

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

ELAINE B. SPANN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Richmond, VA, Employer**

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**Docket No. 05-78
Issued: June 2, 2005**

Appearances:
Elaine B. Spann, 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 October 5, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 7, 2004, which found that the evidence was insufficient to warrant modification of a prior decision pertaining to a recurrence of disability causally related to her accepted employment injury. 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 on appeal is whether appellant met her burden of proof to establish that she sustained a recurrence of disability causally related to her accepted employment injury.

FACTUAL HISTORY

On March 18, 1998 appellant, then a 36-year-old letter carrier, filed an occupational disease claim alleging that she sustained thoracic outlet syndrome in the performance of duty for

which she first became aware on December 17, 1997.¹ Appellant did not stop work. However, she returned to work with restrictions on carrying a bag on the right shoulder and lifting over 10 pounds on the right. On July 7, 1998 the Office accepted appellant's claim for right thoracic outlet syndrome. The Office developed appellant's claim and paid appropriate compensation.

In a January 10, 2001 report, Dr. Ross Bullock, a neurosurgeon, advised that appellant was carrying mailbags on her right shoulder for many years and began to develop pain in the region of the right shoulder, brought on by the heavy mailbags. He noted that in 1997 appellant stopped carrying the bags on her right shoulder, which helped alleviate the pain. Dr. Bullock indicated that appellant related that the pain and problems recurred again in the last few months, with predominant pain centered over the supraspinatus region in the right scapular and trapezius. He noted that appellant's examination was normal with the exception of grip strength on the right hand. Dr. Bullock also indicated that appellant had a negative Adson's test, and bracing in the military position with shoulders in adduction, which did not produce changes in pulse, and normal reflexes in both upper extremities. He also noted that appellant had marked tenderness over the supraspinatus tendon over the scapular, with marked crepitus and "clunking" on her shoulder, especially in external rotation and abduction, with tenderness anteriorly over the anterior hood of the rotator cuff. Dr. Bullock indicated that the diagnostic reports showed no abnormality of the cervical spine or brachial plexus and although there was some prominence of the transverse processes of the C7 cervical vertebra, they did not seem to impinge on the plexus per the magnetic resonance imaging (MRI) scan. He opined that although the electromyogram (EMG) showed "some abnormality of the medial cord of the brachial plexus" he did not feel that appellant's signs were consistent with thoracic outlet syndrome. Dr. Bullock further opined that there did appear to be concrete evidence of shoulder pathology.

The record reflects that appellant filed a notice of recurrence of disability (Form CA-2a) on March 20, 2002 alleging that she had throbbing pain in the neck and shoulder when casing mail and extending her right arm out of the window for delivery of mail. Appellant did not indicate when the recurrence began but alleged that it arose from the originally accepted injury. She also indicated that, after returning to work, she was limited in that she could do no reaching above the shoulder and no carrying the mailbag over her shoulder. Appellant also filed a CA-7 on June 21, 2002 for periods of disability from October 18, 1999 to February 15, 2001. By letter dated March 12, 2003, the Office paid appellant compensation for 63.48 hours during the period from October 18, 1999 to February 23, 2001. The record reflects that the Office also paid appellant compensation for the dates of January 22, 23, 25, February 23, October 10 and December 15, 2000. Appellant subsequently filed a second Form CA-2a on June 6, 2003 alleging that she was requesting medical treatment for thoracic outlet syndrome. She indicated that her condition had not changed, and that medication only calmed the symptoms temporarily. Appellant did not indicate when the recurrence began; however, she alleged that it was ongoing and arose from the originally accepted injury. She repeated that she was limited following her injury in that she could do no reaching and no carrying of her mailbag over the shoulder. The employing establishment controverted the claim.

¹ The record also reflects that appellant has a separate claim for an April 5, 1999 injury to the left leg, which recently came before the Board. The Board issued an Order Remanding Case in appeal, Docket No. 05-79 on April 6, 2005.

In a letter dated July 1, 2003, the Office advised appellant of the additional factual and medical information needed to establish her claim. Appellant was allotted 30 days to submit the requested evidence.

In an August 27, 2003 decision, the Office denied appellant's claim on the grounds that the factual and medical evidence was insufficient to establish that she sustained a recurrence of disability causally related to the accepted employment injury.

By letter dated August 29, 2003, appellant provided additional evidence in support of her claim. Appellant alleged that she had been dealing with her pain since 1993. In a January 23, 2001 report, Dr. R.S. Kirchner, a Board-certified orthopedic surgeon, noted appellant's history of injury and treatment and diagnosed right arm and shoulder pain, "etiology not cervical spine, possible thoracic outlet syndrome, given EMG results." Appellant also submitted a January 22, 2001 report, which Dr. William R. Beach, a Board-certified orthopedic surgeon, noted appellant's history of injury and treatment and determined that "after a brief review of the medical record this certainly appears to be like thoracic outlet syndrome." He indicated that he checked Adson's test but did not notice any change in her pulse, although he thought it might be neurogenic. In addition, appellant provided an August 6, 2003 report from Dr. Bullock, in which he related that appellant was previously labeled with right thoracic outlet syndrome, and was seen by two orthopedic surgeons who were "unimpressed with the possibility of right rotator cuff problems." He noted that appellant complained of radiated pain into the arm, and advised that she was scheduled for a repeat nerve conduction study and MRI scan.

In a February 24, 2004 report, Dr. Phillip O'Donnell, Board-certified in internal medicine, advised that he conducted an EMG which he thought suggested right thoracic outlet syndrome, and that an MRI scan of the cervical spine and brachioplexus looked like the lower cord of the brachioplexus was being compressed by soft tissue in the thoracic outlet. On April 6, 2004 appellant requested reconsideration.

By decision dated July 7, 2004, the Office found that the evidence submitted in support of the application for reconsideration was insufficient to warrant modification of the prior decision dated August 27, 2003.²

LEGAL PRECEDENT

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 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 substantive evidence, a recurrence of total

² On appeal to the Board, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

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 light-duty job requirements.³

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.⁴ This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁵ The physician's opinion must be based on a complete factual and medical background of the claimant, 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 the claimant.⁶

ANALYSIS

In this case, the Office accepted that appellant sustained thoracic outlet syndrome in the performance of duty on December 17, 1997. Appellant filed a notice of recurrence of disability on March 20, 2002 and June 6, 2003 requesting medical treatment for her thoracic outlet syndrome. She did not allege a specific date for her recurrence of disability but rather, alleged that it arose from the originally accepted injury. By letter dated July 1, 2003, the Office advised appellant of the evidence needed to establish her claim. Appellant, however, did not submit any reasoned medical evidence to establish that her present condition was causally related to her accepted injury. For example, she did not submit a medical report in which her treating physician explained why her continuing condition or disability would be related to the accepted injury. The Board also notes that there is no evidence showing a change in the nature and extent of the light duty job requirements.

Appellant submitted a January 10, 2001 report from Dr. Bullock, who noted that appellant's pain and problems, recurred again in the last few months and opined that "he did not feel that appellant's signs were consistent with thoracic outlet syndrome." This report, however, is of limited probative value on the point at issue as it does not contain an opinion on causal relationship.⁷ Furthermore, this report does not lend any support for appellant's contention that her recurrence was related to her accepted condition of thoracic outlet syndrome, as he indicated that he did not feel that her symptoms were consistent with thoracic outlet syndrome and thus is insufficient to support appellant's burden of proof.

³ *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986). See 20 C.F.R. § 10.5(x), (y) (defines the terms "recurrence of disability" and "recurrence of medical condition").

⁴ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

⁵ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

⁶ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

⁷ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

Other medical evidence submitted by appellant also did not offer a specific opinion on causal relationship. These reports were therefore insufficient to meet appellant's burden of proof.

In the instant case, none of the medical reports submitted by appellant contained a rationalized opinion to explain why appellant could no longer perform the duties of her light-duty position and why any such disability or continuing condition would be due to the accepted condition. As appellant has not submitted any medical evidence establishing that she sustained a recurrence of disability due to her accepted employment injury, she has not met her burden of proof.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability causally related to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 2, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member