

² On August 19, 2011 appellant filed a traumatic injury claim alleging injuries to her lower back and neck (File No. xxxxxx232).

FACTUAL HISTORY

On March 23, 2009 appellant, then a 54-year-old transportation assistant, filed a traumatic injury claim alleging numbness in her left thumb with pain in her left shoulder and forearm as a result of removing staples and tossing packages all day. Her claim was accepted for sprains of the left hand, shoulder and upper arm. On July 22, 2009 appellant's treating physician, Dr. Yi Y. Myint, a Board-certified internist, released her to return to work and discharged her with permanent restrictions. Appellant was restricted to lifting a maximum of 10 pounds and was to avoid repetitive, prolonged reaching with the left hand and using staples. In an October 1, 2009 work status report, Dr. Myint stated that appellant was discharged from his care.

Appellant filed CA-7 forms claiming compensation for lost wages for attending medical appointments on October 11 and 27 and November 22, 2011, January 25 and March 7, 2012.

In a report dated October 11, 2011, Dr. Myint diagnosed left carpal tunnel syndrome (CTS), as revealed in a nerve conduction study (NCS). He noted there was no evidence of cervical radiculopathy.³ In a November 29, 2011 report, Dr. Myint diagnosed left CTS and repetitive strain injury, noting that appellant had another claim for a right upper extremity injury. He stated that surgery would not resolve the pain issue relating to her repetitive strain injury.

In a letter dated March 20, 2012, OWCP informed appellant that the information submitted was insufficient to establish that her current condition was causally related to the accepted left upper extremity conditions. It advised her to submit a physician's narrative report with a diagnosis and a rationalized opinion explaining how her current condition was related to the original March 23, 2009 injury.

The record contains e-mail correspondence between appellant and a physician's assistant regarding the scheduling of an appointment.

Appellant submitted disability slips from Dr. David Wang, a treating physician, dated March 7 and April 4, 2012. Dr. Wang stated that she could work with restrictions including no overhead reaching and lifting a maximum of 20 pounds. On April 5, 2012 a patient service coordinator for Dr. Randall Armstrong, Board-certified in family medicine, confirmed that appellant appeared in his office on that date, but she had to be rescheduled due to the absence of an interpreter.

In a letter dated April 18, 2012, OWCP informed appellant that the evidence submitted was insufficient to establish her claim for compensation and advised her to submit medical evidence showing a causal relationship between her current medical condition and the accepted injury if she was claiming a recurrence of her medical condition.

By decision dated July 23, 2012, OWCP denied appellant's recurrence claim, on the grounds that the medical evidence was insufficient to establish that her current medical condition for which she sought treatment was due to the accepted work injury.

³ The record contains a copy of an October 27, 2011 NCS reflecting a diagnosis of left CTS.

LEGAL PRECEDENT

Appellant has the burden of establishing that she sustained a recurrence of a medical condition⁴ that is causally related to her accepted employment injury. To meet her burden, she must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁵ Where no such rationale is present, the medical evidence is of diminished probative value.⁶

OWCP regulations define a recurrence of medical condition as the documented need for further medical treatment after release from treatment of the accepted condition when there is no work stoppage. Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment.⁷

OWCP's procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return as needed (PRN), or computed by the claims examiner from the date of last examination), a claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury.⁸

ANALYSIS

The Board finds that appellant did not to establish that she sustained a recurrence of a medical condition. OWCP accepted her March 23, 2009 traumatic injury claim for sprains of the left hand, shoulder and upper arm. Appellant has claimed entitlement to compensation for lost wages for treatment of her injury-related conditions. She has failed, however, to submit sufficient rationalized medical evidence establishing that she required further medical treatment for a continuing employment-related condition.

On July 22, 2009 Dr. Myint released appellant to return to work and discharged her with permanent restrictions. In an October 1, 2009 work status report, he stated that she was

⁴ "Recurrence of medical condition" means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment. 20 C.F.R. § 10.5(y).

⁵ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁶ *Mary A. Ceglia*, 55 ECAB 626 (2004); *Albert C. Brown*, 52 ECAB 152 (2000).

⁷ 20 C.F.R. § 10.5(y).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003). The procedure manual provides, with certain exceptions, that, within 90 days of release from medical care (as stated by the physician or computed from the date of last examination or the physician's instruction to return PRN), a claims examiner may accept the attending physician's statement supporting causal relationship between appellant's current condition and the accepted condition, even if the statement contains no rationale. *Id.*, Chapter 2.1500.5(a).

discharged from his care. There is no evidence of record documenting that appellant received medical treatment for her accepted condition between October 1, 2009 and October 11, 2011, when she was again examined by Dr. Myint. Based on the date of the last examination by Dr. Myint on October 1, 2009, her treatment on October 11, 2011 was rendered more than 90 days after appellant's release from medical care. Therefore, appellant must submit an attending physician's report that contains a description of the objective findings and supports causal relationship between her current medical condition and the previously accepted left upper extremity injury.⁹ She had the burden of submitting sufficient medical evidence to document the need for further medical treatment.¹⁰ Appellant did not submit such evidence required and failed to establish a need for continuing medical treatment.¹¹

Dr. Myint's reports are insufficient to establish her claim. On October 11, 2011 he diagnosed left CTS, as revealed in an NCS. Dr. Myint noted there was no evidence of cervical radiculopathy. On November 27, 2011 he diagnosed left CTS and repetitive strain injury, noting that appellant had another claim for a right upper extremity injury and stated that surgery would not resolve the pain issue relating to the repetitive strain injury. Neither report contains an opinion addressing the causal relationship between appellant's current condition and the accepted injury. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹² The Board notes that appellant's claim was not accepted for either CTS or repetitive strain injury. In fact, Dr. Myint's reports suggest that her current condition may be due to an occupational injury that occurred over a period of time, rather than a traumatic injury.

Dr. Wang's disability slips do not establish that appellant's current condition was causally related to the accepted employment injury. They fail to provide a definitive diagnosis. Moreover, they does not contain an opinion that appellant's current condition was related to the original 2009 injury. For these reasons, the report is of limited probative value.

Physical therapy notes of record do not constitute probative medical evidence, as physical therapists do not qualify as "physicians" under FECA.¹³ Reports of NCS, magnetic resonance imaging scans and x-rays, which do not contain an opinion as to the cause of appellant's condition, are of diminished probative value and are insufficient to establish her claim.¹⁴

In summary, the medical evidence of record is unsupported by rationalized medical evidence explaining the nature of the relationship between appellant's current condition and her

⁹ Federal (FECA) Procedure Manual, *supra* note 8

¹⁰ *Supra* note 7.

¹¹ *See J.F.*, 58 ECAB 331 (2006).

¹² *Michael E. Smith*, 50 ECAB 313 (1999).

¹³ Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."

¹⁴ *See Mary E. Marshall*, 56 ECAB 420 (2005).

accepted injury.¹⁵ An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there was a causal relationship between her claimed condition and her employment.¹⁶

The Board finds that the evidence submitted was insufficient to establish that appellant sustained a recurrence of a medical condition and OWCP properly denied her claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of a medical condition that was causally related to her accepted injury.

ORDER

IT IS HEREBY ORDERED THAT the July 23, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

¹⁵ While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment, and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant. *See Thomas A. Faber*, 50 ECAB 566 (1999); *Samuel Senkow*, 50 ECAB 370 (1999).

¹⁶ *Patricia J. Glenn*, 53 ECAB 159 (2001).