



of mail. On October 10, 2003 Dr. Dianne Munson, a Board-certified internist, released appellant to return to restricted duty effective October 14, 2003. On October 23, 2003 she released appellant to return to full duty effective October 29, 2003. In a report also dated October 23, 2003, Dr. George B. McManama, a Board-certified orthopedic surgeon and a fitness-for-duty physician, diagnosed a right upper rhomboid strain related to appellant's work duties, but noted that appellant's condition was resolving and that she was able to work eight hours per day with a lifting restriction.

On October 18, 2006 appellant filed a recurrence of disability claim. She stated that the recurrence of disability occurred on September 18, 2006 and she stopped work on September 21, 2006. Appellant attributed her claimed recurrence of disability to reaching overhead, grasping, pulling and lifting heavy items and performing repetitive motion activities, all of which she stated aggravated her condition. She returned to work on October 18, 2006, having used sick leave during her absence.

In support of her recurrence of disability claim, appellant submitted absence authorization notes from Dr. Thomas J. Schulte, a chiropractor. On September 20, 2006 Dr. Schulte stated that appellant should be excused from work until September 24, 2006. On September 25, 2006 he extended appellant's absence until September 25, 2006. Appellant also provided an October 3, 2006 form report from Dr. John B. Wilson, a Board-certified neurologist, stating that appellant would be unable to work from October 3 to 17, 2006.

In a September 26, 2006 report, Dr. Wilson explained that appellant had initially sustained an injury three years earlier, at work, while lifting a bag of mail. He noted that her symptoms had subsequently improved, but that 12 days earlier, while at the gym, she had noticed "pain recurring in the same region." Dr. Wilson stated that appellant was off work for 45 days and sought chiropractic treatment due to her persistent symptoms. He explained that appellant's recurrent pain was gradual in onset but eventually began to acquire radicular symptoms. Dr. Wilson noted that appellant's radicular symptoms consisted of pins and needles sensation in the first, second, third and sometimes fourth fingers of her right hand. Upon examination, he found tenderness in the cervicothoracic paraspinal muscles but no pain on palpation and no underlying bony abnormalities. Dr. Wilson diagnosed cervicothoracic and scapular pain with radicular symptoms in the right upper extremity, "due to a work-related injury when [appellant] lifted a very heavy bag of mail." He reiterated his findings in an October 3, 2006 report, diagnosing large disc protrusions at C5-6 and C6-7 and a small disc protrusion at T10-11. Dr. Wilson attributed appellant's continuing pain and symptoms to her initial work-related lifting injury.

On October 17, 2006 Dr. Wilson reported that appellant presented for "a reevaluation of cervical and thoracic paraspinal sprain/strain that occurred while at work while lifting a heavy bag of mail." He conducted a physical examination and determined that appellant had several large herniated discs at multiple levels of the cervical spine as well as a smaller disc protrusion at the T10-11 level of the thoracic spine. Dr. Wilson diagnosed persistent cervicothoracic pain due to musculoskeletal sprain/strain. He found no evidence of radiculopathy or myelopathy. Dr. Wilson concluded that appellant was able to perform full-duty work but recommended that she avoid heavy lifting if possible. Appellant also submitted cervical and thoracic magnetic

resonance imaging scan reports from Dr. Wilson, diagnosing large disc herniations at C5-6 and C6-7 and a small disc protrusion at T10-11.

By decision dated February 2, 2007, the Office accepted appellant's claim for neck strain and brachial neuritis or radiculitis. On the same day, it advised appellant that, if claiming lost time from work for her recurrence of September 18, 2006, she should file a claim form and submit supporting medical evidence.

On February 6, 2007 the Office transferred appellant's case file to the district Office in Jacksonville, Florida, because she had moved to Florida.

On March 3, 2007 appellant filed a claim for compensation for leave buyback between September 21 and October 17, 2006. The employing establishment clarified that appellant wished to buy back 144 hours of sick leave and 8 hours of holiday leave taken from September 21 to October 17, 2006.

By correspondence dated April 10, 2007, the Office requested additional information supporting disability, concerning appellant's claim for leave buyback between September 21 and October 17, 2006.

In an April 18, 2007 note, Dr. Schulte verified that he treated appellant with adjustments and manipulations of spinal subluxations, which were demonstrated by a September 21, 2006 x-ray scan. He indicated that appellant's malpositions or subluxations were "predominantly" related to the T1, C6, T2, T3 and T5 levels of appellant's cervical and thoracic spines. Appellant also submitted an October 2, 2006 thoracic x-ray read on September 21, 2006 by Dr. Richard A. Leverone, a chiropractor, diagnosing compression deformity of the bodies of T1 and T12, minimal to mild spondylosis in the lower thoracic spine and upper visualized lumbar segments and hyperkyphosis of the lower thoracic spine.

By decision dated August 24, 2007, the Office denied appellant's claim for compensation for the period September 21 to October 17, 2006. It denied her claim on the grounds that her symptoms recurred while she was exercising at the gym and thus was not work related. The Office based its decision on Dr. Wilson's September 26, 2006 report.

### **LEGAL PRECEDENT**

Section 10.5(x) of the Office's regulations provides, in pertinent part:

"Recurrence of disability means 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."<sup>1</sup>

An individual 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

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<sup>1</sup> 20 C.F.R. § 10.5(x) (2002).

probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>2</sup> 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 the employment injury and supports that conclusion with sound medical reasoning.<sup>3</sup> An award of compensation may not be made on the basis of surmise, conjecture or speculation or on an appellant's unsupported belief of causal relation.<sup>4</sup>

### ANALYSIS

The Office accepted appellant's claim for neck strain and brachial neuritis or radiculitis. Appellant claimed that she sustained a recurrence of disability on September 18, 2006. The Office instructed her to submit supporting medical documentation establishing a causal relationship between her employment-related condition and her subsequent claimed disability for work between September 18 and October 18, 2006.

In support of her recurrence of disability claim, appellant submitted a September 26, 2006 report from Dr. Wilson, who explained that appellant had initially sustained an injury three years earlier while at work and opined that her present cervicothoracic and scapular pain with radicular symptoms was related to a prior work-related injury in which she lifted a heavy bag of mail. However, Dr. Wilson did not provide sufficient explanation or rationale to support his conclusion that appellant's claimed disability was due to the 2003 employment injury. For example, he did not explain the medical reasons the claimed disability beginning September 18, 2006 was caused by a spontaneous change in her accepted neck strain and brachial neuritis.<sup>5</sup> Similarly, Dr. Wilson's October 3 and 17, 2006 reports, which indicated that appellant's symptoms were due to her employment injury, also did not provide medical rationale explaining the reasons why appellant's disability was causally related to her accepted employment injury.<sup>6</sup>

Reports from appellant's chiropractor, Dr. Schulte, supporting disability and finding spinal subluxations based on x-ray are insufficient to establish appellant's claim as Dr. Schulte does not specifically support that any disability for the claimed period is causally related to the 2003 employment injury. While the October 2, 2006 report of Dr. Leverone, a chiropractor, notes spinal alignment abnormalities on x-ray testing, he does not diagnose a spinal subluxation

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<sup>2</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

<sup>3</sup> *See Nicolea Bruso*, 33 ECAB 1138 (1982).

<sup>4</sup> *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>5</sup> The Board notes that Dr. Wilson's September 26, 2006 report stated that appellant first noticed her symptoms 12 days earlier while at the gym. The Office apparently interpreted this statement as support for a new injury. However, the record does not support such an interpretation as Dr. Wilson did not state that appellant's recurrent injury occurred at the gym or was caused by activities at the gym, but merely indicated that she first noticed her symptoms, which he characterized as gradual in onset, at the gym.

<sup>6</sup> *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

based on x-rays.<sup>7</sup> As such, Dr. Leverone is not considered a physician. In any event, his report does not address causal relationship. Other medical evidence of record does not contain a reasoned physician's opinion explaining why any disability beginning on or after September 18, 2006 was caused or aggravated by the September 12, 2003 employment injury.

The Board finds that the medical evidence is insufficient to establish that appellant's claimed recurrence of disability beginning on or after September 18, 2006 is causally related to her 2003 work injury.

### **CONCLUSION**

The Board finds that appellant has not established that she sustained a recurrence of disability.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 24, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 2, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>7</sup> The Act provides that the term "physician" includes chiropractors "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist." 5 U.S.C. § 8101(2). See also *Mary A. Ceglia*, 55 ECAB 626 (2004) (a chiropractor is not considered a physician under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist).