

Appellant first sought medical treatment from Dr. Douglas Pope, an attending Board-certified family practitioner. In May 23 and 30, 2001 reports, Dr. Pope related appellant's symptoms of bilateral hand pain, noting that she worked with her arms above her head to file mail. He diagnosed thoracic outlet syndrome and restricted appellant from working above shoulder level. In a June 5, 2001 note, Dr. Pope ruled out carpal tunnel syndrome as nerve conduction velocity testing was normal. In June 7 and 13, 2001 reports, he renewed the restriction against working above shoulder level for two-week periods.

In an October 24, 2002 letter, appellant asserted that she required medical care on October 16, 2002 due to the accepted thoracic outlet syndrome. She requested that the Office reopen her claim. The Office developed appellant's letter as a claim for recurrence of disability.¹

In a November 15, 2002 letter, the Office advised appellant of the Office's definition of a recurrence of disability and of the type of medical and factual evidence needed to establish such a claim. The Office emphasized the need to submit a rationalized report from her attending physician explaining how and why the accepted work factors would cause the claimed recurrence of disability. Appellant was afforded 30 days to submit additional evidence.

In a November 23, 2002 statement, appellant noted that, following her federal employment, she worked milking cows from September 7 to November 29, 2001, bagging turkeys on a conveyor belt and forming molded parts at a machining company. She asserted that she sustained no additional injuries after resigning from federal employment. Appellant submitted medical evidence.

In March 22 and April 12, 2002 reports, Dr. Javaid Saleem, an attending family practitioner, noted appellant's former federal employment. He related her symptoms of persistent weakness and numbness in both upper extremities. Dr. Saleem diagnosed thoracic outlet syndrome by history.

In an April 19, 2002 report, Dr. Kurt Possai, an attending osteopath, provided a history of injury and treatment. He diagnosed possible bilateral thoracic outlet syndrome and probable bilateral carpal tunnel syndrome.

In an October 16, 2002 note, Dr. Behrouz Rassekh, an attending Board-certified neurosurgeon, diagnosed thoracic outlet syndrome. In a November 20, 2002 report, he noted that diagnostic tests were normal and appellant's upper extremity symptoms had persisted for one year. Dr. Rassekh then questioned the diagnosis of thoracic outlet syndrome.

By decision dated March 7, 2003, the Office denied appellant's claim for recurrence of disability on the grounds that causal relationship was not established. The Office found that appellant submitted insufficient rationalized medical evidence explaining how and why factors of her federal employment, ending in May 2001, would cause the claimed recurrence of disability commencing in March 2002. The Office noted that appellant did not obtain medical care from October 2001 to March 2002.

¹ In a November 15, 2002 letter, appellant's attorney asserted both that appellant sustained a recurrence of disability and that the accepted condition had not ceased.

In a March 24, 2003 letter, appellant requested an oral hearing. After a requested postponement, the hearing took place on November 21, 2005. At the hearing, appellant described her work following her resignation from the employing establishment. For one week, she worked at a molding company, placing raw material into a machine, closing a door and pressing a button. Appellant repeated this sequence approximately 25 times an hour. During the following three months, she worked in a poultry plant alternately bagging turkeys, placing pop-up timers or sliding the turkeys on a conveyor belt. After this, appellant milked cows on a dairy farm using an automatic milker. The dairy job required her to lift the milking machine above her waist approximately 200 times a day over a six-hour period. After moving back to Nebraska, appellant worked for one year as a personal aide to people with disabilities, assisting with shopping, cooking and cleaning. She asserted that none of her jobs required her to reach or lift overhead. Appellant affirmed that she did not seek medical care from May 2001 until March 2002.²

After the hearing, appellant submitted an April 22, 2002 report from Dr. Dennis Sollom, an attending Board-certified physiatrist, who related appellant's symptoms of upper extremity pain since October 2001. Electromyographic and nerve conduction velocity tests were normal, ruling out carpal tunnel syndrome or a neuropathy. Dr. Sollom opined that appellant had possible myofascial pain as opposed to a neurologic condition.

By decision dated and finalized January 27, 2006, an Office hearing representative affirmed the March 7, 2003 decision, finding that appellant did not establish that she sustained a recurrence of disability commencing March 22, 2002. The hearing representative found that appellant failed to submit a rationalized medical opinion based on a complete, accurate factual and medical history explaining how her federal employment duties ending in May 2001 would cause the claimed recurrence of disability beginning in March 2002. The hearing representative noted that appellant's private-sector employment required repetitive upper extremity motions. However, the hearing representative did not find that these jobs constituted an intervening cause.

In a January 25, 2007 letter, appellant requested reconsideration. She submitted an undated report from Dr. Richard J. Feldhaus, an attending Board-certified thoracic surgeon, who noted reviewing appellant's hearing testimony, the January 27, 2006 decision and various medical records. Dr. Feldhaus examined appellant on April 26, 2006 and observed a bilaterally positive Adson's sign with "significant bruits in the right and left supraclavicular fossa with her arms extended above her shoulders." He also found a bilaterally positive "stick up" position test, indicative of thoracic outlet syndrome. Dr. Feldhaus related appellant's account of private-sector employment at the dairy, machine plant and assisting persons with disabilities. He opined that, by history, appellant "probably ha[d] a bilateral thoracic outlet syndrome ... caused by the repetitive overhead work activities she engaged in while employed at [the employing establishment] in 2001 and before." Dr. Feldhaus explained that thoracic outlet syndrome could only be resolved by surgically resecting the first rib to relieve pressure on the neurovascular bundle exiting the chest. As appellant did not have surgery, Dr. Feldhaus opined that her

² The employing establishment provided comments on appellant's testimony, asserting that her condition was related to her private-sector work and not her federal employment. Appellant's attorney responded in a December 27, 2005 letter that appellant's additional work activities did not aggravate or accelerate the accepted thoracic outlet syndrome.

thoracic outlet syndrome “subsequent to March 2002, [was] the same injury she reported to Dr. Pope on May 23, 2001.”

By decision dated March 15, 2007, the Office denied modification of the prior decision on the grounds that the evidence submitted was insufficient. The Office found that Dr. Feldhaus’ report did not present objective clinical findings or sufficient medical rationale to establish that appellant sustained a recurrence of disability as alleged.

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 employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability was caused, precipitated, accelerated or aggravated by the accepted injury. This burden includes the necessity of furnishing evidence from a qualified 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. Moreover, sound medical reasoning must support the physician’s conclusion.⁴ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician’s conclusion of a causal relationship.⁵ An award of compensation may not be based on surmise, conjecture or speculation or on an employee’s unsupported belief of causal relation.⁶

While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁷

ANALYSIS

The Office accepted that appellant sustained thoracic outlet syndrome in the performance of duty on or before November 15, 2000. She claimed that, beginning on March 22, 2002, she sustained a recurrence of thoracic outlet syndrome requiring medical treatment. Appellant submitted medical evidence in support of her claim.

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).

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

⁵ For the importance of bridging information in establishing a claim for a recurrence of disability, *see Richard McBride*, 37 ECAB 748 at 753 (1986).

⁶ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁷ *See Ricky S. Storms*, *supra* note 4; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

Appellant submitted reports dated from April 19 to October 16, 2002 from Dr. Possai, an attending osteopathic physician, Dr. Rassekh, an attending Board-certified neurosurgeon and Dr. Sollom, an attending Board-certified physiatrist. These three physicians found no objective indications of thoracic outlet syndrome. Their opinions are insufficient to establish causal relationship as they found no evidence of the accepted condition.

In March 22 and April 12, 2002 reports, Dr. Saleem, an attending family practitioner, noted appellant's former federal employment and diagnosed thoracic outlet syndrome by history. However, he did not provide medical rationale explaining how and why the accepted condition would cause the claimed recurrence of disability. In the absence of such rationale, Dr. Saleem's opinion is insufficient to establish causal relationship in this case.⁸

Appellant also submitted an undated report from Dr. Feldhaus, an attending Board-certified thoracic surgeon, who noted objective clinical findings of thoracic outlet syndrome on the April 26, 2006 examination. Dr. Feldhaus acknowledged appellant's private-sector employment at the dairy, turkey plant and machining factory. He opined that appellant's thoracic outlet syndrome was "probably" due to repetitive overhead work at the employing establishment. Dr. Feldhaus then stated that appellant's thoracic outlet syndrome on and after March 2002 remained work related as she had not had surgery to resolve the condition. The Board finds that Dr. Feldhaus' opinion on causal relationship is speculative and therefore of diminished probative value.⁹ Also, he did not explain the lack of documented bridging symptoms from June 2001 through March 2002.¹⁰

The Board notes that the Office denied appellant's claim for recurrence of disability on the grounds that she submitted insufficient rationalized medical evidence to establish causal relationship. The Office mentioned that appellant's private-sector employment required repetitive upper extremity motion but did not find that these activities constituted an intervening cause.¹¹ The only work restrictions of record pertain to overhead work from May 23 through June 2001, prior to appellant's private-sector employment. No physician of record proscribed repetitive upper extremity motions or opined that appellant's private-sector employment worsened or aggravated the accepted condition. There is no evidence that appellant sustained a new injury in private-sector employment. Therefore, the Board finds that there is insufficient evidence that appellant's private-sector employment constituted an intervening cause. The Office appropriately denied the claim based on appellant's failure to submit sufficient rationalized medical evidence. Appellant thus failed to meet her burden of proof in establishing

⁸ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁹ *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹⁰ See *Richard McBride*, *supra* note 5.

¹¹ See *Carlos A. Marrero*, 50 ECAB 117, 119-20 (1998) (the Board found that the claimant's use of an exercise machine constituted an intervening cause of appellant's disability and thus the Office properly denied appellant's claim for recurrence of disability); *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994) (the Board found that the claimant's knee injury sustained while playing basketball broke the legal chain of causation from an accepted knee injury sustained in the performance of his duties as a firefighter).

that the claimed recurrence of disability beginning on March 22, 2002 resulted from the effects of the accepted thoracic outlet syndrome.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability commencing March 22, 2002.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 15, 2007 is affirmed.

Issued: December 6, 2007
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