



## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a recurrence of disability for the period May 30 to September 28, 2015 causally related to the accepted August 14, 2014 employment injury.

## **FACTUAL HISTORY**

On August 14, 2014 appellant, then a 54-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her left hand on that date while in the performance of duty.<sup>4</sup> She stopped work on the date of injury and returned to work on August 19, 2014.

Dr. David M. Krasner, a Board-certified family practitioner, initially treated appellant on September 2, 2014 for work-related left shoulder pain. He indicated that appellant could return to work on September 17, 2014. Dr. Krasner completed state workers' compensation forms dated September 15 and 29, 2014 and noted diagnoses of left shoulder pain, left lateral epicondylitis, and left biceps tendinitis.

On May 6, 2015 OWCP accepted appellant's claim for aggravation of C4-5 herniated discs, left shoulder rotator cuff sprain, left biceps tendinitis, left deltoid tendinitis, and left lateral epicondylitis. Appellant continued to receive medical treatment.

Appellant sought treatment with Dr. William Newell, Board-certified in physical medicine and rehabilitation. In a January 8, 2015 note, Dr. Newell related that appellant was feeling better after a cervical nerve root block, but still had pain with lifting or pushing heavy objects. He diagnosed acute cervical strain and heel pain and released appellant to light-duty work.

On January 16, 2015 appellant returned to part-time, limited-duty work.

Appellant continued to receive medical treatment from Dr. Newell. In a February 5, 2015 examination note, Dr. Newell diagnosed acute cervical strain and indicated that appellant had been working six hours per day. In notes dated March 16 to April 23, 2015, Dr. Newell indicated that appellant continued to work six hours per day and had "good and bad days" with regard to her neck pain. He diagnosed cervical strain.

In a May 14, 2015 note, Dr. Newell opined that appellant could work full duty without restrictions for the cervical spine. He diagnosed cervical strain.

Dr. Newell indicated in a May 18, 2015 note that appellant could work limited sedentary duty from May 19 to June 19, 2015 with restrictions of no use of the left arm. He continued to diagnose cervical strain. Dr. Newell also provided work restriction notes and duty status reports (Form CA-17) dated May 18 to June 12, 2015, which indicated that appellant could work with restrictions of "no use of left arm" and sedentary work up to 10 pounds occasionally from May 19 to July 5, 2015.

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<sup>4</sup> Appellant was working modified duty at the time due to a previously accepted traumatic injury claim under File No. xxxxxx793, which was accepted for a left knee and ankle injury.

On May 19, 2015 appellant again stopped work.

In a handwritten May 27, 2015 statement, appellant indicated that she was advised that the employing establishment did not have work available within her medical restrictions.

OWCP subsequently received an August 4, 2015 letter wherein OWCP notified appellant that she had been absent from work since May 19, 2015 and had failed to provide updated medical documentation. It instructed her to report back to work on her next regularly scheduled workday and to provide acceptable documentation regarding her absence.

In an August 10, 2015 work restriction note, Dr. Newell related that appellant could perform modified-duty work with restrictions of no pushing, pulling, or lifting with her left arm and lifting up to 20 pounds occasionally or 10 pounds frequently until September 24, 2015. He diagnosed cervical strain.

Appellant related in an August 11, 2015 handwritten note that she had had a conversation with her supervisor and there was no work available for her to perform.

In an August 27, 2015 examination and work restriction note, Dr. Newell indicated that he had treated appellant for complaints of neck pain and left upper extremity paresthesias. He related that an electromyography (EMG) study showed minimal abnormal findings, including mild chronic cervical radiculopathy and mild left ulnar entrapment neuropathy, consistent with mild cubital tunnel syndrome. Dr. Newell reported that appellant's symptoms seemed out of proportion to the EMG findings. He diagnosed cervical strain.

On September 2, 2015 appellant underwent a functional capacity evaluation (FCE). Dr. Newell indicated in a September 28, 2015 treatment note that appellant's FCE demonstrated good effort and he advised that appellant was capable of working full-time, light duty with restrictions of occasional lifting of 20 pounds and limited twisting and spinal rotation. He diagnosed acute cervical strain.

Appellant returned to work on September 29, 2015.

On October 21, 2015 appellant filed a claim for wage-loss compensation (Form CA-7) for the period May 30 to September 28, 2015. On the reverse side of the claim form, the employing establishment verified that appellant was in leave without pay (LWOP) status for 640 hours and returned to work on September 29, 2015.

By development letter dated November 3, 2015, OWCP informed appellant of the evidence needed to support her disability claim.<sup>5</sup>

In statements dated November 15 and 18, 2015, appellant asserted that there was no recurrence of injury, but that she was experiencing the same injury and symptoms from the accident on August 14, 2014. She explained that she experienced discomfort in her shoulder, rotator cuff, and arm and that "she never knew when it would get agitated." Appellant described that on May 18, 2015 she was collecting mail at work and when she took several packages to put

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<sup>5</sup> OWCP explained that because appellant had returned to modified-duty work on January 24, 2015 following the August 14, 2014 employment injury and thereafter stopped work on May 30, 2015, it considered her claim as a recurrence of disability.

in the postal truck she felt much more discomfort in her left shoulder and arm than usual. She noted that these were the same symptoms that she had from the first accident. Appellant clarified that she was not totally disabled from work, but was given medical restrictions which were in place for the period May 18 through September 28, 2015 that her employing establishment was unable to accommodate.

Medical evidence submitted to support her claim included a November 16, 2015 note by Dr. Newell who related that appellant continued to experience pain with lifting and was requesting work restrictions. Dr. Newell diagnosed cervical radiculopathy.

By decision dated January 26, 2016, OWCP denied appellant's claim for compensation for the period May 30 to September 28, 2015 finding that the evidence of record was insufficient to establish that her accepted conditions had objectively worsened, without intervening cause, so that she was no longer able to work limited duty. It noted that Dr. Newell's medical restrictions were due to an acute cervical strain and/or radiculopathy, which were not conditions accepted by OWCP.

On February 1, 2016 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a January 21, 2016 note, Dr. Newell indicated that appellant was working at the employing establishment and had no change in her symptoms. He diagnosed cervical radiculopathy.

On October 19, 2016 a hearing was held and appellant was represented by counsel. Appellant described that she was working modified duty and putting mail in the truck when suddenly her hand cramped. She related that her doctor changed her work restrictions to include no lifting with her left arm.

By decision dated January 5, 2017, an OWCP hearing representative affirmed the January 26, 2016 decision finding that the evidence of record was insufficient to establish appellant's claim of a recurrence of disability.

On June 15, 2017 appellant, through counsel, requested reconsideration.

Additional evidence included a May 19, 2017 narrative report by Dr. Newell who described the August 14, 2014 employment injury and the subsequent treatment that appellant had received. Dr. Newell reviewed his initial examination findings and noted that cervical MRI scans showed mild herniated discs at multiple levels. He related that because appellant's symptoms had failed to respond to treatment, she underwent a nerve root block at C7 on December 18, 2014. Dr. Newell explained that this type of procedure can offer a patient an extended period of symptom relief and when the symptoms return the procedure is repeated. He indicated that the procedure was not a permanent solution, but merely alleviated a patient's symptoms. Dr. Newell reported that this was the case with appellant as she had required that the injection be repeated as her symptoms recurred. He explained that appellant had not experienced an aggravation of a preexisting injury, but rather had experienced a recurrence of her symptoms from her August 14, 2014 injury.

By decision dated September 13, 2017, OWCP denied modification of the January 5, 2017 decision. It found that Dr. Newell's new May 19, 2017 report did not contain a well-rationalized medical opinion explaining how appellant's disability for the period May 30 through

September 28, 2015 resulted from a change or worsening of her accepted August 14, 2014 employment injury.

### **LEGAL PRECEDENT**

A 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 resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.<sup>6</sup> This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations and which is necessary because of a work-related injury or illness is withdrawn or altered so that the assignment exceeds the employee's physical limitations.<sup>7</sup>

OWCP procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. OWCP does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>8</sup>

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.<sup>9</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>10</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability for the period May 30 to September 28, 2015 causally related to the accepted August 14, 2014 employment injury.

Following the August 14, 2014 employment injury, appellant returned to part-time, limited-duty work on January 16, 2015. She stopped work again on May 19, 2015 and subsequently filed a claim for compensation for the period May 30 through September 28, 2015. In statements dated November 15 and 18, 2015, appellant explained that she continued to experience discomfort in her shoulder, rotator cuff, and arm. She related that on May 18, 2015

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<sup>6</sup> 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

<sup>7</sup> *Id.*

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013). *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

<sup>9</sup> *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>10</sup> *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

she was at work loading mail into a postal truck when she felt a sudden increase in discomfort in her left shoulder. Appellant indicated that she sought medical treatment and was given medical restrictions, but her employing establishment was unable to accommodate the restrictions.

The medical evidence relevant to the claimed recurrence includes a series of examination notes from Dr. Newell dated March 16 to November 16, 2015. In a March 16, 2015 note, Dr. Newell indicated that appellant continued to work six hours per day and had “good and bad days” in regards to her neck pain. In a May 14, 2015 note, he authorized appellant to work full duty without restrictions for the cervical spine and diagnosed cervical strain. Shortly thereafter, on May 18, 2015, Dr. Newell examined appellant and again diagnosed cervical strain. He reported that appellant could work limited duty from May 19 to July 5, 2015 with restrictions of “no use of left arm” and sedentary duty. The Board finds that Dr. Newell did not explain how these new restrictions on May 18, 2015 were related to appellant’s accepted conditions nor did he provide objective findings to demonstrate how her accepted conditions had worsened to the point that she needed new work restrictions. Dr. Newell did not address appellant’s specific work duties nor did he include an explanation of why her accepted conditions had suddenly worsened to the extent that she could no longer perform the duties of the January 16, 2015 modified-duty position.<sup>11</sup> A well-rationalized explanation for appellant’s new work restrictions is particularly needed in this case when in his May 14, 2015 note, Dr. Newell authorized her to return to work full duty.<sup>12</sup> As Dr. Newell failed to provide sufficient medical explanation or bridging evidence to show a spontaneous worsening of appellant’s accepted conditions, his opinion is insufficient to establish appellant’s disability claim.<sup>13</sup> Moreover, he reported a diagnosis of acute cervical strain, a condition which was not accepted by OWCP in this claim.

Dr. Newell further noted in a May 19, 2017 narrative report that appellant’s symptoms had failed to respond to treatment. He described the medical treatment appellant received after the August 14, 2014 work injury, including nerve root blocks in her cervical spine. Dr. Newell explained that this type of procedure provided symptom relief to a patient for an extended period of time, but the symptoms would eventually return and require more injections. He reported that this was the situation with appellant in that she required this injection be repeated as her symptoms recurred. Dr. Newell opined that appellant experienced a recurrence of her symptoms from her August 14, 2014 employment injury. The Board finds, however, that Dr. Newell did not provide a rationalized medical explanation to support his conclusion.

To meet appellant’s burden of proof, the medical evidence submitted should reflect a correct history and the physician should offer a medically sound explanation of how and why appellant was no longer able to perform her modified-duty position.<sup>14</sup> The Board concludes, therefore, that Dr. Newell’s opinion is of insufficient rationale to establish that appellant’s

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<sup>11</sup> See *J.L.*, Docket No. 15-1951 (issued May 16, 2016).

<sup>12</sup> Inconsistent and contradictory reports from the same physician lack probative value and cannot constitute competent medical evidence. *K.S.*, Docket No. 11-2071 (issued April 17, 2012); *Cleona M. Simmons*, 38 ECAB 814 (1987).

<sup>13</sup> *J.D.*, Docket No. 16-0064 (issued June 1, 2016); *L.G.*, Docket No. 11-142 (issued August 12, 2011).

<sup>14</sup> See *L.J.*, Docket No. 17-1342 (issued April 13, 2018).

disability had increased such that she was no longer able to perform her modified duties for the period May 30 to September 28, 2015.

The Board notes that to the extent appellant has described an intervening event on March 18, 2015, this would be a claim for a new injury.<sup>15</sup> Appellant may file a new claim with OWCP for such injury. The Board has found that a recurrence of disability does not occur where the claimant's work stoppage is caused by a new or intervening injury, even if the new injury involves the same part of the body previously injured.<sup>16</sup>

On appeal, counsel contends that Dr. Newell provided a rationalized medical opinion explaining how appellant's accepted conditions had worsened to the extent that she sustained a recurrence of disability. However, as explained above Dr. Newell's opinion is of diminished probative value to establish appellant's recurrence claim as he did not provide a medically-sound explanation of how and why appellant's accepted conditions prevented her from performing her modified-duty position.

The Board therefore finds that appellant has not met her burden of proof in this case.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability for the period May 30 to September 28, 2015 causally related to the accepted August 14, 2014 employment injury.

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<sup>15</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997).

<sup>16</sup> *L.R.*, Docket No. 10-0744 (issued October 25, 2010).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 13, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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