

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

L.S., Appellant	)	
	)	
and	)	Docket No. 09-914
	)	Issued: November 5, 2009
DEPARTMENT OF VETERANS AFFAIRS,	)	
VETERANS ADMINISTRATION MEDICAL	)	
CENTER, Memphis, TN, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
 ALEC J. KOROMILAS, Chief Judge  
 DAVID S. GERSON, Judge  
 JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 15, 2009 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated September 15 and November 12, 2008. Under 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 as of July 18, 2008 causally related to her accepted right shoulder condition.

**FACTUAL HISTORY**

On August 2, 2007 appellant, a 49-year-old health technician, injured her right shoulder while attempting to restrain a patient. She filed a claim for benefits on August 3, 2007, which the Office accepted the claim for right shoulder strain.

On July 31, 2008 appellant filed a Form CA-2a claim for benefits, alleging that she sustained a recurrence of disability on July 18, 2008 which was causally related to her accepted right shoulder condition.

By decision dated September 15, 2008, the Office denied the recurrence of disability claim. It found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability as of July 18, 2008 was caused or aggravated by the accepted condition.

On September 25, 2008 appellant requested reconsideration.

In a report dated August 21, 2008, Dr. Claiborne A. Christian, Board-certified in orthopedic surgery, reviewed the history of injury, stated findings on examination and noted that x-rays indicated a type II acromion injury with some acromioclavicular (AC) joint arthritis. He diagnosed right shoulder tendinitis with AC joint arthritis of the right shoulder secondary to the August 2007 work injury. Dr. Christian stated that he would administer a subacromial injection in appellant's right shoulder and schedule appellant to undergo a magnetic resonance imaging (MRI) scan. Appellant underwent an MRI scan on August 26, 2008, the results of which indicated a complete rotator cuff tear of the right shoulder, degenerative osteoarthritis at the AC joint with inferior bony protuberance and degenerative cystic changes in the humeral head.

In a September 18, 2008 report, Dr. Christian noted that the MRI scan showed a full thickness rotator cuff tear with retraction in the right shoulder. He advised that these results were consistent with appellant's history and physical examination. Dr. Christian noted that appellant had a lot of pain with some atrophy and some crepitus on motion. He advised that her shoulder could be improved through surgery though it would never revert to its normal condition. Dr. Christian stated that he discussed the potential benefits and complications with appellant.

By decision dated November 12, 2008, the Office denied modification of the September 15, 2008 Office decision.

### **LEGAL PRECEDENT**

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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 who supports that conclusion with sound medical reasoning.<sup>1</sup> A recurrence of disability is defined as the inability to work caused by a spontaneous change in a medical condition which results from a previous injury or illness without an intervening injury or new exposure in the work environment that caused the illness.<sup>2</sup>

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<sup>1</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

<sup>2</sup> *See* 20 C.F.R. § 10.5(x); *Donald T. Pippin*, 54 ECAB 631 (2003).

## ANALYSIS

Appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her condition or disability as of July 18, 2008 to her accepted right shoulder condition. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment condition. Appellant has failed to submit evidence to show that she sustained a worsening of her accepted right shoulder condition after July 18, 2008. As she did not submit medical evidence sufficient to establish that she sustained a recurrence of her work-related right shoulder condition, the Office properly denied compensation in its September 25, 2008 decision.

Appellant submitted Dr. Christian's August 21 and September 18, 2008 reports. In his August 21, 2008 report, Dr. Christian related complaints of right shoulder pain and diagnosed right shoulder tendinitis with AC joint arthritis of the right shoulder, secondary to the August 2007 work injury. He had appellant undergo an MRI scan which revealed a full thickness right rotator cuff tear of the right shoulder, degenerative osteoarthritis at the AC joint with inferior bony protuberance, and degenerative cystic changes in the humeral head. Dr. Christian noted in his September 18, 2008 report that the MRI scan results were consistent with appellant's history and physical examination. While he indicated that appellant could improve the condition of her right shoulder by undergoing surgery, it would never return to its normal state. Dr. Christian further advised that such a procedure entailed potential risks as well as benefits.

The reports from Dr. Christian, however, did not address the causal connection, if any, between appellant's employment-related right shoulder strain and her alleged recurrence of disability. Causal relationship must be established by rationalized medical opinion evidence. Dr. Christian's reports failed to provide an explanation of how appellant's right shoulder strain would cause or contribute to her claimed disability as of July 18, 2008. While his reports provided a diagnosis of appellant's current condition and noted that she complained of disabling right shoulder pain as of July 18, 2008, they did not provide a discussion of how appellant's accepted right shoulder condition would cause or contribute to the diagnosed right rotator cuff tear, arthritis and degenerative changes of the AC joint as of July 18, 2008. The Board finds that appellant failed to submit rationalized medical evidence sufficient to establish that her current condition was causally related to her July 18, 2008 employment injury.

Appellant has not submitted sufficient medical evidence supporting her claim that she sustained a recurrence of her employment-related disability as of July 18, 2008. The Office properly found that appellant was not entitled to compensation based on a recurrence of her work-related disability. The Board will affirm the September 15 and November 12, 2008 Office decisions.

## CONCLUSION

The Board finds that appellant has not met her burden to establish that she was entitled to compensation for a recurrence of disability as of July 18, 2008 causally related to her accepted right shoulder condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 12 and September 15, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: November 5, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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