



## **FACTUAL HISTORY**

OWCP accepted that on December 13, 2005 appellant, then a 39-year-old letter carrier, sustained right shoulder sprain and contusion as a result of slipping on ice in the driveway in the performance of duty. She stopped work and returned on December 15, 2005. On December 20, 2005 appellant accepted a job offer for a modified letter carrier position.

OWCP also accepted that on February 14, 2007 appellant sustained cervical, thoracic and lumbosacral strains when she slipped on a small, icy snow mound and that on February 24, 2007 she sustained a right shoulder strain when a coworker snatched a tray out of her right hand.<sup>2</sup> She continued to work limited duty. On March 25, 2010 OWCP granted a schedule award for six percent permanent impairment of the right upper extremity.

Appellant submitted various claims for partial disability beginning February 28, 2006 for physician and physical therapy appointments. She received compensation for partial disability until December 17, 2010.

On September 30, 2010 appellant was offered a limited-duty position as a letter carrier effective September 8, 2010. Her duties included casing Route 132 for two hours and delivering mail with no bag for two hours. The physical requirements of the modified position were three hours of standing, five hours of walking, 15 minutes of driving, pushing 35 pounds and pulling 25 pounds. Appellant accepted the offer on September 30, 2010.

In a November 23, 2010 second-opinion report, Dr. Pietro Seni, a Board-certified orthopedic surgeon, related that appellant was a city carrier with the employing establishment and provided an accurate history of injury. He reviewed her medical history and conducted an examination. Dr. Seni observed diffuse tenderness over the periscapular area of the shoulder and normal range of motion. He noted pain on palpation of the acromioclavicular (AC) joint and pain of the superior medial border of the scapula. Crossed arm test was positive for AC arthritis and impingement test was positive. Dr. Seni opined that appellant continued to suffer residuals of her work-related conditions. In a work capacity evaluation form, he authorized her to return to limited duty with the following restrictions: no carrying of a mailbag, no reaching or reaching above the shoulder and three to four hours of pushing, pulling and lifting no more than 30 pounds.

On September 10, 2011 appellant filed a claim for 38.45 hours of partial disability compensation for time missed from work from January 15 to August 2, 2011. In the time analysis form, she stated that there was either no work available or she refused to work.<sup>3</sup> The employing establishment noted that for 12.96 hours there was no work available, but for the remaining 25.49 hours appellant refused to work. Appellant received disability compensation on March 9, April 13, May 31 and June 7, 2011 for a total of 12.96 hours.

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<sup>2</sup> File No. xxxxxx727 and File No. xxxxxx987 respectively.

<sup>3</sup> Appellant indicated that on January 15 and 24, February 5, March 3 and May 4 and 10, 2011 she refused work. On March 9 and April 13, 2011 there was no work available. On March 1, May 20 and 21, June 7, July 7 and 20 and August 2, 2011 appellant used annual or administrative leave.

In an April 6, 2011 Employee Leave Information letter, the employing establishment advised appellant that she had refused to accept a limited-duty assignment that it had found to be within her medical restrictions.

In an August 3, 2011 report, Dr. Stephen Altic, a family practitioner, related appellant's complaints of continued weakness in her right shoulder. Upon examination, he observed full range of motion and opined that her examination was pretty normal. Dr. Altic noted that appellant's problems with her right shoulder appeared to have stabilized and recommended another functional capacity evaluation (FCE) to better determine her abilities. He reported that he completed a Form CA-17 with the previous restrictions of no mailbag carrying given her right shoulder problems. Dr. Altic opined that he was not certain that appellant's restrictions at that time accurately represented her functional condition and that based on another FCE she may be able to return to full duty with no restrictions.

By letter dated October 31, 2011, OWCP advised appellant that the evidence was insufficient to establish that she was partially disabled for a total of 25.49 hours on January 15 and 24, February 5, March 3 and May 4 and 10, 2011, as a result of her employment-related conditions. It requested additional evidence to establish her claim.

In a decision dated April 10, 2012, OWCP denied appellant's recurrence of disability claim finding insufficient medical evidence to establish that she was unable to perform her limited-duty assignment on January 15 and 24, February 5, March 3 and May 4 and 10, 2011, for a total of 25.49 hours as a result of her employment-related injuries. It found that, although appellant claimed there was no work available on those dates, the employing establishment stated that work was available for the hours indicated but she refused to work.

On April 13, 2012 appellant, through counsel, submitted a request for a telephone hearing, which was held on July 17, 2012. She stated that from January through May 2011 her restrictions were no lifting over 20 pounds, no bending, no twisting, no pulling, no pushing and no carrying a mailbag. Appellant noted that during that same time period there were times when her employer wanted her to work beyond her restrictions, so she went home because the employing establishment could not provide her with a job within her medical restrictions. She related that she won a union hearing with her employing establishment that demonstrated that she was sent home because a job within her restrictions could not be provided.

Appellant resubmitted the September 30, 2010 job offer for modified letter carrier position.

By decision dated October 12, 2012, an OWCP hearing representative affirmed the April 10, 2012 denial decision. OWCP found that the medical evidence failed to establish that appellant's claim for partial disability on January 15 and 24, February 5, March 3 and May 4 and 10, 2011 were causally related to her accepted conditions.

### **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 resulted from a previous

injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>4</sup> 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.<sup>5</sup> OWCP's procedure manual provides that a recurrence of disability also includes worsening of disability due to an accepted consequential injury.<sup>6</sup> Moreover, when the claimed recurrence of disability follows a return to light-duty work, the employee may satisfy his or her burden of proof by showing a change in the nature and extent of the injury-related condition such that he or she is no longer able to perform the light-duty assignment.<sup>7</sup>

When 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 of record establishes that he or she can perform the light-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 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 requirements.<sup>8</sup>

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>9</sup>

### ANALYSIS

OWCP accepted appellant's claims for right shoulder, neck and lumbar conditions. Appellant returned to limited duty as a modified letter carrier. She received wage-loss compensation for physician and physical therapy appointments beginning February 2006. On September 10, 2011 appellant filed a claim for 38.45 hours of partial disability from January 15 to August 2, 2011. She received disability compensation for a total of 12.96 hours of missed work on March 9, April 13, May 31 and June 7, 2011. Appellant has the burden of proof to establish that she was partially disabled from work for the remaining 25.49 hours as a result of her employment-related conditions.

Appellant does not allege that there was a change in the nature and extent of her work-related conditions. She alleges that the work she was assigned to do exceeded her medical restrictions. Appellant, therefore, has the burden to show a change in the nature and extent of her limited-duty job requirements. The Board finds that there is no credible evidence which

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<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> *Id.*

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (January 1995).

<sup>7</sup> *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

<sup>8</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>9</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Mary J. Briggs*, 37 ECAB 578 (1986).

substantiates that she experienced a change in the nature and extent of the light-duty requirements or was required to perform duties which exceeded her medical restrictions.

Appellant accepted an offer for a modified carrier position effective September 8, 2010 with the following restrictions: three hours of standing, five hours of walking, 15 minutes of driving, pushing 35 pounds and pulling 25 pounds. Her duties included casing Route 132 for two hours and delivering mail with no bag for two hours. Appellant alleges that on January 15 and 24, February 5, March 3 and May 4 and 10, 2011 she did not work because there was no work available within her limited-duty restrictions. The evidence of record does not establish that the employing establishment had taken any formal action to cause any change in the nature and extent of her light-duty job requirements.

In a November 23, 2010 work capacity evaluation form, Dr. Seni authorized appellant to return to limited duty with the following restrictions: no carrying of a mailbag, no reaching or reaching above the shoulder and three to four hours of pushing, pulling and lifting. In an August 3, 2011 report, Dr. Altic noted that her right shoulder conditions appeared to have stabilized. He opined that appellant continue with her previous restrictions of no mailbag carrying but recommended another FCE to better determine her abilities. Appellant accepted the modified assignment within those restrictions. The record does not contain any evidence establishing that any particular duty that she actually performed exceeded her work restrictions or that the employing establishment did not provide her with appropriate work within her restrictions. The Board finds that there is no evidence substantiating that appellant was required to perform duties that exceeded her medical restrictions. The September 10, 2011 time analysis form indicates that on January 15 and 24, February 5, March 3 and May 4 and 10, 2011 she refused to work. The employing establishment noted that for 12.96 hours there was no work available, but for the remaining 25.49 hours appellant refused to work. Appellant did not submit any evidence to establish that she refused to work on the above-mentioned dates because the employing establishment asked her to perform duties that exceeded her restrictions. Instead, an April 6, 2011 Employee Leave Information letter, demonstrates that she had refused to accept a limited-duty assignment that was found within her medical restrictions.

On appeal, counsel contends that the October 12, 2012 OWCP decision is contrary to fact and law. The Board finds that appellant did not submit any evidence to show a change in the nature and extent of her limited-duty requirements or a change in the nature and extent of her accepted conditions. Therefore, appellant did not meet her burden of proof to establish that she was partially disabled for intermittent periods from January 15 to May 10, 2011.

Appellant may submit new evidence or argument with a written request for reconsideration 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.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish a recurrence of intermittent periods of partial disability from January 15 to May 10, 2011 as a result of her accepted right shoulder, back and neck conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 12, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 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