

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

M.H., Appellant)	
)	
and)	Docket No. 11-1117
)	Issued: December 2, 2011
U.S. POSTAL SERVICE, POST OFFICE,)	
Sacramento, CA, Employer)	
)	

Appearances:
Sally F. LaMacchia, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 5, 2011 appellant, through her representative, filed a timely appeal from the January 18, 2011 merit decision of the Office of Workers' Compensation Programs, which denied compensation after March 28, 2008. Pursuant to the Federal Employees' Compensation Act¹ and 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's medical condition or wage loss after March 28, 2008 was causally related to the June 11, 2003 work injury.

FACTUAL HISTORY

In the prior appeal,² the Board found that OWCP properly terminated compensation for appellant's June 11, 2003 left shoulder and cervical muscle strain. The Board also found that appellant did not meet her burden to establish that she had a residual medical condition or

¹ 5 U.S.C. § 8101 *et seq.*

² Docket No. 09-646 (issued October 6, 2009).

disability causally related to the June 11, 2003 work injury. The facts of this case as set out in the Board's prior decision are hereby incorporated by reference.³

Appellant requested reconsideration. She argued that when OWCP terminated her compensation, the accepted conditions included neck sprain, left shoulder and arm sprain, thoracic sprain, lumbar sprain and cervical intervertebral disc disorder with myelopathy. Appellant argued that OWCP did not meet its burden to terminate compensation for the thoracic and lumbar sprains or the cervical disc disorder. She further argued that the weight of the medical evidence established ongoing compensable disability related to the June 11, 2003 work injury. Appellant added that pain is compensable.

On October 5, 2010 Dr. Patrick N. Rhoades, appellant's physiatrist and a specialist in pain medicine, stated that appellant's pain was due to her industrial injury and that any pain from her cancer was long since gone. Current diagnoses included lumbago, myofascial pain syndrome, cervical pain and sciatica. Previous imaging studies, he noted, showed significant findings for degenerative disc disease.

Dr. Rhoades stated that appellant's chronic cervical pain, chronic myofascial pain syndrome and chronic shoulder pain were all due to the June 2003 employment incident. He explained that a strain does not last for an extended period of time; it recovers unless there was further damage done. Dr. Rhoades thought that even in 2003, when she was hit by a cage, appellant began to develop myofascial pain syndrome and possibly some facet arthropathy at the cervical spine. He stated that the myofascial pain continued since that time and increased due to muscle imbalances and reinjury. Dr. Rhoades stated that it would radiate down to the shoulder.

Dr. Rhoades explained that shoulder strain is a pretty inexact diagnosis. He thought appellant had myofascial pain and possibly an injury to a tendon or ligament that progressed due to arthritis or prolonged irritation due to work "etc." "I believe that June 2003 strain injuries to her neck and left shoulder caused her condition then and what it has progressed to now." Specifically, Dr. Rhoades believed that the neck, shoulder and upper back pain were all caused by probable damage to the facet joints and myofascial pain syndrome.

Dr. Rhoades added that he thought appellant's hypertension was caused by her industrial injury, as patients with chronic low back pain have increased incidences and significance of hypertension. He thought pain aggravated her hypertension.

In a decision dated January 18, 2011, OWCP reviewed the merits of appellant's case and denied modification of its prior decision. Although there were a few instances in the case record identifying other diagnoses as accepted work injuries, it found that it had accepted only shoulder/arm strain and neck strain as work related. OWCP determined that appellant did not submit rationalized medical evidence showing how other conditions were caused by the accepted injury. It found that Dr. Rhoades' opinion had little weight because he based it on an inaccurate history of injury.⁴ OWCP further found that the weight of the medical evidence supported that

³ On June 11, 2003 appellant, a casual clerk, sustained an injury in the performance of duty when she used her left arm to push against some carts (cages on wheels) to prevent them from falling on her. On July 25, 2003 OWCP notified her that it accepted her claim for left shoulder/arm strain and cervical strain.

⁴ Dr. Rhoades reported on July 20, 2004 that appellant was working inside a cage in June 2003 when a forklift ran into the cage, crushing her inside the cage and mail fell on top of her.

appellant's persistent complaints had always been disproportionate to her objective findings and had escalated significantly after she quit work.

On appeal, appellant's representative argues that all conditions included in the November 2005 statement of accepted facts were accepted conditions and that OWCP abused its discretion when it terminated appellant's compensation as if the November 2005 statement of accepted facts did not exist. She cites to a case in which the Board found that OWCP improperly removed an accepted condition from the statement of accepted facts. Appellant's representative argues that OWCP has the burden of proof, which remains unsatisfied.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁵ When OWCP meets its burden of proof to justify the termination of compensation benefits, the burden switches to the claimant to establish that any subsequent medical condition or disability is causally related to the accepted employment injury.⁶

Causal relationship is a medical issue,⁷ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁸ must be one of reasonable medical certainty⁹ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹⁰

ANALYSIS

The decisions and orders of the Board are final as to the subject matter appealed, and such decisions and orders are not subject to review, except by the Board. The decisions and orders of the Board will be final upon the expiration of 30 days from the date of issuance unless the Board has fixed a different period of time therein.¹¹

In its October 6, 2009 decision and order, the Board affirmed the termination of appellant's compensation. The Board found that OWCP met its burden of proof to justify the

⁵ 5 U.S.C. § 8102(a).

⁶ *Maurice E. King*, 6 ECAB 35 (1953).

⁷ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁸ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁹ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹⁰ *See William E. Enright*, 31 ECAB 426, 430 (1980).

¹¹ 20 C.F.R. § 501.6(d).

termination. The Board explained that the burden of proof switched to appellant to establish that any subsequent medical condition or disability was causally related to the June 11, 2003 work incident. The Board found that appellant did not meet her burden.

The Board's October 6, 2009 decision and order is final and is not subject to review. Whether OWCP met its burden of proof to justify the termination of appellant's compensation is decided. The Board will not readjudicate that issue. The issue presented by OWCP's January 18, 2011 merit decision is whether appellant has met her burden to establish that any subsequent medical condition or disability was causally related to the June 11, 2003 work injury.

OWCP accepted appellant's claim for left shoulder/arm strain and cervical strain. Dr. Rhoades tried to explain that a strain does not last for an extended period of time. It recovers, unless there was further damage done, and it was his opinion that further damage included myofascial pain syndrome and possibly some facet arthropathy at the cervical spine. Dr. Rhoades did not explain how this happened, physiologically or biomechanically, or what objective evidence led him to this conclusion. Although his opinion is generally supportive of appellant's claim, the Board finds his opinion speculative and of diminished probative value. A medical opinion need not reduce the cause of a disease or condition to an absolute medical certainty, but neither can it be speculative.¹²

Dr. Rhoades speculated further when he explained that shoulder strain is a pretty inexact diagnosis and that he thought appellant had myofascial pain and possibly an injury to a tendon or ligament that progressed due either to arthritis or prolonged irritation due to work. He believed appellant's neck, shoulder and upper back pain were all caused by probable damage to the facet joints and myofascial pain syndrome, but again did not explain what evidence there was that the work incident on June 11, 2003 damaged appellant's facet joints or injured a tendon or ligament that progressed due either to arthritis or prolonged irritation at work. At best, Dr. Rhoades posited a possibility, a scenario that could connect appellant's present condition to what happened on June 11, 2003. But because he offered insufficient reasons for causation, his conclusion must be regarded as speculative.

Dr. Rhoades also found that what happened on June 11, 2003 aggravated appellant's hypertension because, apparently, patients with chronic low back pain have increased incidences and significance of hypertension. If that is true as a general observation, he did not make the case that this is what happened to appellant. Like Dr. Rhoades' conclusion about damage to facet joints and injury to a tendon or ligament that progressed, he did not ground his theory in the established facts of appellant's case. He did not explain, for example, what clinical evidence showed the causal relationship.

The Board finds that Dr. Rhoades' October 5, 2010 report is not well rationalized and is insufficient to discharge appellant's burden of proof to establish that her medical condition or wage loss after March 28, 2008 was causally related to the June 11, 2003 work injury.

On appeal, appellant's representative contended that OWCP accepted more than a left shoulder/arm strain and cervical strain. As OWCP explained in its January 18, 2011 decision, and as the Board determined in its October 6, 2009 decision, OWCP accepted appellant's case

¹² *Philip J. Deroo*, 39 ECAB 1294 (1988).

for left shoulder/arm strain and cervical strain. The November 22, 2005 statement of accepted facts indicated otherwise, but the record as a whole established the statement to be in error.

First and foremost, OWCP issued a formal notice of acceptance on July 25, 2003 accepting appellant's case for left shoulder/arm strain and cervical strain. This stands as the only formal notice of acceptance in the record and indeed, when OWCP issued its first statement of accepted facts on November 20, 2003, it correctly identified the accepted conditions as cervical and left shoulder strain. Nine months later, in an August 24, 2004 referral for vocational rehabilitation services, a claims examiner noted that thoracic and lumbar strain and cervical intervertebral disc disease with myelopathy were also accepted conditions. This made its way into the November 22, 2005 statement of accepted facts, which the same claims examiner prepared. The Board has carefully reviewed the record during this period and can find no support for the inclusion of these medical conditions, in one statement of accepted facts. OWCP did not further develop the issue of causal relationship, and no physician addressed the issue in a probative or convincing manner, as one would expect with any expansion of the claim, particularly for a disc disease with myelopathy.

Based on this, OWCP began to authorize medical treatment for conditions other than cervical and left shoulder strain. On March 6, 2004 OWCP authorized treatment of a spinal cord lesion. On August 6, 2004 it authorized injections of the cervicothoracic and lumbosacral spine. Authorization for another cervicothoracic spine injection followed on October 11, 2004. Appellant's representative noted that bills were being paid. The Board has held that authorization and payment for treatment of a medical condition does not establish that the condition is employment related.¹³ What distinguishes this case from *C.W.*,¹⁴ upon which appellant's representative relies, is that the case record in *C.W.* well documented that OWCP had, in fact, accepted reflex sympathetic dystrophy (RSD) as work related. Multiple well-rationalized reports supported causal relationship, and OWCP found that the claimant had submitted sufficient medical evidence to support RSD as a work-related condition. That was not the case here. There was no medical basis for expanding the acceptance of appellant's claim between November 20, 2003 and August 24, 2004. Consistent with the Board's reasoning in *C.W.*, the Board finds that OWCP properly corrected its November 22, 2005 statement of accepted facts on December 7, 2007, when it again indicated that it had accepted appellant's claim for cervical and left shoulder strain.

The statement of accepted facts is the means by which factual findings are separated from medical findings and opinion. This separation of functions is aimed at seeing that the claims examiner does not inadvertently make medical decisions.¹⁵ Without well-reasoned medical opinion evidence establishing causal relationship, the claims examiner in this case inadvertently made a medical decision when he included thoracic and lumbar strain and cervical disc herniation with myelopathy as work-related conditions in the November 22, 2005 statement of accepted facts. OWCP did not accept these conditions and did not, perforce, rescind any such acceptance.

¹³ *E.g.*, *G.A.*, Docket No. 09-2153 (issued June 10, 2010).

¹⁴ Docket No. 08-756 (issued February 6, 2009).

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.2(c) (September 2009).

As the Board found in the last appeal, OWCP met its burden to terminate appellant's compensation for the accepted medical conditions. It remains her burden to establish that any other medical condition or disability for which she seeks continuing compensation benefits is causally related to the June 11, 2003 work injury.

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 to establish that her medical condition or wage loss after March 28, 2008 was causally related to the June 11, 2003 work injury.

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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