

FACTUAL HISTORY

OWCP accepted that on October 21, 2009 appellant, then a 41-year-old transportation security screener, sustained a neck sprain and displacement of the cervical intervertebral disc without myelopathy as a result of placing a bag onto a roller system. On December 23, 2009 she returned to part-time limited-duty work, four hours a day at the employing establishment.

On February 16, 2010 OWCP accepted that appellant sustained a recurrence of disability on January 29, 2010 due to her October 21, 2009 employment injuries. It authorized a cervical fusion and discectomy at C5-6 and C6-7 which was performed on February 4, 2010 by Dr. Steven K. Jacobs, an attending neurosurgeon. OWCP placed appellant on the periodic rolls effective February 4, 2010.

Appellant accepted the employing establishment's May 17, 2010 job offer for a part-time limited-duty transportation security screener position and returned to work on that date. The position involved working at the exit lane and on an x-ray machine and a queue monitor. The physical requirements of the position included no lifting, pushing or pulling more than 20 pounds. Appellant was allowed to sit, stand and walk as personally needed. Her work hours were from 4:00 a.m. to 8:00 a.m., five days a week.

On May 25, 2010 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability on May 20, 2010. She stated that at approximately 7:10 a.m. on May 20, 2010 she felt a pop in her neck in the same area as her employment-related neck injury while at work. Appellant stopped work on May 21, 2010. On the claim form, the employing establishment contended that she did not report the claimed recurrence of disability until 5:27 p.m., more than eight hours after it occurred. Also, appellant did not seek medical treatment until four days later.

In a May 18, 2010 medical report, Dr. Valapet Sridaran, a Board-certified physiatrist, obtained a history of appellant's cervical treatment and noted her complaints of constant pain and burning sensation in the middle of her neck and a headache on both sides. He listed findings on physical examination of the neck and upper extremities. Dr. Sridaran advised that appellant was temporarily partially disabled. She could return to light-duty work the following week.

In a June 1, 2010 letter, the employing establishment contended that appellant did not sustain a recurrence of disability due to her October 21, 2009 employment injuries. It asserted that she was unhappy with her limited-duty work schedule. Appellant provided an inconsistent history of the claimed recurrence of disability as she initially stated that she felt a pop in her neck while performing her limited-duty work duties, but later stated that she experienced unbearable pain after taking a nap at home. The employing establishment submitted affidavits from employees who stated that appellant did not mention to them that she sustained a recurrence of disability on the claimed date.

By letter dated June 14, 2010, OWCP determined that appellant's claim should be treated as a new traumatic injury claim rather than as a recurrence of disability because it arose from the new May 20, 2010 incident. The claim was assigned File No. xxxxxx971.

In a June 23, 2010 letter, OWCP advised appellant that the evidence submitted was insufficient to establish her traumatic injury claim. It requested additional factual and medical evidence.

In a report dated May 24, 2010, Dr. Jacobs noted appellant's complaints of continuing pain and numbness in her neck. He listed findings on neurological examination and reviewed diagnostic test results. Dr. Jacobs advised that appellant had a neck sprain/strain. He opined that she was 75 percent disabled based on her chronic pain. In a July 9, 2010 report, Dr. Jacobs stated that appellant did not sustain a new work injury on May 20, 2010 because the pain she experienced was probably related to the fact that she had not healed from her authorized February 4, 2010 cervical surgery. He advised that her neck pain on May 20, 2010 was causally related to and exacerbated by her October 21, 2009 employment injuries. Dr. Jacobs concluded that appellant was 75 percent disabled based on her chronic pain. In a July 9, 2010 prescription, he placed her off work through the end of the month.

In a July 13, 2010 report, Dr. Sridaran noted that appellant had increased difficulty with performing daily tasks and urinary incontinence for well over two years. He listed findings on physical examination with regard to her neck and upper extremities. Dr. Sridaran advised that appellant was temporarily totally disabled from work.

Treatment notes from appellant's physical therapists addressed the treatment of appellant's cervical spinal stenosis from January 25 through July 8, 2010.

On August 3, 2010 OWCP advised appellant that her recurrence claim had been erroneously treated as a new traumatic injury claim. The claim was converted back to a recurrence claim under the current File No. xxxxxx231. On August 4, 2010 OWCP addressed the factual and medical evidence appellant needed to submit in support of her recurrence claim.

In an August 6, 2010 letter, appellant described the May 20, 2010 incident. While sitting at an x-ray machine, she felt a twinge of pain in her neck. Appellant did not tell anyone about her pain because she thought it was part of the healing process. Later in the afternoon, she took a nap at home. Appellant awoke with a stiff neck and was unable to move it. She telephoned her case nurse who advised her not to go to work until she was evaluated by her physician, which was not until May 24, 2010 when she was evaluated by Dr. Jacobs who placed her off work through September 9, 2010. Appellant stated that, following her return to work on May 17, 2010, she continued to experience pain in her neck that radiated to her shoulders and upper back.

In an August 9, 2010 report, Dr. Jacobs reiterated his prior opinion that appellant's neck pain on May 20, 2010 did not constitute a new injury, but rather it was an exacerbation of her October 21, 2009 employment injuries. In a report dated September 7, 2010, he listed findings on neurological examination and diagnosed brachial neuritis or radiculitis not otherwise specified. Dr. Jacobs ordered magnetic resonance imaging (MRI) scans of the cervical and thoracic spines in light of appellant's persistent neck and upper back pain.

In a report dated August 10, 2010, Dr. Sridaran listed findings on physical examination with regard to appellant's neck and upper back and torso. He advised that she was totally disabled for work.

In a September 29, 2010 decision, OWCP denied appellant's recurrence of disability claim. The factual and medical evidence was found insufficient to establish that her total disability on May 20, 2010 was due to her October 21, 2009 employment injuries.

On October 27, 2010 appellant requested an oral hearing before an OWCP hearing representative.

In an October 1, 2010 report, Dr. Phillip A. Baum, a Board-certified radiologist, advised that an MRI scan of the cervical spine revealed appellant was status post anterior cervical discectomy bony and hardware fusion at C5-C6 and C6-C7. Minor posterior bony proliferation at C5-C6 was unchanged without spinal cord deformity. There was slight progressive mild bony proliferation at right C6-C7 with slight progressive mild deformity of the right anterior spinal cord. There was minimal mild cervical spondylosis elsewhere. No other mass effect or displacement of neural structure was noted. Minor multilevel anteroretroisthesis scoliosis was noted. Probable element of red bone marrow recruitment was unchanged and unlikely of significance given its stability.

In an October 2, 2010 report, Dr. Michael S. Silber, a Board-certified radiologist, advised that an MRI scan of the thoracic spine was slightly limited due to artifact inferiorly. The remainder of the examination was unremarkable.

In prescriptions dated October 11, 2010, Dr. Jacobs placed appellant off work for three months due to cervical radiculopathy. On October 26, 2010 he advised that her need to undergo physical therapy and trigger point injections to treat her neck sprain/strain was causally related to the May 20, 2010 injury. Dr. Jacobs stated that this injury exacerbated her October 21, 2009 employment-related conditions. In a form report also dated October 26, 2010, he indicated with an affirmative mark that appellant had a musculoskeletal strain that was caused or aggravated by an employment activity. On November 2, 2010 Dr. Jacobs advised that she was unable to work through January 11, 2011. On December 6, 2010 he released appellant to return to limited-duty work with restrictions for three months. In a February 15, 2011 report, Dr. Jacobs listed findings on neurological examination and advised that appellant sustained an injury on May 20, 2010 when she hyperextended her neck. Since this injury, appellant suffered from severe neck pain. In a February 24, 2011 prescription, Dr. Jacobs ordered physical therapy to treat her neck injury. On April 4, 2011 he advised that appellant complained about severe and progressive neck pain. She had weakness and sensory loss. Dr. Jacobs ordered an updated cervical MRI scan and concluded that appellant was unable to return to work. On April 8, 2011 he prescribed physical therapy for her neck pain.

In reports dated October 18 and November 15, 2010, Dr. Sridaran noted appellant's complaints of increasing neck pain, headache and bilateral upper extremity weakness and pain. He listed findings on physical and neurological examination which included pain, passive and restricted range of motion and paravertebral tenderness on both sides of the neck, and moderate wasting, weakness and sensory deficit of the upper extremities. Dr. Sridaran reviewed an October 1, 2010 MRI scan of the cervical spine which revealed postsurgical changes at C6-C7 and possibly in the C5-C6 area, and decreased enhancement suggesting scar formation at the C6 and C7 levels. He advised appellant to remain active and follow-up with Dr. Jacobs for interventional spinal treatments. In a December 13, 2010 report, Dr. Sridaran listed findings on

physical examination and diagnosed chronic cervical radiculopathy and pain syndrome and paresthesia of the right hand. He advised that appellant was status post cervical discectomy and fusion. On January 10, 2011 Dr. Sridaran reported that she had failed cervical surgery syndrome, occipital neuralgia and secondary right shoulder region pain due to bursitis/tendinitis. He stated that appellant could continue to work four hours a day with restrictions. In a February 28, 2011 report, Dr. Sridaran reiterated his opinion that she could work four hours a day with restrictions.

In reports dated November 4 and 18, 2010, Dr. Marc J. Rosenblatt, a Board-certified physiatrist, related that appellant received cervical trigger point injections on these dates.

In a November 30, 2010 report, a physical therapist advised that a functional capacity evaluation revealed that appellant was able to tolerate sitting for 20 minutes with breaks every 45 minutes. She was able to stand for a maximum of 120 minutes with rest breaks after 60 minutes. Appellant was able to perform light work with additional limitations on lifting and overhead activities. In progress notes dated March 2 and April 15, 2011, appellant's physical therapists addressed the treatment of her back and neck pain.

A March 3, 2011 report from a physician whose signature is illegible addressed the treatment of appellant's cervical conditions and shoulder pain with physical therapy.

At a February 14, 2011 hearing, appellant testified that on May 20, 2010 she was performing her limited-duty work as she sat in a chair at an x-ray machine. She looked up to see the monitor and side to side to see passengers loading their bags through the machine. Appellant felt a pop in her neck. She finished her shift without mentioning her neck pain to a lead screener. Appellant went home and took pain medication and a nap hoping to relieve her symptom. Because she could not move her neck when she awakened, she sought medical treatment.

In an April 27, 2011 decision, an OWCP hearing representative affirmed the denial of appellant's recurrence claim on the grounds that she identified a new traumatic injury. He stated that Dr. Jacobs' medical opinion that appellant sustained a new injury on May 20, 2010 was unequivocal. As a result, the hearing representative determined that there was no basis for finding a spontaneous worsening of an accepted injury or that appellant's light-duty requirements changed such that she was required to work beyond her physical restrictions. He concluded that appellant did not sustain a recurrence of total disability as of May 20, 2010. Upon return of the case record, OWCP was instructed to reopen her traumatic injury claim under File No. xxxxxx971 for further development as deemed necessary and issue an appropriate decision.

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.² This 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

² 20 C.F.R. § 10.5(x).

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.³

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.⁴

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁵

ANALYSIS

OWCP accepted that appellant sustained a neck sprain and displacement of the cervical intervertebral disc without myelopathy while working as a transportation security screener on October 21, 2009. Following this injury, she returned to part-time light-duty work. Appellant filed a recurrence claim for total disability commencing May 20, 2010. She alleged that on that date she felt pain in her neck while sitting at an x-ray machine monitoring passengers' bags at work which caused her to reinjure her neck. In reports dated October 26, 2010 and February 15, 2011, Dr. Jacobs stated that on May 20, 2010 appellant hyperextended her neck which resulted in a neck sprain/strain that required physical therapy and trigger point injections. He opined that this injury exacerbated the October 21, 2009 employment conditions. As OWCP's hearing representative explained, this would be considered a new injury based on this evidence since a new work factor was identified as the cause of the May 20, 2010 injury. The hearing representative instructed OWCP to reopen appellant's traumatic injury claim under File No. xxxxxx971 for the new injury.⁶ While appellant's May 20, 2010 work stoppage may have been

³ *Id.*

⁴ *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁵ *James H. Botts*, 50 ECAB 265 (1999).

⁶ A claim based on new employment incidents or exposures, even if the same part of the body previously injured is involved, is a new injury. *B.B.*, Docket No. 09-1858 (issued April 16, 2010); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997).

due to her new exposure in the work environment, the issue of whether she has established a new traumatic injury is not an issue currently before the Board as it is in an interlocutory posture.⁷

As to the recurrence of disability claim, appellant has not alleged a change in the nature and extent of her light-duty job requirements. Instead, she attributed her recurrence of disability to a change in the nature and extent of her employment-related conditions. Appellant must provide medical evidence to establish that she was disabled due to a worsening of her accepted work-related conditions. The Board finds that she has not met her burden of proof in establishing her claim.

Dr. Jacobs' May 24 and November 2, 2010 and April 4, 2011 reports, and July 9 and October 11, 2010 prescriptions found that appellant was totally disabled for work, but failed to provide any rationale explaining how the accepted injuries caused her disability. Similarly, in his report dated October 26, 2010 and prescriptions dated February 24 and April 8, 2011, Dr. Jacob did not explain how appellant's current neck pain and musculoskeletal strain and need for medical treatment were causally related to the accepted injuries. Medical evidence offering no opinion as to the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸ Further, the Board has consistently held that pain is a symptom, not a compensable medical diagnosis.⁹ Dr. Jacobs' July 9 and August 9, 2010 reports found that appellant's neck pain on May 20, 2010 did not constitute a new injury, rather it was caused or exacerbated by the October 21, 2009 employment injuries "probably" due to the fact that she had not healed from her February 4, 2010 cervical surgery. The Board finds that Dr. Jacobs provided a speculative opinion on causal relation. In order to be of probative value, medical opinions should be expressed in terms of a reasonable degree of medical certainty.¹⁰ Furthermore, the Board has held that medical opinions which are speculative or equivocal are of diminished probative value.¹¹ Dr. Jacobs did not provide adequate medical rationale for his opinion on how appellant's authorized cervical surgery caused or contributed to her current neck condition.¹²

⁷ See 20 C.F.R. § 501.2(c)(2). As was noted above, following the hearing representative's April 27, 2011 decision, OWCP, in a September 14, 2011 decision, denied appellant's traumatic injury claim. It found that the medical evidence was insufficient to establish that she sustained an injury causally related to the accepted May 20, 2010 employment incident. In an April 12, 2012 decision, an OWCP hearing representative set aside the September 14, 2011 decision and remanded the case to OWCP. It found that while the medical evidence submitted by appellant was not sufficient to discharge her burden of proof to establish her entitlement to compensation benefits, it was sufficient to require OWCP to further develop the medical evidence.

⁸ *A.D.*, 58 ECAB 159 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Willie M. Miller*, 53 ECAB 697 (2002); *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *C.F.*, Docket No. 08-1102 (issued October 10, 2008); *Robert Broome*, 55 ECAB 339, 342 (2004).

¹⁰ See *Roy L. Humphrey*, 57 ECAB 238 (2005) (to be probative, the medical opinion must be of reasonable medical certainty and supported by medical rationale).

¹¹ See *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (the Board has generally held that opinions such as the condition is probably related, most likely related or could be related are speculative and diminish the probative value of the medical opinion); *Cecelia M. Corley*, 56 ECAB 662 (2005) (medical opinions which are speculative or equivocal are of diminished probative value).

¹² See *Robert Broome*, *supra* note 9.

None of his other reports addressed how the claimed recurrence of disability was caused by the accepted injuries.¹³ For the stated reasons, the Board finds that Dr. Jacobs' reports are insufficient to establish appellant's burden of proof.

Dr. Sridaran's July 13 and August 10, 2010 reports found that appellant was totally disabled for work. Although he found that she was totally disabled, he did not express an opinion as to whether and how her disability on the claimed date was causally related to the accepted employment injuries.¹⁴ The other reports from Dr. Sridaran failed to address whether appellant sustained total disability for work on the claimed date due to the accepted employment injuries.¹⁵ The Board finds that his reports are insufficient to establish her claim.

Similarly, the diagnostic test results of Dr. Baum and Dr. Silber regarding appellant's cervical and thoracic spine conditions and Dr. Rosenblatt's reports concerning her cervical treatment are insufficient to establish her claim for a recurrence of total disability. This evidence does not contain any opinion addressing her disability on May 20, 2010 or how any disability was causally related to the accepted injuries.¹⁶

The March 3, 2011 report lacks any probative medical value because the physician's signature is illegible. The Board has held that medical reports lacking proper identification do not constitute probative medical evidence.¹⁷

The reports and progress notes from appellant's physical therapists are of no probative value because a physical therapist is not a "physician" as defined under FECA.¹⁸

Appellant has not met her burden of proof in establishing that there was a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the limited light-duty requirements which would prohibit her from performing the limited light-duty position she assumed after she returned to work.

On appeal, appellant's attorney contended, without explanation, that OWCP's hearing representative's decision was contrary to fact and law. For the reasons stated above, the Board finds that appellant did not submit sufficient medical evidence establishing that she sustained a recurrence of disability as of May 20, 2010 due to her accepted October 21, 2009 employment injuries.

¹³ See cases cited *supra* note 8.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *R.M.*, 59 ECAB 690, 693 (2008).

¹⁸ See 5 U.S.C. § 8101(2); A.C., Docket No. 08-1453 (issued November 18, 2008).

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 that she sustained a recurrence of total disability on May 20, 2010 causally related to her accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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