United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 09-772**
	)	**Issued: November 23, 2009**
DEPARTMENT OF HOMELAND SECURITY, FEDERAL EMERGENCY MANAGEMENT AGENCY, Bluemont, VA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 27, 2009 appellant filed a timely appeal of the August 27 and November 24, 2008 merit decisions of the Office of Workers' Compensation Programs and Office hearing representative denying her recurrence of disability claim. Pursuant to 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 has established that she sustained a recurrence of disability commencing June 19, 2008 causally related to her accepted employment-related injuries.

FACTUAL HISTORY

On January 23, 2004 appellant, then a 37-year-old human services specialist, sustained a broken right thumb and head, neck, low back, face, pelvic, left leg and knee injuries as a result of falling down several steps at work. The Office accepted her claim for concussion, right thumb fracture, cervical strain, deviated nasal septum and left knee and ankle contusions. On April 12,

2004 appellant returned to full-duty work. She experienced periods of disability following a septoplasty to repair her deviated septum on August 26, 2005 and a right maxillary antrostomy and ethmoidectomy on June 22, 2006 which were performed by Dr. Ingrid C. Iwanow, an attending Board-certified otolaryngologist. On June 30, 2008 appellant filed a claim (Form CA-7) for wage-loss compensation for the period June 19 to August 30, 2008.

By letter dated July 15, 2008, the Office addressed the factual and medical evidence appellant needed to submit to establish her claim.

On July 16, 2008 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability commencing June 19, 2008. She experienced neck strain, dizziness, pressure in the back of her neck and tingling in her left arm and face following her return to work. Appellant submitted additional evidence. An undated and unsigned health care provider form stated that she experienced severe dizziness with numbness and tingling. Appellant was unable to return to work pending an appointment with a neurologist on July 21, 2008.

A June 29, 2008 magnetic resonance imaging (MRI) scan by Dr. Neil W. Crow, a Board-certified neurologist, demonstrated a three millimeter left posterolateral disc herniation at C5-6 with impingement upon the cervical cord but without intrinsic signal change within the cervical cord. There was trace distortion of the left anterior portion of the cord. The findings were significantly changed when compared with a March 5, 2004 MRI scan which found only a slight bulge at the C5-6 level with a degree of annulus tear.

A July 1, 2008 report of Patrick G. Northcraft, a certified nurse practitioner, reviewed a history of appellant's January 23, 2004 employment injuries, medical treatment and family and social background and findings on examination. He opined that appellant's symptoms sounded somewhat like complicated migraine.

A June 19, 2008 disability certificate of Dr. Richard Siira, an emergency medicine physician, stated that appellant could return to work in two days. Emergency room discharge instructions dated June 19 and 29, 2008 addressed care for appellant's cervical strain and related symptoms.

In a July 22, 2008 narrative statement, appellant related that on June 19, 2008 she left work due to illness and went to an emergency room for evaluation. A June 23, 2008 MRI scan demonstrated a cervical strain. On June 29, 2008 appellant returned to the emergency room because she experienced dizziness, a cold sweat, a sick stomach and pressure on her brain. An MRI scan of her cervical spine demonstrated a cervical strain as previously diagnosed by Dr. Patrick D. Ireland, a Board-certified neurologist. Appellant was placed off work commencing June 19, 2008 by Dr. Iwanow due to seizures. She experienced four seizures since May 3, 2008.

In prescriptions dated July 5, 2008, Dr. Ravi B. Masih, an internist, prescribed pain medication for appellant.

On August 5, 2008 Dr. Iwanow opined that appellant's dizziness and neck pain could be due to her January 23, 2004 employment injuries.

By decision dated August 27, 2008, the Office denied appellant's recurrence of total disability claim. It found the evidence insufficient to establish that she sustained disability commencing June 19, 2008 causally related to her accepted January 23, 2004 employment-related injuries.

On September 7, 2008 appellant requested a review of the written record by an Office hearing representative. In a September 6, 2008 narrative statement, she described her continuing residuals and disability and noted her medical treatment. Appellant contended that the evidence was sufficient to establish her claim.

In an undated report, Dr. Ireland agreed with Mr. Northcraft's July 1, 2008 findings and opined that appellant's symptoms sounded somewhat more like complicated migraine. A July 22, 2008 report which contained an illegible signature stated that appellant sustained cervical spondylosis. Emergency room discharge instructions dated September 5, 2008 addressed the care for appellant's fractured foot.

In a September 3, 2008 report, Dr. Patrick M. Capone, a Board-certified neurologist, reviewed a history of appellant's January 23, 2004 employment injuries and medical treatment. He noted her complaints of continuing dizziness, cervical problems and numbness. Dr. Capone reported essentially normal findings on neurological examination with the exception of the results of Hallpike maneuvers that were performed with Frenzel lenses. He noted appellant's subjective sensation of vertigo without nystagmus with the head both in the midline and turned to the left in the recumbent and upright position. Appellant had mixed muscle tension vascular cephalgia with face and left arm appendicular numbness, vertigo and tremor. Dr. Capone stated that this could be seen in association of complex migraine. He stated that a less likely consideration included seizure or panic attacks. Dr. Capone related that recurrent vertigo and appendicular sensory loss could occur with subclavian steal syndrome or vertebrobasilar disease. However, he did not expect the associated headache phenomenon. Dr. Capone advised appellant that it was fine if she did not believe it was safe to drive while taking the medication he had prescribed. He released her to work without restriction, stating that the medication had no bearing on her ability to work on a computer.

The August 21, 2008 EMG/NCV studies of Dr. Crow showed normal findings regarding the left arm. There was no evidence of ongoing left cervical radiculopathy. A June 23, 2008 MRI scan of appellant's brain was performed by Dr. Andre Fredieu, a Board-certified neurologist, who found posterior angulation of the dens which posteriorly displaced and angulated the cervicomedullary junction without causing spinal stenosis or compression of those regions. An MRI scan of the cervical spine was recommended. No acute abnormalities were present. The findings represented no definite interval change when compared to the March 5, 2001 MRI scan of the brain. A May 3, 2008 MRI scan performed by a Dr. Blake H. Watts was due to appellant's headaches. He found no acute intracranial abnormalities.

A September 3, 2008 report of Daniel E. Howard, a licensed nurse practitioner, provided findings on physical examination, which included neck pain and stiffness, left arm pain and muscle weakness, numbness, decreased memory, dizziness and headaches.

By decision dated November 24, 2008, an Office hearing representative affirmed the August 27, 2008 decision. He found the medical evidence insufficient to establish that appellant sustained a condition or disability causally related to her January 23, 2004 employment injuries.[1]

LEGAL PRECEDENT

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment, which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[2]

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which she claims compensation is causally related to the accepted employment injury.[3] Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her employment injury.[4] 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.[5] Moreover, the physician's conclusion must be supported by sound medical reasoning.[6]

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[7] 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.[8] While the opinion of a physician supporting

[1] Following the issuance of the Office hearing representative's November 24, 2008 decision, the Office received additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

[2] 20 C.F.R. § 10.5(x).

[3] *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

[4] *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

[5] *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

[6] *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

[7] *See Ricky S. Storms, supra* note 5; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

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

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.[9]

ANALYSIS

The Office accepted that appellant sustained a concussion, right thumb fracture, cervical strain, deviated nasal septum and left knee and ankle contusions while in the performance of duty on January 23, 2004. Appellant returned to her regular duties as of April 12, 2004. She claimed a recurrence of disability commencing June 19, 2008. The Board finds that appellant has failed to submit sufficient rationalized medical evidence to establish that her disability as of that date was due to her accepted injury.

Dr. Siira's June 19, 2008 disability certificate stated that appellant could return to work in two days. Although he found that appellant was disabled for work, he did not address whether her disability was causally related to the accepted employment injuries. The Board finds that Dr. Siira's disability certificate is insufficient to establish appellant's claim. Dr. Masih's July 5, 2008 prescriptions prescribed pain medication for appellant. He did not provide an opinion addressing whether she sustained a recurrence of total disability commencing June 19, 2008 causally related to the January 23, 2004 employment injuries. This evidence is insufficient to establish appellant's claim.

Dr. Iwanow's August 5, 2008 report stated that appellant's dizziness and neck pain "could be" due to her January 23, 2004 employment injuries. In an undated report, Dr. Ireland agreed with Mr. Northcraft's July 1, 2008 findings of a migraine and cervical spondylosis. He opined that appellant's symptoms sounded "somewhat" more like complicated migraine. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.[10] The Board finds that the opinions of Dr. Iwanow and Dr. Ireland regarding causal relation are speculative in nature and, thus, insufficient to establish appellant's claim. Neither Dr. Iwanow nor Dr. Ireland explained how appellant's disability commencing June 19, 2008 were caused by her accepted employment injuries.

Dr. Capone's September 3, 2008 report provided essentially normal findings on neurological examination with the exception of the results of Hallpike maneuvers that were performed with Frenzel lenses. He noted that appellant had subjective sensation of vertigo without nystagmus with the head both in the midline and turned to the left in the recumbent and upright position. Dr. Capone determined that she had mixed muscle tension vascular cephalgia with face and left arm appendicular numbness, vertigo and tremor. He noted that this could be seen in association of complex migraine. Dr. Capone stated that less likely consideration included seizure or panic attacks. He related that recurrent vertigo and appendicular sensory loss could occur with subclavian steal syndrome or vertebrobasilar disease. However, Dr. Capone

[9] *See Ricky S. Storms, supra* note 5; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

[10] *L.R. (E.R.)*, 58 ECAB ___ (Docket No. 06-1942, issued February 20, 2007); *D.D.*, 57 ECAB 734 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.3(g) (April 1993).

did not expect the associated headache phenomenon. He released appellant to work without restriction, stating that the medication he had prescribed for her had no bearing on her ability to work on a computer. Dr. Capone did not provide any opinion addressing the causal relationship between appellant's diagnosed conditions and the January 23, 2004 employment injuries. Although he found that appellant was no longer disabled as of September 8, 2008, he did not provide an opinion addressing her disability for work commencing June 19, 2008 due to the accepted employment injuries. The Board finds that his report is insufficient to establish appellant's claim.

The undated and unsigned certification form stated that appellant suffered from severe dizziness with numbness and tingling. It also stated that she was unable to return to work pending a July 21, 2008 neurological evaluation. The July 22, 2008 report which contained an illegible signature stated that appellant sustained cervical spondylosis. As this evidence lacks adequate documentation that it was completed by a physician it does not constitute probative medical evidence.[11]

The diagnostic test results and emergency room discharge instructions regarding appellant's cervical spine, left arm and head conditions did not provide an opinion addressing whether the diagnosed conditions were causally related to her January 23, 2004 employment-related injuries. The test results and discharge instructions are insufficient to establish appellant's claim.

The July 1 and September 3, 2008 reports of Mr. Northcraft, a certified nurse practitioner, and Mr. Howard, a licensed nurse practitioner, respectively, do not constitute probative evidence. A nurse practitioner is not defined as a physician under the Federal Employees' Compensation Act.[12] This report does not constitute competent medical evidence to support appellant's recurrence of disability claim.

Appellant failed to submit rationalized medical evidence establishing that her disability commencing June 19, 2008 resulted from the effects of her employment-related injury. The Board finds that she has not met her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a recurrence of disability commencing June 19, 2008 causally related to her accepted employment-related injuries.

[11] *See D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[12] *See* 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208 (2004); *Thomas R. Horsfall*, 48 ECAB 180 (1996).

ORDER

IT IS HEREBY ORDERED THAT the November 24 and August 27, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 23, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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