

FACTUAL HISTORY

This case has previously been before the Board. OWCP accepted that on May 6, 1996 appellant, then a 31-year-old part-time flexible mail handler, sustained right shoulder impingement syndrome and right shoulder rotator cuff tear. It terminated her compensation benefits effective August 11, 1999. The Board reversed the termination due to an unresolved conflict in medical opinion.² Appellant returned to work on limited duty. On November 9, 2010 a hearing representative affirmed OWCP's April 20, 2010 denial of appellant's claim for a recurrence of disability as of January 5, 2010. By decision dated October 7, 2011, the Board affirmed the denial of a recurrence.³ The facts as set forth in the Board's prior decisions are hereby incorporated by reference.

In a November 22, 2010 attending physician's report, Dr. Jacob Salomon, a Board-certified surgeon, noted that appellant had a recurrent rotator cuff tear which he believed was caused or aggravated by an employment activity which he did not describe. He listed her as totally disabled from January 5 through November 23, 2010 and partially disabled starting that date. In a November 23, 2010 report, Dr. Salomon indicated that, on January 5, 2010, after three previous operations, appellant experienced recurrent shoulder pain and was taken off work by her doctor. He noted that her physician did not return her to work, but that, after evaluation, he found she could work with restrictions on shoulder motion. Appellant required physical therapy and steroid injections for her recurrent right shoulder rotator cuff tear. In a disability certificate of November 23, 2010, Dr. Salomon advised that appellant was sufficiently recovered to return to work with restrictions of no lifting over five pounds and that she was not to raise her right arm above her shoulder. In a December 30, 2010 report, he noted that she had significant pain in her right lower neck and right trapezius muscle of her right shoulder. Dr. Salomon ordered a magnetic resonance imaging (MRI) scan of her cervical spine and an electromyography (EMG) of her right upper extremity. He noted that the cervical MRI scan showed significant disc disease especially at the C5, C6 and C7 levels. Further, the EMG study showed radiculopathy due to the cervical disc disease extending into portions of appellant's right shoulder and right arm. Dr. Salomon opined that a significant portion of appellant's pain was due to her misdiagnosed cervical disc disease and radiculopathy instead of her right rotator cuff syndrome. He stated that her employment history of driving a forklift and using her right arm repetitively to turn the wheel caused stress on her cervical spine which caused an aggravation of her cervical disc disease with radiculopathy. Although it is impossible to say when appellant's cervical disc disease started, her work aggravated the disease causing right upper extremity and shoulder pain. Dr. Salomon noted that, although she was not currently working, he believed the disease started while appellant was working. In a March 31, 2011 report, Dr. Salomon noted that appellant has had a recurrence of her recurrent right shoulder tendinitis. He noted that an attempt to return to work was made on November 23, 2010; however, she was told that no work was available and was never called back.

On November 4, 2011 appellant, through counsel, requested reconsideration. He resubmitted the December 30, 2010 report of Dr. Salomon and the supporting EMG.

² Docket No. 00-2433 (issued October 10, 2001).

³ Docket No. 11-513 (issued October 7, 2011).

By decision dated August 20, 2012, OWCP denied modification of the decisions denying appellant's claim for a recurrence.

LEGAL PRECEDENT

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. 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁴ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing January 5, 2010 and the May 4, 1996 accepted employment injury.⁵ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

ANALYSIS

OWCP accepted that, as a result of appellant's employment injury of May 4, 1996, she sustained right shoulder impingement syndrome and right shoulder rotator cuff tear. Appellant underwent three surgeries on her right shoulder and returned to work in a limited-duty position. She alleged a recurrence of disability due to the accepted injury on January 5, 2010.

The Board finds that appellant has not submitted medical evidence that is sufficient to establish a recurrence of disability related to her accepted injury of May 4, 1996. The Board's previous decision found that the evidence of record was not sufficient to establish a recurrence.⁷ Appellant submitted additional reports by Dr. Salomon. In a November 22, 2010 attending physician's form report, Dr. Salomon listed that appellant was totally disabled for the period January 5 through November 23, 2010, due to recurrent right rotator cuff tear. He did not explain the basis for his conclusion that appellant's condition was caused or aggravated by any employment activity, despite being requested to do so, on the form. Dr. Salomon also did not provide any medical data to support his diagnosis. In a narrative report dated December 30, 2012, he noted that appellant had significant pain in her right lower neck and the right trapezius muscle of her right shoulder. An MRI scan of the cervical spine showed significant degenerative disc disease and an EMG study showed cervical radiculopathy due to the cervical disc disease extending into appellant's right shoulder and arm. Dr. Salomon stated generally that a significant portion of appellant's pain was due to her misdiagnosed cervical disc disease and

⁴ 20 C.F.R. § 10.5(x).

⁵ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308 (1982).

⁶ *See L.H.*, Docket No. 10-2248 (issued July 22, 2011); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁷ *See supra* note 2.

radiculopathy instead of her accepted right rotator cuff syndrome. He noted that the work she performed driving a forklift and using her right arm repetitively to turn the wheel which caused stress on her cervical spine and an aggravation of her cervical disc disease. Dr. Salomon noted that, although it was impossible to say when the cervical disc disease started, it was possible that appellant's work aggravated her cervical disc disease causing right upper extremity and shoulder pain. He stated that appellant's cervical disc disease dated back to when she was working at the employing establishment. The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revealing an underlying condition does not establish a causal relationship between her condition and her employment factors.⁸ Dr. Salomon also indicated that appellant's employment duties caused aggravation of her cervical disc disease and resultant radiculopathy, but he did not explain how the employment injury of May 4, 1996 caused a recurrence of symptoms on January 5, 2010, over 13 years later. He did not address the impact of appellant's return to work and the impact of her new duties on her condition. The Board notes that the case was accepted for right shoulder impingement syndrome and right shoulder rotator cuff tear, not cervical disc disease. Appellant has the burden of proof to establish a causal relationship between the conditions not accepted by OWCP and the May 4, 1996 employment injury.⁹

Accordingly, as appellant has not submitted a rationalized medical opinion that related her disability commencing January 5, 2010 to her accepted work injury of May 4, 1996, she did not show that she sustained a recurrence of disability on or after January 5, 2010.

CONCLUSION

The Board finds that appellant did not establish a recurrence of disability on January 5, 2010 causally related to her accepted May 4, 1996 employment injury.

⁸ *P.G.*, Docket No. 12-905 (issued December 12, 2012); *see also Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁹ *See JaJa K. Asaramo*, 55 ECAB 104 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 20, 2012 is affirmed.

Issued: February 22, 2013
Washington, DC

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

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

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