

Appellant returned to modified duty. She received a schedule award for an 11 percent impairment of her right upper extremity. In 2007 appellant accepted a full-time permanent modified job assignment performing a variety of services.

Appellant filed a claim alleging that she sustained a recurrence of total disability on March 19 and 20, 2012. She explained that she was still having problems with her right shoulder and had to have shots with physical therapy.

Dr. John C. Gordon, the attending Board-certified orthopedic surgeon, saw appellant on March 19, 2012. This was more than two years after her last visit. Appellant complained of pain in her right shoulder area and trouble sleeping at night. "It is waking her up and she can't get comfortable." X-rays from October 2011 showed some acromioclavicular joint arthritis. Dr. Gordon physically examined appellant and found that she had impingement and adhesive capsulitis with significant restriction in motion. She had full extension to 90 degrees and -80 degrees of internal rotation. Abduction was 130 degrees and adduction was very tight at midline. Dr. Gordon gave appellant an injection and put her on a course of physical therapy, which he hoped would resolve her problem. He released her to return to limited duty on March 21, 2012.

Appellant received physical therapy that same day, March 19, 2012. She was to continue with physical therapy three times a week for four to six weeks.

Appellant also filed a claim for wage loss on May 21 and 22, 2012. She indicated that this was at her doctor's request.

Dr. Gordon saw appellant again on May 21, 2012. Appellant was continuing to have problems with her right shoulder. She had tenderness over the acromioclavicular joint and over the shoulder. Appellant was also having increased restriction in motion. She was -10 degrees of external rotation and -80 degrees of internal rotation. Appellant's abduction was tight at 110 degrees and her adduction was tight before midline. "Unfortunately I think her range of motion has worsened more over the last six weeks." Dr. Gordon gave appellant an injection. If appellant did not get better over the next couple of weeks, manipulation to break up the adhesion might be indicated. Dr. Gordon advised that appellant could return to work on May 23, 2012.

On August 27, 2012 OWCP denied appellant's recurrence claim. It found that the evidence of record did not substantiate a material change or worsening of her accepted medical conditions.

On November 28, 2012 an OWCP hearing representative reviewed the written record and noted that the injections Dr. Gordon provided on March 19 and May 21, 2012 were not authorized by OWCP. Further, Dr. Gordon did not provide an opinion that appellant was disabled for work for the two-day periods due to the effects of the injections. Therefore, the hearing representative affirmed the denial of compensation.

Appellant argues that she and her doctor have submitted all the paperwork multiple times. She states that her doctor put her out of work on March 19 and 20 and May 21 and 22, 2012 due to procedures needed on her right shoulder. Appellant explains that her four days of missed work were due to the worsening of her condition.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² “Disability” means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.³

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴

When an employee, 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 of record establishes that he or she can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of his or her 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

Appellant was working limited duty when she claimed wage loss for several days in March and May 2012. She therefore has the burden to establish that her work stoppage was a result of a change in the nature and extent of her injury-related condition.⁶

Appellant saw her orthopedic surgeon, Dr. Gordon, on March 19, 2012 because she was experiencing pain in her right shoulder and trouble sleeping at night. Her shoulder condition was waking her and she could not get comfortable. X-rays from October 2011 showed some acromioclavicular joint arthritis.

OWCP did not accept appellant’s claim for arthritis and Dr. Gordon did not explain whether it was the arthritis that was causing appellant’s complaints, or whether it was an objective change in the nature and extent of the accepted right shoulder impingement and adhesive capsulitis. The medical evidence does not establish appellant’s claim of recurrence. Dr. Gordon did not state that he was taking appellant off work on March 19 and 20, 2012 because of an injection made necessary by a documented worsening of her accepted right shoulder impingement and adhesive capsulitis.

² 5 U.S.C. § 8102(a).

³ 20 C.F.R. § 10.5(f).

⁴ *Id.* at § 10.5(x).

⁵ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁶ Appellant does not contend that her total disability on the dates claimed was a result of a change in the nature and extent of her limited-duty job requirements.

Over the next six weeks, as Dr. Gordon reported, appellant's range of motion worsened. He did not say why. Again, Dr. Gordon did not attribute the need for an injection to a worsening of the accepted right shoulder impingement and adhesive capsulitis. He did not explain why, nearly three years after her last appointment, appellant was now having trouble with her right shoulder such that she needed injections and physical therapy.

It is not enough that appellant's discomfort in March and May 2012 was to the same shoulder she injured in 2002. The medical opinion evidence must soundly explain how the four days of disability for which appellant seeks compensation was a result of an objective change in the nature and extent of her right shoulder impingement and adhesive capsulitis. As Dr. Gordon did not directly address this issue, the Board finds that appellant has not met her burden of proof. Accordingly, the Board will affirm OWCP's November 28, 2012 decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability causally related to her accepted employment injury. The medical evidence does not directly address the issue raised by her claim for compensation.

ORDER

IT IS HEREBY ORDERED THAT the November 28, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 1, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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