



a pallet to the floor. She did not stop work, but was offered a limited-duty position on October 20, 2000.

On January 31, 2001 OWCP accepted appellant's claim for right shoulder strain and right shoulder impingement. Appellant claimed intermittent wage loss between March 13 and July 26, 2001. OWCP authorized payment of compensation during this period.

Appellant underwent an authorized diagnostic arthroscopy followed by an open subacromial decompression and coracoacromial ligament release on June 4, 2001. Dr. Jose Ortega, an orthopedic surgeon, performed the surgery and rendered a postoperative diagnosis of right shoulder impingement, stage 2. There were no complications.

Appellant returned to work for four hours per day on limited duty on July 3, 2001 and she returned to work at eight hours per day on limited duty on July 21, 2001

In a report dated December 12, 2002, Dr. Ortega stated that appellant reached maximum medical improvement on December 4, 2001, and that she had a permanent impairment rating of four percent. On the same date Dr. Ortega completed a work status report noting restrictions of no lifting over 20 pounds and no reaching above the shoulder with the right arm. On December 13, 2002 appellant accepted a permanent limited-duty job offer within these restrictions.

On April 21, 2003 appellant filed a claim for a schedule award. On July 24, 2003 OWCP issued a schedule award for six percent permanent impairment of the upper right shoulder.

In a report dated June 12, 2008, Dr. Ortega noted that appellant returned for a follow-up on her shoulder and that he had not seen her in almost two years. Appellant complained of pain located over the acromioclavicular (AC) joint. Dr. Ortega provided examination findings noting tenderness to touch and a complete range of motion. He examined the results of the x-ray of appellant's right shoulder, which showed degenerative changes. Dr. Ortega diagnosed her with AC joint arthritis of the right shoulder and stated, "In my opinion, this is another work-related condition.... Nothing else that I can offer this patient from the [w]orkers' [c]ompensation case. The restrictions remain the same with the same permanent impairment rating. If she wishes for me to see her for the AC joint, it should be under her own regular insurance."

On November 3, 2010 appellant accepted a limited-duty modified assignment within the restrictions as outlined in the functional capacity evaluation. The physical requirements included lifting and carrying of up to 45 pounds; pulling and pushing up to 45 pounds; and reaching above the shoulder up to 30 pounds, for an average of three hours per day.

On April 21, 2014 appellant filed a notice of recurrence. She stated that she had not stopped work, but that on July 19, 2013 she had rapid discomfort in her right shoulder and hand, and that her reach capacities lessened. Appellant noted that she could no longer lift within her restrictions.

By letter dated May 19, 2014, OWCP requested additional medical evidence from appellant to support her claim for recurrence of a medical condition. It noted that she had not

submitted any medical evidence to support her claim for recurrence. OWCP also asked that appellant complete and return a questionnaire.

On June 4, 2014 appellant responded to OWCP's questionnaire. She stated that her duties since returning to work included repetitive motions, hanging sacks, lifting, unsleeving, lifting tray mail, and repetitive pushing and pulling of equipment. In response to a query for information needed to determine whether she sustained a recurrence or a new injury, appellant stated that she had received instructions to reopen the case file and just needed medical care. She stated that she believed her current condition was due to the original injury because it involved the same shoulder. Appellant noted that her symptoms came and went depending on her duties and number of days off.

By decision dated August 13, 2014, OWCP denied appellant's recurrence claim. It noted that she had not submitted any medical evidence in support of her claim for recurrence of a condition causally related to the October 13, 2000 employment-related injury.

By form dated September 14, 2014 and postmarked September 15, 2014, received by OWCP September 18, 2014, appellant requested a hearing before an OWCP hearing representative. With her request, she submitted documents from Dr. Ortega and stated that she had been disabled since February 17, 2014 due to a neck injury and surgery in addition to a complete knee replacement. The request was received by OWCP on September 18, 2014 and postmarked September 15, 2014.

By decision dated October 29, 2014, the Branch of Hearings and Review denied the hearing request as untimely. The hearing representative noted that appellant could file a request for reconsideration and submit new evidence.

### **LEGAL PRECEDENT -- ISSUE 1**

Appellant has the burden of establishing that she sustained a recurrence of a medical condition that is causally related to her accepted employment injury. To meet her burden, she must furnish medical evidence from a 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 and supports that conclusion with sound medical rationale.<sup>2</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>3</sup>

OWCP regulations define a recurrence of medical condition as the documented need for further medical treatment after release from treatment of the accepted condition when there is no work stoppage. Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment.<sup>4</sup>

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<sup>2</sup> *Ronald A. Eldridge*, 53 ECAB 218, 220 (2001).

<sup>3</sup> *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *Albert C. Brown*, 52 ECAB 152, 155 (2000).

<sup>4</sup> 20 C.F.R. § 10.5(y).

## ANALYSIS -- ISSUE 1

The Board finds that appellant has not established a recurrence of disability. OWCP accepted her traumatic injury claim for right shoulder impingement and strain on January 31, 2001. Appellant has claimed entitlement to compensation for medical treatment. She has failed to submit medical evidence to show that she required further treatment because of a continuing employment-related condition.

On May 19, 2014 OWCP requested that appellant submit additional medical evidence to support her need for continued treatment. Dr. Ortega found that she had reached maximum medical improvement on December 4, 2001 after surgery. Appellant received a schedule award for permanent impairment of her right shoulder on July 24, 2003. In a report dated June 12, 2008, Dr. Ortega reported that appellant had returned for follow-up and diagnosed her with AC joint arthritis of the right shoulder. He wrote: "In my opinion, this is another work-related condition...."

On August 9, 2010 Dr. Ortega reported that appellant required no further orthopedic treatment.

Appellant must submit an attending physician's report that contains a description of the objective findings and supports a causal relationship between her current medical condition and the previously accepted right shoulder impingement and strain.<sup>5</sup> She has the burden of submitting sufficient medical evidence to document the actual need for further specific medical treatment.<sup>6</sup> Appellant submitted no medical evidence in support of her claim for recurrence and thus failed to establish a need for continuing medical treatment.<sup>7</sup>

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there was a causal relationship between her condition and her employment.<sup>8</sup>

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<sup>5</sup> See *V.P.*, Docket No. 14-1557 (issued December 2, 2014). OWCP's procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return as needed or computed by the claims examiner from the date of last examination), a claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013).

<sup>6</sup> *Supra* note 3.

<sup>7</sup> While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment, and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant. See *Thomas A. Faber*, 50 ECAB 566, 569 (1999); *Samuel Senkow*, 50 ECAB 370, 377 (1999).

<sup>8</sup> *Patricia J. Glenn*, 53 ECAB 159, 160 (2001).

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.

### **LEGAL PRECEDENT -- ISSUE 2**

A claimant, injured on or after July 4, 1966, who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision.<sup>9</sup> The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.<sup>10</sup> The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.<sup>11</sup> If the request is not made within 30 days, a claimant is not entitled to a hearing as a matter of right. However, the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing.<sup>12</sup>

### **ANALYSIS -- ISSUE 2**

OWCP issued its last merit decision on August 13, 2014. Appellant had 30 days to request a hearing. Appellant's hearing request was postmarked September 15, 2014. OWCP regulations provide that the hearing request must be sent within 30 days of the date of the decision for which a hearing is sought.<sup>13</sup> Because appellant's September 15, 2014 request was untimely, she was not entitled to a hearing as a matter of right. The Branch of Hearings and Review also denied appellant's hearing request because it found that her claim for recurrence could be equally well addressed by requesting reconsideration before OWCP. The Board finds that the hearing representative properly exercised her discretionary authority in denying appellant's request for a hearing.<sup>14</sup>

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of a medical condition causally related to her accepted injury. The Board further finds that the Branch of Hearings and Review properly denied appellant's hearing request.

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<sup>9</sup> 20 C.F.R. § 10.616(a).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> 5 U.S.C. §§ 8124(b)(1) and 8128(a); *Hubert Jones, Jr.*, 57 ECAB 467, 472-73 (2006); *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>13</sup> 20 C.F.R. § 10.616(a).

<sup>14</sup> *Mary B. Moss*, 40 ECAB 640, 647 (1989). Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts. See *André Thyatron*, 54 ECAB 257, 261 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 29 and August 13, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 10, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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