

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

B.E., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Poway, CA, Employer**

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**Docket No. 09-201
Issued: August 14, 2009**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 27, 2008 appellant filed a timely appeal from October 2 and March 26, 2008 decisions of the Office of Workers' Compensation Programs denying a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that she sustained a recurrence of disability from September 1 to December 26, 2007 causally related to her accepted upper extremity and cervical spine conditions.

FACTUAL HISTORY

The Office accepted that on or before June 22, 2001 appellant, then a 46-year-old clerk, sustained cervical disc displacement, aggravation of tendinitis of the right elbow and aggravation of bursitis in the right shoulder. She began light-duty work on July 6, 2001 and remained on light duty through August 30, 2007.

Dr. William E. Monk, an attending Board certified family practitioner, submitted reports from July 31 to October 9, 2001 diagnosing right shoulder bursitis, right elbow tendinitis, bilateral carpal tunnel syndrome and cervical degenerative disc disease. He limited lifting and repetitive motion. Dr. Louis Lurie, an attending Board-certified orthopedic surgeon, submitted reports from October 31, 2001 to January 18, 2002. He diagnosed neck pain and bilateral carpal tunnel syndrome. Dr. Lurie restricted lifting to eight pounds for no more than two hours a day and not above table height.

In a December 10, 2001 report, Dr. William S. Adsit, a Board-certified orthopedic surgeon and second opinion physician, opined that repetitive upper extremity motion at work aggravated cervical spondylosis and exacerbated the accepted right shoulder impingement syndrome.

On November 23, 2007 appellant claimed a recurrence of disability commencing September 1, 2007. On the reverse of the form, her supervisor noted that she had just begun a new full-duty position but asked for accommodation because she was restricted to lifting 10 pounds or less. The supervisor instructed appellant to obtain current medical restrictions from her physician. However, appellant did not return. She mailed documents to the employing establishment in November but the Office advised that her compensation claim was closed. Appellant returned to work on December 27, 2007.

In a January 2, 2008 letter, the Office advised appellant of the additional evidence needed to establish her claim, including a detailed description of her job activities before and after September 1, 2007.

In January 18 and 23, 2008 letters, the employing establishment stated that until August 30, 2007, appellant worked light duty writing notices and putting mail in the employing establishment's boxes. Appellant's duties did not require heavy lifting. As of September 1, 2007, she was in training for a full-duty position in the automation section. The night of September 1, 2007, appellant processed approximately 30,000 pieces of mail with a training partner.

In a February 15, 2008 letter, appellant stated that her duties on September 1, 2007 exacerbated the accepted conditions. She contended that a supervisor told her to leave as she could not be accommodated.¹ Severe financial difficulties prompted appellant to return to work on December 27, 2007. In a September 24, 2007 report, Dr. Pamela Jong, an attending Board-certified internist, stated that repetitive lifting of more than 10 pounds at work exacerbated appellant's chronic neck, right shoulder and right elbow pain.

By decision dated March 26, 2008, the Office denied the recurrence of disability on the grounds that the fact of injury was not established. It found that appellant did not provide evidence corroborating her job duties or medical evidence supporting a recurrence of disability.

¹ In a November 14, 2007 letter, the employing establishment advised appellant that it did not have work available within her present restrictions.

Appellant requested an oral hearing, held on August 12, 2008. At the hearing, she asserted that she bid for the automation job because her previous light-duty position, which entailed ripping covers off magazines, was eliminated. The automation position was not to require heavy lifting. However, during appellant's work shift on September 1, 2007, she lifted trays of mail weighing up to 20 pounds and pushed mail cages, worsening her neck, right arm and right hand pain. She took sick leave the following day and sought medical attention. Appellant returned to work from December 27, 2007 to March 14, 2008, then stopped work due to disciplinary action. She then received disability retirement benefits through the Office of Personnel Management (OPM).

Following the hearing, appellant submitted reports from September 2001 to 2002 diagnosing carpal tunnel syndrome and right shoulder pain. Dr. Jong treated her for degenerative cervical disc disease, bilateral carpal tunnel syndrome, right elbow and shoulder pain from March 2003 to June 2006. She noted work limitations on December 18, 2007 and prescribed wrist splints and physical therapy.

In an April 9, 2008 report, Dr. Jong noted treating appellant for carpal tunnel syndrome and degenerative joint disease of the neck and shoulder. She related appellant's account of lifting 20-pound mail trays at work on September 1, 2007, causing increased neck and right shoulder pain. Dr. Jong diagnosed an exacerbation of thoracic and right shoulder muscle spasms, cervical arthritis, and possible medial epicondylitis due to repetitive lifting and carrying at work. She opined that appellant's "right neck, shoulder, arm/elbow condition worsened as a result of duties performed on September 1, 2007 to the point that she could not perform those same duties without risking further serious injury."

By decision dated and finalized October 2, 2008, an Office hearing representative affirmed the March 26, 2008 decision. The hearing representative found that the evidence demonstrated that appellant's work activities on September 1, 2007 constituted an intervening cause, breaking the legal chain of causation from the accepted injuries.²

LEGAL PRECEDENT

The Office's implementing regulations 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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."³

When an appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician, who on the basis of a

² The hearing representative noted that the medical evidence was insufficiently rationalized to establish a new injury on September 1, 2007.

³ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician's conclusion.⁴ An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.⁵

ANALYSIS

The Office accepted that appellant sustained cervical disc displacement, aggravation of right elbow tendinitis and an aggravation of right shoulder bursitis. Appellant claimed a recurrence of total disability from September 1 to December 26, 2007 related to these injuries. She thus has the burden of providing sufficient evidence, including rationalized medical evidence, to establish the causal relationship asserted.⁶

Appellant attributed the claimed recurrence of disability to repetitive lifting and carrying at work on September 1, 2007. In her November 23, 2007 claim form, a February 15, 2008 letter, and at the August 12, 2008 hearing, she attributed an increase of neck and upper extremity pain to lifting and carrying trays of mail weighing up to 20 pounds.

The medical evidence also substantiates that work factors on September 1, 2007 constituted an intervening cause. In a September 24, 2007 report, Dr. Jong, an attending Board-certified internist, stated that repetitive lifting at work exacerbated appellant's chronic neck and upper extremity pain. In an April 9, 2008 report, she opined that "duties performed on September 1, 2007" caused increased neck and upper extremity pain and worsened the accepted conditions.⁷ The exposure to new work factors on September 1, 2007 broke the legal chain of causation stemming from the accepted upper extremity and neck injuries. The circumstances did not involve a spontaneous change in the accepted conditions.⁸ For this reason, the Office's denial of the claimed recurrence of disability was proper under the law and the facts of the case.⁹

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability from September 1 to December 26, 2007 related to her accepted upper extremity and cervical spine conditions.

⁴ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁵ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁶ *Ricky S. Storms*, *supra* note 4.

⁷ The Board's decision in this appeal does not preclude appellant from clarifying a traumatic injury on September 1, 2007.

⁸ *Bryant F. Blackmon*, 56 ECAB 752 (2005).

⁹ *Beverly A. Spencer*, 55 ECAB 501 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 2 and March 26, 2008 are affirmed.

Issued: August 14, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board