms*, *supra* note 6.

<sup>9</sup> *See also George E. Williams*, 44 ECAB 530 (1993).

**CONCLUSION**

The Board finds that appellant has not established that she sustained a recurrence of disability commencing July 18, 2011.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 7, 2011 is affirmed.

Issued: May 17, 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