

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

C.T., Appellant)

and)

OFFICE OF PERSONNEL MANAGEMENT,)
OFFICE OF INSURANCE PROGRAMS,)
Washington, DC, Employer)

**Docket No. 12-363
Issued: July 9, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 9, 2011 appellant filed a timely appeal from an October 28, 2011 merit decision of the Office of Workers' Compensation Programs denying her recurrence claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 has established that her recurrence of disability on and after January 13, 2003 was causally related to her accepted employment injury.

FACTUAL HISTORY

On November 17, 1992 appellant, then a 30-year-old office automation clerk, filed an occupational disease claim attributing her bilateral wrist joint inflammation to her typing duties.

¹ 5 U.S.C. § 8101 *et seq.*

She indicated that she first became aware of the condition and the relationship to her job on November 6, 1992. OWCP accepted the claim for bilateral/lateral epicondylitis and bilateral carpal tunnel conditions.² It authorized right wrist carpal tunnel release surgery which was performed on March 1, 1994.³ Wage-loss compensation was paid through May 14, 1994. Appellant resigned from the employing establishment in May 1994.⁴

On February 5, 2007 Dr. Scot Kampmann, a treating physician, conducted a physical examination for an injury which had occurred in October 2006. He noted appellant's medical history which included an April 26, 2004 employment incident while working as a transportation security officer and the onset of her neck, upper and mid-back symptoms in October 2006. Dr. Kampmann diagnosed cervical sprain/strain, cervical intersegmental dysfunction, thoracic sprain/strain, thoracic intersegmental dysfunction and lumbar intersegmental dysfunction which he attributed to her October 2006 injury. He indicated that appellant had been partially disabled for the period December 29, 2006 to January 23, 2007.

OWCP received a number of reports and progress notes from Dr. Shaheer Yousaf, a treating Board-certified orthopedic surgeon, for treatment provided in March and April 2009. Dr. Yousaf reported physical findings and noted a history of chronic pain since a November 20, 1992 employment injury. Diagnoses included cervical radiculitis, lumbar radiculitis, bilateral patellofemoral syndrome, upper extremity pain and paresthesias and bilateral shoulder pain.

On April 21, 2009 appellant filed a claim for a recurrence of disability beginning January 13, 2003 due to her accepted employment injury.

By letters dated December 14, 2009 and February 25, 2010, OWCP informed appellant of the medical and factual evidence required to support a recurrence claim. The February 25, 2010 letter advised her to provide the requested information within 30 days.

In support of her claim, appellant submitted December 10, 2009 progress notes from Dr. Yousaf who provided physical findings and noted appellant's complaints of pain in her neck, wrists, shoulders and lumbosacral spine. She also submitted a March 20, 2009 magnetic resonance imaging (MRI) scan of the cervical and lumbar spine showing lumbar and cervical disc herniations and a bulging disc at L5-S1.

On March 10, 2010 appellant attributed her chipped cervical disc and shoulder, lower back and spine problems to her accepted bilateral carpal tunnel condition.

An April 16, 2010 electrodiagnostic study by Dr. Ahmed Kajafi, a reviewing physician, revealed abnormal results. The findings are suggestive of neuropathy entrapment or carpal tunnel syndrome and was suggestive subacute to chronic C5-6 bilateral radiculopathies.

² On March 29, 1996 OWCP granted appellant a schedule award for a 24 percent impairment of the left upper extremity. The period of the award was from February 16, 1996 to July 23, 1997.

³ The medical reports indicate the surgery was performed on the left wrist and not the right wrist.

⁴ On September 5, 2007 OWCP received medical and factual evidence regarding a back injury appellant sustained while working for Southwest Airlines in October 2006.

By decision dated July 14, 2010, OWCP denied appellant's recurrence claim.

Subsequent to the denial of her recurrence claim, OWCP received additional medical evidence for the period December 10, 2009 to March 18, 2011 from Dr. Yousaf, who provided physical findings and reported her complaints. A September 22, 2010 disability certificate was also received from Dr. Yousaf which indicated that appellant could telework from home.

On May 20, 2011 appellant requested reconsideration.

By decision dated October 28, 2011, OWCP denied modification.⁵

LEGAL PRECEDENT

OWCP'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.⁶ If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken and an appropriate new claim should be filed.⁷

For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.⁸

ANALYSIS

OWCP accepted appellant's claim for bilateral/lateral epicondylitis and bilateral carpal tunnel conditions. It paid wage-loss compensation until May 14, 1994. Appellant resigned from the employing establishment in May 1994. By decision dated March 3, 1995, OWCP denied her claim for wage-loss compensation after May 16, 1994. The issue is whether appellant has established that she sustained a spontaneous recurrence of disability on and after January 13, 2003 due to her accepted bilateral/lateral epicondylitis and bilateral carpal tunnel condition. The Board finds that she has failed to establish that her claim for a recurrence of disability on and after January 13, 2003 was due to her accepted employment conditions.

⁵ The Board notes that, following the October 28, 2011 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

⁶ 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 Phillip L. Barnes*, 55 ECAB 426 (2004).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997), *Donald T. Pippin*, 54 ECAB 631 (2003).

⁸ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

In support of her claim, appellant submitted medical evidence from her treating physician, Dr. Yousaf. In reports for treatment in 2009 through March 18, 2011, Dr. Yousaf noted a November 1992 employment injury, provided physical findings and appellant's current complaints. He diagnosed cervical radiculitis, lumbar radiculitis, bilateral patellofemoral syndrome, upper extremity pain and paresthesias and bilateral shoulder pain, but these conditions have not been accepted by OWCP.⁹ Dr. Yousaf provided no supporting rationale explaining how the conditions he diagnosed were a result of her accepted bilateral/lateral epicondylitis and bilateral carpal tunnel condition. The Board has held that opinions unsupported by rationale are entitled to little probative value.¹⁰ In addition, Dr. Yousaf does not address the impact of injuries appellant sustained in 2004 and 2006 while working for a private employer. The Board has also held that medical evidence based on an inaccurate or incomplete factual history is of diminished probative value.¹¹ The record contains a September 22, 2010 disability certificate in which he requests appellant be allowed to telework from home. This certificate is of diminished probative medical value as Dr. Yousaf did not explain how teleworking from home instead of going into work was related to appellant's accepted bilateral/lateral epicondylitis and bilateral carpal tunnel conditions.¹²

Dr. Kajafi's diagnostic test report of April 16, 2010 noted diagnoses but failed to provide an opinion on causal relationship between the claimed period of disability and the accepted condition. The Board has held that a physician's opinion, which does not address causal relationship, is of diminished probative value.¹³ Additionally, OWCP did not accept the condition of subacute to chronic C5-6 bilateral radiculopathies. Thus, Dr. Kajafi's report is insufficient to establish appellant's claim.

Appellant also submitted a February 5, 2007 report from Dr. Kampmann, diagnosing cervical sprain/strain, cervical intersegmental dysfunction, thoracic sprain/strain, thoracic intersegmental dysfunction and lumbar intersegmental dysfunction which he attributed to an October 2006 injury. A recurrence is defined as a spontaneous change in a medical condition resulting from a previous injury without an intervening injury or new exposure to the work environment that caused the illness.¹⁴ Here, Dr. Kampmann attributed appellant's partial disability for December 29, 2006 to January 23, 2007 to an October 2006 injury, thereby, implicating a

⁹ *Charles W. Downey*, 54 ECAB 421 (2003); *Alice J. Tysinger*, 51 ECAB 638 (2000) (for conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship).

¹⁰ *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹¹ *M.W.*, 57 ECAB 710 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹² *See A.F.*, 59 ECAB 714 (2008); *Robert Broome*, 55 ECAB 339 (2004); *Michael E. Smith*, 50 ECAB 313 (1999) (medical opinion, which does not offer any opinion regarding the cause of an employee's condition, is of limited probative value).

¹³ *See A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, *supra* note 8 (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁴ *K.S.*, Docket No. 08-2105 (issued February 11, 2009); *J.F.*, 58 ECAB 124 (2006); *Theresa L. Andrews*, 55 ECAB 719 (2004).

new injury rather than a spontaneous recurrence of disability from the accepted injury. The Board finds that Dr. Kampmann's report is insufficient to establish that appellant's recurrence of disability was causally related to her accepted employment conditions.

It is appellant's burden of proof to provide evidence from a qualified physician to support the recurrence of total disability for any period of time. She failed to submit rationalized medical evidence establishing that her claimed recurrence of disability commencing January 13, 2003 was causally related to the accepted employment conditions and therefore OWCP properly denied her claim for compensation.

The Board therefore affirms the October 28, 2011 OWCP decision concerning the denial of compensation based on a recurrence of her work-related disability.

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 established that she sustained a recurrence of disability on and after January 13, 2003 causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 28, 2011 is affirmed.

Issued: July 9, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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