

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

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**SULAN F. PEEBLES, Appellant** )

**and** )

**DEPARTMENT OF HOMELAND SECURITY, )  
DEPARTMENT OF IMMIGRATION & )  
CUSTOMS ENFORCEMENT, Washington, DC, )  
Employer** )

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**Docket No. 05-747  
Issued: June 21, 2005**

*Appearances:*  
*Sulan F. Peebles, 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  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On February 14, 2005 appellant filed a timely appeal from the Office's February 1, 2005 merit decision, denying her claim for a recurrence of disability. 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 sustained a recurrence of disability on or about July 16, 2004 causally related to her April 23, 1998 employment injury.

**FACTUAL HISTORY**

Appellant, a 41-year-old special agent, filed a timely claim alleging that she sustained injuries to her neck, shoulders, right lower leg, hands and back on April 23, 1998 as a result of a work-related automobile accident. On May 14, 1998 her claim was accepted for back sprain and knee contusion.

On October 5, 2004 appellant filed a claim for a recurrence of disability alleging that she had experienced chronic back pain since her accepted 1998 injury, but that it became more severe on or about July 16, 2004. She felt sharp pains in her lower back, neck and shoulders every time she rose from a seated position.

Documents submitted in conjunction with appellant's claim included a copy of a CA-1 form dated July 3, 2001, reflecting a knee injury that occurred during a work-related drill and physical therapy notes dated July 16, 2004.

By letter dated November 9, 2004, the Office advised appellant that the evidence submitted was insufficient to establish her claim and requested additional information, including a diagnosis and a rationalized medical opinion regarding the causal relationship between her current condition and the original injury.

In response to the Office's request, appellant submitted an x-ray report dated October 19, 2004, which revealed narrowing of the cervical spine at C4-5 and C5-6, as well as narrowing of the lumbar spine at L4-5 and L5-S1 with arthritic changes. She also submitted a medical report dated October 19, 2004, signed by Dr. Talaat F. Maximus, a treating physician, who listed impressions of cervical disc disease; cervical radiculopathy; right shoulder bursitis; lumbar disc disease; and right lumbar radiculopathy. Causal relationship was not addressed.

Appellant submitted a variety of documents related to previous injuries, including a traumatic injury claim dated June 23, 1991, alleging whiplash to the neck and head as a result of a work-related automobile accident; emergency room report dated April 23, 1998; medical reports dated April 26, May 1 and 19, 1998; an x-ray report dated April 23, 1998; and a traumatic injury claim dated August 31, 1992, alleging that she suffered whiplash in an automobile accident.

Appellant provided unsigned physical therapy progress notes dated October 22, 2004, reflecting treatment for cervical, dorsal and lumbar strain and notes dated November 11, 2004 signed by Anne N. Swope, a physical therapist, reflecting treatment for an ankle injury.

By letter dated December 21, 2004, the employing establishment noted that appellant had not complained to her immediate supervisor that her injuries had resulted in difficulties in the performance of her duties.

In a statement dated December 25, 2004, appellant alleged that she had experienced chronic back pain since the April 23, 1998 injury, but continued with her regular duties as an active street agent. She contended that after July 16, 2004, when she transferred to Washington, D.C., her duties were sedentary but the pain became more severe. Appellant noted that she experienced severe pain in her lower back and sharp pains in her neck and shoulders when getting up from her desk. She reported that she injured her knee on January 1, 2001 after running her sixth marathon in 13 months; that she sustained a work-related right knee injury on July 3, 2001; and that on February 27, 2004 she sought treatment for injuries to her ankle and foot sustained as a result of running four miles daily to and from work. Appellant stated her belief that her current condition was a recurrence of her 1998 injury because the pain in her back, neck and shoulders is "the same" as that sustained from the 1998 work-related injury.

In a physical therapy referral dated January 13, 2005, Dr. Rafik D. Muawwad, a Board-certified orthopedic surgeon, provided a diagnosis of cervical and lumbar strain. In a report dated January 13, 2005, entitled "Orthopedic Consultation Report for Conditions Caused by Work Injury of July 16, 2004," Dr. Muawwad stated that appellant had had no acute injury recently and opined that her symptoms were "most likely" due to a "reoccurrence of her chronic cervical and lower back and lumbar problems related to her work accident in the past." Having reviewed a report of a magnetic resonance imaging (MRI) scan given to him by appellant, he stated that she had "some findings on her MRI scan consistent with the previous injury."<sup>1</sup> Dr. Muawwad indicated that an MRI scan of the cervical spine revealed a large disc protrusion at the C5-6 level; no evidence of cord compression; and mild degenerative changes at the C4-5 level. He stated that an MRI scan of the lumbar spine revealed mild bulging and degenerative changes at L4-5 and L3-4 level; no cord compression; and no other root abnormalities. Dr. Muawwad also reported that appellant's symptoms were "not very severe" and were not progressively becoming worse.

By decision dated February 1, 2005, the Office denied appellant's claim on the grounds that the evidence submitted did not establish that her claimed disability on or about July 16, 2004 was due to the accepted work injury.<sup>2</sup>

### **LEGAL PRECEDENT**

A claimant seeking compensation under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.<sup>4</sup> In this case, appellant has the burden of establishing that she sustained a recurrence of a disability on April 16, 2004 causally related to her July 8, 2002 employment injury.

The Act's implementing regulations define 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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."<sup>5</sup>

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from

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<sup>1</sup> The date of the MRI scan report was not provided.

<sup>2</sup> The Board notes that appellant submitted additional evidence after the Office issued its February 1, 2005 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Therefore, the newly submitted evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joan R. Donovan*, 54 ECAB \_\_\_\_ (Docket No. 03-297, issued June 13, 2003).

<sup>5</sup> 20 C.F.R. § 10.5(x) (2003).

a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.<sup>6</sup>

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.<sup>7</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>8</sup> An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>9</sup>

In order to establish that her claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between her present condition and the accepted injury must support the physician's conclusion of a causal relationship.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on or about July 16, 2004 causally related to her April 23, 1998 employment injury.

The Office accepted that appellant sustained a back sprain and knee contusion on April 23, 1998. She did not miss time from work as a result of her accepted injury. In order to establish her recurrence of disability claim, appellant has the burden of proving that she sustained disability for work after she returned to work, caused by a spontaneous change in a medical condition which resulted from her previously accepted injury, without an intervening injury or new exposure to the work environment that caused the injury.<sup>11</sup> The evidence of record does not provide sufficient facts or rationalized medical opinion to support her claim.

First, appellant's factual allegations do not qualify as a recurrence of disability under the regulations. She asserted that upon her transfer to Washington, D.C. her job duties were sedentary but that her pain became more severe. Appellant's allegations attributes her current condition as caused by "a new exposure to the work environment," not "a spontaneous change in

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<sup>6</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>7</sup> *See Joan R. Donovan*, *supra* note 4; *see also John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

<sup>8</sup> *Mary A. Ceglia*, 55 ECAB \_\_\_\_ (Docket No. 04-113, issued July 22, 2004).

<sup>9</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>10</sup> *Mary A. Ceglia*, *supra* note 8.

<sup>11</sup> 20 C.F.R. § 10.5(x) (2003).

medical condition.”<sup>12</sup> She has not specifically addressed her sedentary duties or how such work activities related in more severe pain.<sup>13</sup>

Appellant submitted a statement dated December 25, 2004, in which she reported her belief that her current condition was a recurrence of her 1998 injury because the pain in her back, neck and shoulders was “the same” as that experienced following the 1998 work-related injury. However, neither the fact that she experienced increased pain nor her inference that her current condition was causally related to her accepted 1998 injury is sufficient to warrant an award of compensation.<sup>14</sup> An award of compensation cannot be predicated merely upon a claimant’s belief of causal relationship.<sup>15</sup> It is her burden of proof to submit the necessary medical evidence to establish a claim for a recurrence.

The medical evidence of record included reports and other documents relating to previous injuries sustained by appellant; various physical therapy progress notes; an x-ray report dated October 19, 2004; a report from Dr. Maximus dated October 19, 2004; and a January 13, 2005 report from Dr. Muawwad. The record does not contain a medical report providing a reasoned medical opinion experiencing how appellant sustained a recurrence of disability on or about July 16, 2004 causally related to the April 23, 1998 employment injury. Dr. Maximus provided impressions of cervical disc disease; cervical radiculopathy; right shoulder bursitis; lumbar disc disease; and right lumbar radiculopathy. However, his report lacks probative value in that it failed to address the causal relationship between appellant’s current condition and the accepted injury.<sup>16</sup> The only medical evidence of record containing an opinion as to the cause of appellant’s current condition is found in Dr. Muawwad’s January 13, 2005 report. He observed that appellant had not sustained any recent acute injury and opined that appellant’s symptoms were “most likely” due to a “reoccurrence of her chronic cervical and lower back and lumbar problems related to her work accident in the past.” However, he provided no information whatsoever connecting appellant’s current condition to her injury of April 23, 1998 or explaining why her condition became symptomatic after five years. Nor does his report reflect that it was based on a complete factual and medical background. Dr. Muawwad did not address the other injuries sustained as a result of appellant’s marathon running or the impact that such activity may have on her current condition. Moreover, his opinion is speculative and equivocal in nature and, thus, insufficient to discharge her burden of proof.<sup>17</sup> Dr. Muawwad has provided only conjectural opinion and insufficient factual information to substantiate a causal relationship between appellant’s current condition and the 1998 injury. Therefore, his opinion is of diminished probative value.

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<sup>12</sup> See 20 C.F.R. § 10.5(x) (2003).

<sup>13</sup> Neither the fact that a condition becomes apparent during a period of employment nor the belief of a claimant that a condition was caused by the employment is sufficient to establish causal relation. See *Donald E. Ewals*, 51 ECAB 428 (2000).

<sup>14</sup> See *Dennis M. Mascarenas*, *supra* note 9.

<sup>15</sup> *Id.*

<sup>16</sup> *Mary A. Ceglia*, *supra* note 8.

<sup>17</sup> See *John D. Jackson*, 55 ECAB \_\_\_\_ (Docket No. 03-2281, issued April 8, 2004); see also *Wendall E. Harrell*, 49 ECAB 289 (1998).

In *Joan R. Donovan*,<sup>18</sup> a 38-year-old letter carrier filed a claim for a recurrence of a condition causally related to an employment injury. The Office had accepted the claim for contusions of the left leg and knee. Claimant received compensation for temporary total disability for approximately six months. Eight months after returning to work, she filed a claim asserting a recurrence of her condition. As in the instant case, the employee explained that her symptoms were “the same as before.” However, medical reports reflected treatment for back pain and severe headaches. The Board found that she had not met her burden of proof in that she failed to submit evidence establishing a causal relationship between the newly diagnosed condition and the original injury. In this case, as in *Donovan*, appellant has not met her burden of proof. She has failed to produce any rationalized medical opinion evidence explaining how her present condition is pathophysiologically related to the April 23, 1998 employment injury.

The Board accordingly finds that appellant did not meet her burden of proof and the Office properly denied the claim.

### **CONCLUSION**

The Board finds that appellant failed to establish that she sustained a recurrence on July 16, 2004 related to her accepted April 23, 1998 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers’ Compensation Programs dated February 1, 2005 is affirmed.

Issued: June 21, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>18</sup> See *Joan R. Donovan*, *supra* note 4.