

**United States Department of Labor  
Employees' Compensation Appeals Board**

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MARIE A. FARLEY, Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, Upper )  
Black Eddy, PA, Employer )

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**Docket No. 03-2114  
Issued: January 23, 2004**

*Appearances:*  
Thomas R. Uliase, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On August 26, 2003 appellant, through her attorney, filed a timely appeal of the decisions of the Office of Workers' Compensation Programs dated February 19, 2003 and November 12, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established that she sustained a recurrence of disability from January 8 to April 9, 2001 causally related to her employment-related right shoulder condition.

**FACTUAL HISTORY**

On September 25, 1992 appellant, then a 46-year-old rural carrier, filed an occupational disease claim alleging that she sustained fibromyositis due to "constant movement and reaching with the shoulder" in casing mail. She stopped work on September 19, 1992. The Office accepted her claim for impingement syndrome of the right shoulder. The Office authorized a February 11, 1993 arthroscopic acromioplasty of

appellant's right shoulder and a February 8, 1994 right shoulder arthroscopy with an open ear acromioplasty and distal clavical resection.

Appellant sustained intermittent period of temporary total disability causally related to her employment injury. In a decision dated March 6, 1997, the Office reduced appellant's compensation to zero based on its finding that her actual earnings in a modified position effective September 9, 1996 fairly and reasonably represented her wage-earning capacity. In a decision dated May 26, 2000, the Office reduced appellant's compensation to zero based on its finding that her actual earnings as a modified clerk effective March 7, 2000 fairly and reasonably represented her wage-earning capacity.

On January 19, 2001 appellant filed a notice of recurrence of disability on January 8, 2001 causally related to her accepted condition, in which she stated that the "same injury flared up." By letter dated February 2, 2001, the Office requested additional information regarding appellant's claim. She submitted a form report dated January 12, 2001 from Dr. Charles W. Burmeister, Board-certified in family practice and her attending physician. He listed findings of limitation of motion of the right shoulder, diagnosed a sprain/strain tear and found that appellant could possibly return to modified work on January 29, 2001. In a form report dated January 23, 2001, Dr. Burmeister diagnosed a right rotator cuff tear post surgery. In a note dated January 30, 2001, Dr. Burmeister found that appellant was "unable to work until further notice." In a report dated February 14, 2001, Dr. Burmeister stated: "This time out of work is due to a reoccurrence of [appellant's] right shoulder injury. Inflammation has caused severe pain and very limited motion in this area." He noted that he had referred appellant to Dr. Thomas DiBenedetto, a Board-certified orthopedic surgeon, for a consultation.

In a report dated February 14, 2001, Dr. DiBenedetto discussed appellant's history of a right shoulder employment injury with subsequent surgeries. He listed findings on examination and reviewed the medical evidence. Dr. DiBenedetto stated: "I do not believe that all [appellant's] pain is coming from her shoulder. She has pain in her trapezius and radicular-type pain.... [Appellant] may have fibromyalgia or a cervical radiculopathy."

Dr. Burmeister completed a Form CA-20 on February 23, 2001. He diagnosed right shoulder and arm pain post surgery, checked "yes" that the condition was due to appellant's employment and found that she was totally disabled beginning January 29, 2001. Dr. Burmeister completed another form report on March 13, 2001, in which he diagnosed a rotator cuff tear post surgery and found that appellant could resume employment on April 9, 2001. In an accompanying report of the same date, Dr. Burmeister opined that appellant's pain was caused by her right shoulder injury and further opined that she did not have fibromyalgia.

Based on the recommendation of the Office medical adviser, by letter dated March 13, 2001, the Office requested that Dr. DiBenedetto provide a reasoned opinion regarding the causal relationship of appellant's current condition to her accepted employment injury. In a response dated March 22, 2001, Dr. DiBenedetto stated that he had found no evidence that appellant had impingement syndrome and that he did "not

believe that her shoulder was aggravated by her light-duty job.” In a medical report dated March 16, 2001, received by the Office on March 27, 2001, Dr. DiBenedetto related that as the Office had accepted right shoulder impingement, which he did not diagnose on February 14, 2001, appellant’s complaints “were not a sequela, consequence or aggravation of her right shoulder impingement syndrome. I made the provisional diagnosis of fibromyalgia or cervical radiculopathy.”

On April 6, 2001 an Office medical adviser reviewed Dr. DiBenedetto’s report and noted that his report did not support causal relationship between appellant’s current condition and her accepted employment injury. He recommended that the Office refer appellant for a second opinion examination.

On April 6, 2001 the Office referred appellant for a second opinion examination. The Office requested that the second opinion examiner provide an opinion regarding whether appellant’s current condition was due to her accepted employment injury.

In a duty status report dated May 1, 2001, Dr. Burmeister opined that appellant could resume work on April 9, 2001. She returned to employment on that date.

In a report dated May 10, 2001, Dr. Anthony W. Salem, a Board-certified orthopedic surgeon, who performed a second opinion examination, discussed appellant’s history of injury and listed detailed findings on examination. He noted that she stopped work on January 9, 2001 and returned to work April 9, 2001. Dr. Salem diagnosed adhesive capsulitis due to “disuse and poor motivational activity.” He noted that appellant’s impingement syndrome was related to factors of employment based on her statement that lifting and reaching “aggravated the impingement syndrome.” Dr. Salem found that appellant had to move her shoulder in order to improve. He further found that she could currently perform her modified clerk duties.

By decision dated June 26, 2001, the Office denied appellant’s claim on the grounds that the medical evidence was insufficient to establish that she sustained a recurrence of disability beginning January 8, 2001, due to her accepted employment injury. On July 12, 2001 appellant requested a hearing on her claim. She submitted a report dated April 19, 2001 from Dr. John M. Fenlin, a Board-certified orthopedic surgeon, who discussed her current condition and diagnosed residual pain from the distal clavical resection.

At the hearing, held on November 15, 2001, appellant related that she was out of work due to a recurrence of disability from January 9 to April 9, 2001, at which time she resumed her usual modified position. Appellant submitted a report dated October 30, 2001 from Dr. Scott M. Fried, an osteopath, who discussed her history of injury, current complaints and reviewed her medical records. He diagnosed a repetitive strain injury of the right upper extremity and recommended an electromyogram and job modification.

In a decision dated February 8, 2002, the hearing representative affirmed the Office’s June 26, 2001 decision. On October 10, 2002 appellant, through her

representative, requested reconsideration of her claim.<sup>1</sup> In support of her request, appellant submitted a report dated July 31, 2002 from Dr. Burmeister, who discussed his treatment of her and diagnosed right shoulder syndrome and neuropathy “caused by repetitive trauma in her job at the [employing establishment].” By decision dated November 12, 2002, the Office denied modification of the prior merit decision.

Appellant, through her representative, again requested reconsideration on December 10, 2002. She submitted an addendum to her July 31, 2002 report from Dr. Burmeister dated November 22, 2002. He noted that appellant had right shoulder and arm pain since her 1992 injury. Dr. Burmeister stated: “Continuation of pain has increased which has caused her to leave work starting January 8, 2001. To the best of my knowledge, appellant is still not working.” By decision dated February 19, 2003, the Office denied modification of its prior merit decision.

### **LEGAL PRECEDENT**

Where 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 establishes that the employee 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 to 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 job requirements.<sup>2</sup>

### **ANALYSIS**

In this case, appellant resumed full-time limited-duty employment following her employment injury. There is no evidence in the record establishing any change in the nature and extent of her light-duty position as a cause of her claimed disability from January 8 to April 9, 2001.<sup>3</sup>

Appellant further has not established that she was unable to perform her limited-duty assignment due to a recurrence of her employment-related condition. In support of her claim, she submitted form reports dated January 12 and 23, February 23 and March 13, 2001 from Dr. Burmeister, who diagnosed, in various reports, right shoulder and arm pain post surgery and a right rotator cuff tear post surgery. He checked “yes” that the condition was caused or aggravated by factors of appellant’s federal employment and found that she was disabled from work from January to April 2001. The Board has held, however, that, when a physician’s opinion on causal relationship consists only of

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<sup>1</sup> The Office accepted that appellant sustained a recurrence of disability beginning August 29, 2002.

<sup>2</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>3</sup> At the hearing, appellant noted that she was performing additional work duties, but attributed the development of her condition to being off medication for three months.

checking “yes” to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.<sup>4</sup>

In a note dated January 30, 2001, Dr. Burmeister found that appellant was disabled from work “until further notice.” However, he did not address the cause of her condition. Medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of diminished probative value on the issue of causal relationship.<sup>5</sup>

In a report dated February 14, 2001, Dr. Burmeister opined that appellant was disabled from work as a result of inflammation causing pain and loss of motion due to a reoccurrence of her right shoulder injury. He, however, did not provide any rationale for his opinion by explaining how, with reference to the specific facts of this case, appellant’s right shoulder injury caused any current disability from employment. To be of probative value, the opinion of a physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.<sup>6</sup>

In a report dated July 31, 2002, Dr. Burmeister diagnosed right shoulder syndrome and neuropathy due to factors of appellant’s federal employment. In an addendum dated November 22, 2002, he opined that her right shoulder and arm pain since her 1992 injury “caused her to leave work starting January 8, 2001.” However, Dr. Burmeister provide no rationale explaining how appellant’s right arm and shoulder condition worsened such that she was unable to perform her limited-duty employment beginning January 8, 2001. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet appellant’s burden of proof.<sup>7</sup>

The remaining evidence of record does not support appellant’s claim for a recurrence of disability beginning January 9, 2001. In a report dated February 14, 2001, Dr. DiBenedetto, who examined appellant at the request of Dr. Burmeister, opined that she had radicular pain and pain in her trapezius. He diagnosed possible fibromyalgia or cervical radiculopathy. In a report dated March 16, 2001, Dr. DiBenedetto informed the Office that appellant’s current condition was “not a sequela, consequence or aggravation” of the accepted condition of right shoulder impingement syndrome. In a report dated March 22, 2001, Dr. DiBenedetto opined that appellant’s limited-duty employment did not aggravate her shoulder.

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<sup>4</sup> *Lee R. Haywood*, 48 ECAB 145 (1996).

<sup>5</sup> *Linda I. Sprague*, 48 ECAB 386 (1997).

<sup>6</sup> *Gloria J. McPherson*, 51 ECAB 441 (2000).

<sup>7</sup> *Judith J. Montage*, 48 ECAB 292 (1997).

The record further contains evidence from Dr. Salem, who performed a second opinion evaluation. He diagnosed adhesive capsulitis which he attributed to “nonuse and poor motivation.” Dr. Salem found that appellant was currently able to perform her employment.<sup>8</sup> Appellant also submitted a report dated April 19, 2001 from Dr. Fenlin and a report dated October 30, 2001 from Dr. Fried. However, neither Dr. Fenlin nor Dr. Fried address the pertinent issue in the present case, which is whether appellant sustained a recurrence of disability from January 8 to April 9, 2001, due to her accepted employment injury. Therefore, these reports are insufficient to meet appellant’s burden of proof.

**CONCLUSION**

The Board finds that appellant has not established that she sustained a recurrence of disability from January 8 to April 9, 2001 causally related to her employment-related right shoulder condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers’ Compensation Programs dated February 19, 2003 and November 12, 2002 are affirmed.

Issued: January 23, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>8</sup> Dr. Salem addressed the issue posed to him by the Office, which was whether appellant’s current condition was due to her employment injury and whether she could currently perform her work duties. At the time of his report, appellant had resumed employment. Dr. Salem did not specifically address whether appellant sustained a recurrence of disability from January 8 to April 9, 2001.