

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

K.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Rancho Cucamonga, CA, Employer**

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**Docket No. 13-15
Issued: April 2, 2013**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 1, 2012 appellant, through her attorney, filed a timely appeal from an August 31, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) finding that she did not establish a recurrence of disability. Pursuant to the Federal Employees' Compensation Act¹ (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 was disabled from November 7, 2011 to June 26, 2012 causally related to her accepted employment injury.

FACTUAL HISTORY

On March 14, 1997 appellant, then a 33-year-old rural route carrier, filed an occupational disease claim alleging that she sustained right shoulder inflammation and spasms and cervical

¹ 5 U.S.C. § 8101 *et seq.*

osteoarthritis causally related to factors of her federal employment. She stopped work on March 6, 1997. OWCP accepted the claim for right shoulder tendinitis, cervical arthritis at C3-4, C4-5 and C5-6 and right carpal tunnel syndrome. It paid appellant compensation for total disability.

Appellant returned to modified employment on October 14, 1998 for six hours per day. In a decision dated January 1, 1999, OWCP reduced her compensation to zero based on its finding that her actual earnings as a part-time modified rural letter carrier effective October 14, 1998 fairly and reasonably represented her wage-earning capacity. It found that appellant worked part time at the time of her employment injury.

On November 9, 2011 Dr. Scott Goldman, a Board-certified surgeon, diagnosed a large herniated disc on the right with right radiculopathy, a history of carpal tunnel syndrome and status repair of a right rotator cuff tear.² He found that appellant was unable to work from November 7 to 13, 2011 and could resume work on November 14, 2011 with no lifting, pushing or pulling over five pounds. On November 18, 2011 Dr. Goldman provided the same diagnoses and noted that she was off work.

In a form report dated November 22, 2011, Dr. Goldman diagnosed a multilevel herniated disc with radiculopathy on the right and status post right rotator cuff repair. He checked “yes” that the condition was caused or aggravated by employment. Dr. Goldman found that appellant was totally disabled from November 18, 2011 through February 18, 2012 and partially disabled from June 21, 2010 through November 7, 2011.

On December 5, 2011 appellant filed a claim for compensation beginning November 15 through 25, 2011.

In an initial evaluation dated December 6, 2011, Dr. James I. Rho, a Board-certified anesthesiologist, discussed appellant’s history of neck pain and headaches for the past 14 years due to a work injury caused by repetitive motion. He noted that a physician found her unable to work after a “recent reevaluation.” Dr. Rho diagnosed cervical spondylosis without myelopathy, degenerative cervical intervertebral disc, cervicgia, cervicocranial syndrome, brachial neuritis/radiculitis and unspecified myalgia and myositis. He provided a pain management program.

On December 22, 2011 OWCP requested that appellant submit additional factual and medical information in support of her claim for disability, including a reasoned opinion regarding why her employment-related condition worsened such that she could no longer performed her modified work.

² In a report dated October 3, 2011, Dr. Goldman discussed appellant’s history of a 1997 employment injury and her current complaints of neck pain radiating through the right arm. He diagnosed a cervical disc bulge with right radiculopathy, status post rotator cuff tear of the right shoulder and recurring symptoms of carpal tunnel syndrome post right release. Dr. Goldman requested authorization for diagnostic studies. An October 27, 2011 magnetic resonance imaging scan study of the cervical spine revealed disc herniations at C5-6 and C2-3 and a disc protrusion at C4-5. An electromyogram performed November 7, 2011 indicated moderate carpal tunnel syndrome on the right, mild carpal tunnel syndrome on the left and mild to moderate right ulnar nerve entrapment at the right elbow.

In a report dated January 17, 2012, Dr. Goldman noted that he evaluated appellant on November 18, 2011 for large disc herniations at five levels. He stated, "At that time, [appellant] was experiencing increased pain and decreased range of motion with the neck, as well as shooting-type pain and numbness in the upper extremities. Prior to then, she was working at modified work with restrictions." Dr. Goldman related that appellant was disabled from work beginning November 18, 2011 due to her "large disc herniations in her neck and increased radicular symptoms...."

By decision dated February 3, 2012, OWCP found that appellant had not established a recurrence of disability beginning November 15, 2011 causally related to her accepted employment injury. It noted that it had not accepted the claim for herniated cervical discs.

On February 13, 2012 appellant requested a telephone hearing before an OWCP hearing representative.

In a report dated February 17, 2012, Dr. Goldman listed findings on examination and diagnosed osteoarthritis of the cervical spine with multilevel discs bulges and right radiculopathy and right shoulder tendinosis. He indicated that appellant was off work. Dr. Goldman submitted similar progress reports dated March 22, April 20 and May 22, 2012. Dr. Goldman also completed duty status reports on March 22, April 20 and May 22 2012. He diagnosed a right shoulder and spine condition and checked "yes" that the condition corresponded to the history given on the form. The form, however, contains no history of injury.

At the telephone hearing, held on June 15, 2012, appellant related that she was working in a modified position in November 2011. She experienced pain in her neck and her physician found that she should not work from November 7 to 13, 2011. When appellant returned to work on November 14, 2011, her supervisor sent her home because there was no work within her restrictions. She noted that at the time of her injury she worked eight or more hours per day but was only given six hours of work after her injury because she was not a regular carrier.

On June 26, 2012 appellant returned to modified employment.³

By decision dated August 31, 2012, an OWCP hearing representative affirmed the February 3, 2012 decision. She found that the medical evidence was insufficient to show that appellant was unable to work beginning November 15, 2011 due to her accepted employment injury. The hearing representative further determined that appellant had not established modification of the previous loss of wage-earning capacity determination.

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

³ In reports dated June 20 and July 18, 2012, Dr. Goldman diagnosed cervical spine osteoarthritis with radiculopathy and multilevel disc bulges and status post right rotator cuff repair with tendinosis. He found that appellant could perform modified employment lifting no more than five pounds.

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.⁴

Once OWCP issues a formal decision on wage-earning capacity, the rating should be left in place until the claimant requests resumption of compensation for total wage loss for more than a limited period of disability, in which instance it will need to evaluate the request according to the customary criteria for modifying a formal wage-earning capacity determination.⁵ When the period of disability for which the claimant seeks compensation is limited or closed, however, OWCP should adjudicate the claim as one of recurrence.⁶

ANALYSIS

OWCP accepted that appellant sustained right shoulder tendinitis, cervical arthritis at C3 through C6 and right carpal tunnel syndrome causally related to factors of her federal employment. By decision dated January 1, 1999, it reduced her compensation based on its finding that her actual earnings working six hours per day in a part-time position as a modified rural letter carrier effective October 14, 1998 fairly and reasonably represented her wage-earning capacity.

On December 5, 2011 appellant filed claims for compensation for disability beginning November 15, 2011. She returned to work on June 26, 2012. Consequently, as appellant is requesting compensation for total wage loss for a closed or limited period, her claim is properly adjudicated here as one of recurrence rather than modification of the wage-earning capacity.⁷

Appellant has not alleged a change in the nature and extent of her light-duty job requirements. Instead, she attributed her recurrence of disability to a change in the nature and extent of her employment-related conditions. Appellant must provide medical evidence to establish that she was disabled due to a worsening of her accepted work-related conditions of right shoulder tendinitis, cervical arthritis at C3 through C6 and right carpal tunnel syndrome.⁸

⁴ *Richard A. Neidert*, 57 ECAB 474 (2006); *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ See *Katherine T. Kreger*, 55 ECAB 633 (2004); *Sharon C. Clement*, 55 ECAB 552 (2004).

⁶ *Id.*; see *L.G.*, Docket No. 10-1614 (issued May 12, 2011) (appellant claimed a recurrence of disability on March 9, 2009 when the employing establishment withdrew her limited-duty assignment due to the National Reassessment Process, but she returned to work around August 14, 2009; therefore, the period of disability for which she sought compensation was limited or closed); *S.H.*, Docket No. 07-755 (issued November 9, 2007); *Sandra D. Pruitt*, 57 ECAB 126 (2005) (OWCP is not precluded from adjudicating a limited period of employment-related disability when a formal loss of wage-earning capacity determination has been issued).

⁷ *Id.*

⁸ See *Jackie D. West*, *supra* note 4.

In a report dated November 9, 2011, Dr. Goldman diagnosed a large herniated disc on the right with right radiculopathy, a history of carpal tunnel syndrome and status repair of a right rotator cuff tear. He advised that appellant was disabled from employment November 7 to 13, 2011 but could resume work November 14, 2011 with no lifting, pushing or pulling over five pounds. On November 18, 2011 Dr. Goldman provided the same diagnoses and noted that she was off work. He did not, however, address the cause of the diagnosed condition of a cervical herniated disc with radiculopathy. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.⁹

In a November 22, 2011 form report, Dr. Goldman diagnosed a multilevel herniated disc with radiculopathy on the right and status post right rotator cuff repair. He checked "yes" that the condition was caused or aggravated by employment and opined that appellant was totally disabled from November 18, 2011 through February 18, 2012 and partially disabled from June 21, 2010 through November 7, 2011. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.¹⁰

On January 17, 2012, Dr. Goldman discussed his treatment of appellant on November 18, 2011 for large disc herniations at five levels. He noted that she was working modified duty but experienced increased pain in her neck radiating into her upper extremities with decreased motion. Dr. Goldman found that appellant was disabled beginning November 18, 2011 as a result of her disc herniations and radiculopathy. Again, however, he did not address the cause of the disc herniations or attribute them to her prior employment injury. As Dr. Goldman did not discuss the cause of appellant's condition, his report is of little probative value.¹¹

In progress reports dated February through May 2012, Dr. Goldman provided findings on examination and diagnosed osteoarthritis of the cervical spine with multilevel discs bulges and right radiculopathy and right shoulder tendinosis. He noted that appellant was off work but did not address causation. In duty status reports dated March through May 2012, Dr. Goldman diagnosed a right shoulder and spinal condition and checked "yes" that the condition provided by her corresponded to that on the form. The form, however, contains no history of injury. As Dr. Goldman did not identify the cause of any disability, his reports are insufficient to meet appellant's burden of proof.

On December 6, 2011 Dr. Rho reviewed appellant's history of headaches and neck pain for 14 years after an employment injury. He diagnosed cervical spondylosis without myelopathy, degenerative cervical intervertebral disc, cervicgia, cervicocranial syndrome, brachial neuritis/radiculitis and unspecified myalgia and myositis and noted that her attending

⁹ See *Conrad Hightower*, 54 ECAB 796 (2003).

¹⁰ *Deborah L. Beatty*, 54 ECAB 3234 (2003).

¹¹ 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).

physician found that she was unable to work. Dr. Rho, however, did not address the cause of the diagnosed conditions or independently find that appellant was disabled from her modified employment.¹² Consequently, his opinion is of little probative value.

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between her claimed condition and her employment.¹³ She must submit evidence in which the physician reviews those factors of employment identified by her as causing her condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.¹⁴ Appellant failed to submit such evidence and, therefore, failed to discharge her burden of proof.

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 was disabled from November 7, 2011 to June 26, 2012 causally related to her accepted employment injury.

¹² *Id.*

¹³ *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁴ *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).

ORDER

IT IS HEREBY ORDERED THAT the August 31, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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