



## ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability for the period November 20, 2019 through May 1, 2021 causally related to her accepted February 24, 2018 employment injury.

## FACTUAL HISTORY

On February 24, 2018 appellant, then a 43-year-old rotating/irregular rural carrier associate (RCA), filed a traumatic injury claim (Form CA-1) alleging that on that day she sprained her right arm while picking up a tub of mail in the performance of duty. She stopped work that day.<sup>4</sup>

On March 22, 2018 appellant was seen by Dr. John F. Loupe, a Board-certified orthopedic surgeon. Dr. Loupe noted appellant's history of injury and her right shoulder complaints. He completed a duty status report of even date wherein he diagnosed torn rotator cuff and traumatic injury to the right rotator cuff joint. Dr. Loupe placed appellant on a no work status.

OWCP accepted the claim for sprain of right shoulder girdle and adhesive capsulitis of right shoulder and authorized a right shoulder arthroscopic surgery, which appellant underwent on June 28, 2018.<sup>5</sup>

OWCP paid appellant wage-loss compensation on the supplemental rolls from May 6 through October 13, 2018 and on its periodic rolls from October 14, 2018 through November 9, 2019, with a supplemental payment issued from November 10 through 15, 2019.

On November 15, 2019 Dr. Scott G. Petrie, a Board-certified orthopedic surgeon, released appellant to full-duty work beginning November 16, 2019. Appellant returned to work on November 16, 2019 in a full-duty capacity. She stopped work on November 19, 2019.

On November 21, 2019 appellant filed a traumatic injury claim (Form CA-1) alleging that on November 19, 2019 a supervisor snatched a tray of mail from her hands while in the performance of duty. She claimed reinjury to her right shoulder and neck pain. OWCP assigned File No. xxxxxx645. By decision dated January 8, 2020, it denied the claim as the medical evidence did not demonstrate that the claimed medical conditions were causally related to the accepted November 19, 2019 employment incident.

In a November 21, 2019 report, Dr. Petri reported that appellant had complaints of right shoulder and neck pain after she returned to work and her postmaster/supervisor pulled a mail tray away from her. He noted appellant's physical examination findings indicating that appellant's right shoulder portal/incision were well healed. Dr. Petri diagnosed right shoulder/C-spine contusion/strain/right upper extremity radiculopathy related to a November 19, 2019 work injury.

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<sup>4</sup> Appellant was seen by Dr. Vanessa Tarver, Board-certified in emergency medicine, on February 24, 2018. In an attending physician's report (Form CA-20), Dr. Tarver did not indicate that appellant was totally or partially disabled. The record is unclear as to the date appellant returned to work; however, a statement of accepted facts (SOAF) dated May 2, 2019 indicates that appellant stopped work on March 22, 2018 and did not return.

<sup>5</sup> The surgical procedures involved right shoulder arthroscopic subscapularis repair, right shoulder mini open supraspinatus repair, right shoulder arthroscopic Mumford procedure and extensive debridement of the glenohumeral joint, right shoulder subacromial decompression and regional block.

He also assessed “right shoulder ATS/decompression/Mumford/RTCR [June 28, 2018]” based on February 24, 2018 employment injury. In that report and in an accompanying November 21, 2019 duty status report (Form CA-17), Dr. Petri related appellant’s diagnoses as right shoulder/cervical strain and downgraded appellant’s work status to sedentary duty.

In a December 16, 2019 Form CA-17, Dr. Petri noted the February 24, 2018 date of injury and continued appellant on sedentary duty.

A January 13, 2020 magnetic resonance imaging (MRI) scan of appellant’s cervical spine related findings of disc protrusions at C4-C7, and/or uncovertebral spurring and foraminal stenosis C5-C6.

In a January 24, 2020 report, Dr. Petri noted that appellant had not been able to perform much work since her recent reinjury. He related that on physical examination appellant’s right shoulder portal/incision were well healed, her range of motion and strength continued to improve, her motor and sensory functions were intact, and her pulses were intact bilaterally. Dr. Petri continued to assess “right shoulder ATS/decompression/Mumford/RTCR [June 28, 2018]” based on the February 24, 2018 employment injury. In that report and in an accompanying CA-17, he also continued to place appellant on a sedentary-duty work status.

In a February 24, 2020 report, Dr. Petri noted that appellant’s complaints of right shoulder weakness and tenderness on examination anteriorly and laterally. He continued to assess “right shoulder ATS/decompression/Mumford/RTCR [June 28, 2018]” based on February 24, 2018 work injury. In that report and in an accompanying CA-17, Dr. Petri continued appellant on a sedentary-duty work status.

In medical reports and accompanying CA-17 forms and work status notes dated March 23, April 20, May 18, June 15, July 13, August 10, September 9, October 7, November 4, December 2, December 30, 2020 and January 27, February 5, February 24, March 24 and April 21, 2021, Dr. Petri reported appellant’s continued complaints regarding the right shoulder and cervical spine. He continued to assess “right shoulder ATS/decompression/Mumford/RTCR [June 28, 2018]” based on February 24, 2018 work injury. Dr. Petri also continued to indicate that appellant was restricted to sedentary duty. In his reports dated April 20, 2020 and February 25, 2021, he also provided assessments of right shoulder/cervical spine contusion/strain/right upper extremity radiculopathy based on November 19, 2019 work injury and cervical spine spondylosis C4-C7 and spurring/non-foraminal stenosis C5-C8.

On June 8, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period November 20, 2019 through May 1, 2021.

In a developmental letter dated June 10, 2021, OWCP indicated that appellant was alleging a recurrence of disability on November 20, 2019 when she stopped work. It noted that she had filed a claim under File No. xxxxxx645 for November 19, 2019 injuries to her right shoulder and neck which was denied. OWCP notified her of the definition of a recurrence of disability and requested that she provide additional factual and medical information supporting that her accepted conditions had materially changed/worsened without an intervening injury such that she was disabled from employment. It afforded appellant 30 days to respond to the request.

OWCP received a June 30, 2021 statement from appellant wherein she described the November 19, 2019 employment incident. Appellant related that a tray of mail was aggressively

snatched from her hands, while she was holding onto both sides of the tray. She further explained that her right arm was pulled in an upward position, which aggravated previously injured muscles, tendons, and nerves.

In May 21 and June 18, 2021 reports, Dr. Petri continued to assess “right shoulder ATS/decompression/Mumford/RTCR [June 28, 2018]” based on February 24, 2018 work injury. He continued to indicate that appellant’s work status was limited to sedentary duty.

In reports dated November 11 and December 9, 2020 and January 8, February 5, March 5, April 5, May 3, June 2, 2021, Dr. Petri also provided assessments of right shoulder/cervical spine contusion/strain/right upper extremity radiculopathy based on claimed a November 19, 2019 work injury and cervical spine spondylosis C4-C7 and spurring/non-foraminal stenosis C5-C8. He continued to restrict appellant to sedentary work duties.

By decision dated August 4, 2021, OWCP denied the claim for compensation for the period November 20, 2019 through May 1, 2021. It found that the evidence was insufficient to establish that appellant was totally disabled due to a material change/worsening of her accepted February 24, 2018 right shoulder conditions.

On August 9, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review. A telephonic hearing was held on December 6, 2021.

In reports dated July 19 and November 30, 2021, Dr. Petri continued to assess right shoulder ATS/decompression/Mumford/RTCR June 28, 2018 based on the February 24, 2018 employment injury. He continued to relate that appellant was restricted to sedentary duty.

OWCP also received CA-17s dated June 18, July 19, August 16, September 14, November 30, 2021 from Dr. Petri noting a February 24, 2018 date of injury. In these reports he again related that appellant was restricted to sedentary work.

By decision dated January 25, 2022, OWCP’s hearing representative affirmed the August 4, 2021 decision as appellant failed to provide sufficient medical evidence to support the claim for recurrent disability for the period November 20, 2019 through May 1, 2021 was causally related to the accepted February 24, 2018 employment injury. He found that appellant’s claim was not a claim for recurrence of disability, but rather a claim for a new traumatic injury on November 19, 2019. The hearing representative also instructed OWCP to double File No. xxxxxx645 into File No. xxxxxx591, the current case.

### **LEGAL PRECEDENT**

OWCP’s implementing regulations define a recurrence of disability as 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.<sup>6</sup>

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<sup>6</sup> 20 C.F.R. § 10.5(x).

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.<sup>7</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>8</sup>

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>9</sup>

OWCP's procedures require that in cases where recurrent disability for work is claimed within 90 days or less from the first return to duty, the claimant is not required to produce the same evidence as a recurrence claimed long after apparent recovery and return to work.<sup>10</sup> Thus, in cases where a recurrence is claimed within 90 days of the first return to duty, the focus is on disability rather than causal relationship of the accepted condition(s) to the work injury.

The Board has held that, if recurrent disability from work is claimed within 90 days or less from the first return to duty, the attending physician should describe the duties which the employee cannot perform and demonstrate objective medical findings that form the basis for the renewed disability from work.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability for the period November 20, 2019 through May 1, 2021 causally related to her accepted February 24, 2018 employment injury.

On November 16, 2019 appellant returned to full-time work in a full-duty capacity following her February 24, 2018 employment injury. On November 19, 2019 she alleged that she sustained a new intervening traumatic injury to her right shoulder and neck. Appellant subsequently filed, on June 8, 2021, a Form CA-7 for disability from work for the period November 20, 2019 through May 1, 2021, which OWCP developed as a recurrence claim. While she stopped work within days of her November 16, 2019 return to work following the February 24,

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<sup>7</sup> See *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

<sup>8</sup> *Id.*

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *D.T.*, Docket No. 19-1064 (issued February 20, 2020).

<sup>10</sup> *Id.*; see also *R.E.*, Docket No. 20-0421 (issued May 17, 2021); *R.W.*, Docket No. 17-0720 (issued May 21, 2018).

<sup>11</sup> *R.E.*, *id.*; *K.R.*, Docket No. 19-0413 (issued August 7, 2019).

2018 accepted injury, the record does not establish that this was appellant's first return to work.<sup>12</sup> Therefore, the burden of proof requires that appellant establish causal relationship of her claimed disability to the February 24, 2018 employment injury.

In progress and CA-17 forms and work notes dated November 21, 2019 through November 30, 2021, Dr. Petri diagnosed right shoulder ATS/decompression/Mumford/RTCR June 28, 2018 based on February 24, 2018 employment injury. He also included, in some reports, additional assessments of right shoulder/cervical spine contusion/strain/right upper extremity radiculopathy related to November 19, 2019 work injury and cervical spine spondylosis C4-C7 and spurring/nonforaminal stenosis C5-C8. In his progress reports and accompanying November 21, 2019 CA-17 forms, Dr. Petri downgraded appellant's work status from full to sedentary duty.

However, Dr. Petri did not provide a rationalized medical opinion establishing that appellant had objective findings of disability or that the accepted conditions of February 24, 2018 had materially worsened with or without an intervening cause. While he noted appellant's subjective complaints on physical examination, he did not provide objective medical findings to support his opinion regarding appellant's disability status.<sup>13</sup> Further, Dr. Petri failed to offer a rationalized opinion on causal relationship. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship or disability.<sup>14</sup> Without a specific opinion regarding how the accepted employment injury of February 24, 2018 caused the downgrading of appellant's work status, due to objective findings, Dr. Petri's reports are insufficient to meet appellant's burden of proof.<sup>15</sup>

The record also contains a January 13, 2020 MRI scan of the cervical spine which noted several conditions. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injuries resulted in appellant's period of disability on specific dates.<sup>16</sup>

As the medical evidence of record does not contain a rationalized medical opinion, based on objective medical findings, establishing that appellant sustained a recurrence of disability causally related to her February 24, 2018 employment injury which resulted either in a change in her work status or that her accepted conditions related to the February 24, 2018 employment injury had worsened without intervening injury, the Board finds that she has not met her burden of proof to establish her recurrence claim.

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<sup>12</sup> *Supra* note 10.

<sup>13</sup> *J.W.*, Docket No. 17-0715 (issued May 29, 2018).

<sup>14</sup> *T.M.*, Docket No. 21-1310 (issued March 7, 2022); *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>15</sup> *T.M.*, *id.*; *see D.B.*, Docket No. 21-0503 (issued August 24, 2021).

<sup>16</sup> *D.K.*, Docket No. 21-0082 (issued October 26, 2021); *O.C.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

On appeal, counsel contends that appellant's denied claim under OWCP File No. xxxxxx645 should be allowed as a new injury. However, the issue before the Board concerns only the recurrence claim in the present case.

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 met her burden of proof to establish a recurrence of disability for the period November 20, 2019 through May 1, 2021 causally related to her accepted February 24, 2018 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 25, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 29, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board