

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

BRENDA K. McLAREN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
West Frankfort, Il, Employer**

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**Docket No. 04-765
Issued: June 17, 2004**

Appearances:
Brenda K. McLaren, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On January 28, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated January 31 and November 13, 2003, finding that she failed to establish a recurrence of disability on or after October 4, 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 met her burden of proof in establishing a recurrence of disability on or after October 4, 2002 causally related to her February 19, 2002 employment injury.

FACTUAL HISTORY

On February 20, 2002 appellant, then a 40-year-old letter carrier, filed a notice of traumatic injury alleging that she developed pain in her neck and shoulders on February 19, 2002 due to carrying an unusually heavy mail volume following a holiday. Appellant stopped work

February 20, 2002 and returned on February 21, 2002. Appellant submitted medical evidence in support of her claim.

Appellant filed a notice of recurrence of disability on October 29, 2002 alleging on October 4, 2002 she sustained a recurrence of disability due to her February 19, 2002 employment injury. Appellant stated that, following her February 19, 2002 employment injury, she returned to full-duty work on March 1, 2002 with a little soreness which she managed with over-the-counter medication. However, appellant stated that after carrying circulars on September 27 and 28, 2002 her shoulder, neck and low back began hurting. Appellant again treated her symptoms with over-the-counter medications, but by October 4, 2002 she was unable to lift her arm due to pain in her neck and shoulder. Appellant consulted with a nurse on October 4, 2002 but did not seek medical treatment until October 28, 2002.

In a letter dated November 20, 2002, the Office requested additional factual and medical evidence in support of appellant's claim for recurrence of disability. The Office formally accepted that appellant's February 19, 2002 employment incident resulted in right cervical strain on November 20, 2002. By decision dated January 31, 2003, the Office denied appellant's claimed recurrence of disability on October 4, 2002 finding that the medical evidence did not establish a causal relationship between appellant's current condition and her accepted February 19, 2002 employment injury.

Appellant requested an oral hearing on February 4, 2003. She testified at the oral hearing on August 20, 2003 and submitted additional medical evidence. By decision dated November 13, 2003, the hearing representative affirmed the Office's January 31, 2003 decision finding that appellant's additional employment duties constituted a new employment exposure.¹

LEGAL PRECEDENT

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 October 4, 2002 and her February 19, 2002 employment injury.² 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.³

ANALYSIS

The Office accepted that appellant sustained a right cervical strain as a result of her employment duties on February 19, 2002. Appellant submitted a report dated February 20, 2002 from Dr. Samantha Sattler, a Board-certified family practitioner, diagnosing right-sided cervical

¹ Following the November 13, 2003 decision, appellant submitted additional new evidence. As the Office did not review this evidence in reaching a final decision, the Board will not consider this evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

³ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

strain and stating that the injury was job related. Dr. Jeffrey D. Parks, a Board-certified family practitioner, completed a form report on February 20, 2002 and diagnosed right cervical strain due to appellant's employment activities on February 19, 2002. On February 27, 2002 Dr. Sattler found that appellant's cervical strain was resolved, but that she had developed a further condition of right rhomboid strain due to additional work exposures of placing letters into slots while on light-duty work.

In support of her claim for recurrence of disability due to the accepted right cervical strain arising on or after October 4, 2002, appellant submitted a nurse's note dated October 29, 2002. Appellant also submitted a physical therapy note dated November 19, 2002. As neither a nurse nor a physical therapist is a physician for the purposes of the Federal Employees' Compensation Act, these reports are not medical evidence and cannot establish appellant's claim for a recurrence of disability on October 4, 2002 causally related to her accepted February 19, 2002 employment injury of right cervical strain.⁴

Appellant also submitted medical reports from Dr. Parks beginning November 5, 2002, diagnosing cervical strain and right shoulder sprain.⁵ In a narrative report dated February 11, 2003, Dr. Parks stated that appellant had reported upper back and shoulder pain due to work activities. He diagnosed chronic and recurrent cervical and trapezius strain of her shoulders bilaterally. Dr. Parks disagreed with Dr. Sattler's assessment that appellant sustained an additional right shoulder injury after February 19, 2002 and concluded that appellant's various conditions were related. Dr. Parks completed a report on July 25, 2003 and reviewed appellant's history of treatment. He noted that, following the February 19, 2002 employment injury, he released appellant to full duty on February 27, 2002. Dr. Parks stated that he did not treat appellant for her cervical strain again until October 28, 2002. He noted that appellant sought treatment on October 28, November 5 and 19, 2002, as well as January 17, 2003, for the symptom of shoulder pain. Dr. Parks diagnosed chronic and recurrent cervical strain and right trapezius strain. He opined that all of appellant's treatment was due to the February 19, 2002 employment injury. Dr. Parks stated: "I believe that the waxing and waning course of this illness is as expected for this type of injury."

Appellant attributed her initial injury on February 19, 2002 to carrying a heavy mail load on that date due to extra mail volume following a holiday. In regard to her alleged recurrence of disability on or after October 4, 2002, appellant asserted that on September 27 and 28, 2002 she carried and delivered circulars to each of the customers on her route. She believed that this heavy mail load due to the extra weight of circulars resulted in her condition and disability for work. Dr. Parks did not address appellant's contentions in his treatment notes or narrative reports. Therefore, his medical reports are not based on a proper factual background. As Dr. Parks' reports are not based on an accurate history of injury, his reports lack the necessary

⁴ 5 U.S.C. §§ 8101-8193, 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 (2000) (a physical therapist is not a physician under the Act); *Vicky L. Hannis*, 48 ECAB 538, 540 (1997) (a nurse is not a physician under the Act).

⁵ Appellant also submitted medical documentation addressing a separate coccyxgeal injury.

probative value to establish appellant's claim for a recurrence of disability on or after October 4, 2002.⁶

CONCLUSION

The Board finds that the medical evidence submitted by appellant is not based on a proper factual background as it does not consider the intervening injury of an unusually heavy mail volume on September 27 and 28, 2002, which appellant alleged caused or contributed to her current condition and disability. Appellant has not established that she sustained a recurrence of disability on or after October 4, 2002 causally related to her February 19, 2002 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 13 and January 31, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 17, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ As noted by the hearing representative in the November 13, 2003 decision, the Office's regulation 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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness." Appellant has attributed her condition after October 4, 2002 to carrying extra weight due to an unusually heavy mail load on September 27 and 28, 2002. This may constitute a new injury.