

FACTUAL HISTORY

This case has previously been before the Board. In a decision dated July 6, 2007, the Board affirmed in part and set aside in part a June 16, 2006 OWCP decision.² The Board found that OWCP properly terminated appellant's compensation and medical benefits effective August 15, 2002. It found that the weight of the medical evidence, as represented by Dr. Richard Krugel, a Board-certified orthopedic surgeon and impartial medical examiner, established that she had no further disability or residuals of her work injury, accepted for tendinitis of the right hand and wrist and sprains of the right shoulder, arm, elbow and forearm. The Board determined, however, that Dr. Krugel was a second opinion examiner on the issue of whether appellant sustained a cervical disc herniation due to her employment. The Board found that his opinion was insufficient to establish the cause of her cervical condition and that the remaining medical evidence of record was sufficient to warrant further development regarding a cervical or additional upper extremity condition causally related to factors of her federal employment. The facts and the circumstances as set forth in the Board's prior decision are hereby incorporated by reference.

On April 7, 2009 OWCP informed appellant's attorney that she would be referred for an impartial medical examination. In an internal memorandum, it noted that the Board had found a conflict regarding whether she had continuing employment-related disability.

By letter dated May 18, 2009, OWCP referred appellant to Dr. Robert S. Levine, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated May 29, 2009, Dr. Bradford Barker, a Board-certified physiatrist, diagnosed bilateral impingement syndrome of the shoulders with a partial rotator cuff tear, a severe myofascial strain injury to the cervical spine, upper trapezius, bilateral scapula and bilateral deltoids, multiple cervical herniated discs and bilateral bicipital tendinitis. He found that appellant could not lift over five pounds or perform overhead activities or repetitive motion. Dr. Barker noted that she had not received treatment from him since 2005 because she was undergoing chemotherapy.

In a report dated June 15, 2009, Dr. Levine reviewed appellant's work history and the medical reports of record. On examination, he measured loss of range of motion of the neck and internal rotation of the right shoulder. Dr. Levine found a lack of effort on strength testing of the shoulder and a negative impingement sign with no atrophy or neurological defect. He determined that x-rays of the shoulders were normal and x-rays of the cervical spine were consistent with early spondylosis. Dr. Levine diagnosed atypical right upper extremity pain, cervical spondylosis and to rule out psychological factors. He attributed appellant's cervical spondylosis to "normal aging" and found that her atypical upper extremity pain would have resolved when she stopped work if work had caused her condition. Dr. Levine asserted that her

² Docket No. 06-2149 (issued July 6, 2007). On July 4, 2000 appellant, then a 47-year-old distribution clerk, filed an occupational disease claim alleging that she experienced severe right wrist pain radiating through her arm as a result of employment factors. OWCP accepted the claim for tendinitis of the right hand and wrist and sprains of the right shoulder, arm, elbow and forearm. After sustaining intermittent periods of disability, appellant stopped work on March 26, 2002 and did not return.

pain and disability resulted from “nonorganic factors that would have to be evaluated by a clinical psychologist familiar with chronic pain and disability.” He concluded:

“It is felt that [appellant] did not sustain a cervical condition related to work. Based on the records, it appears that she has had tendinosis, but the records also indicate that the complaints have been atypical. The records also indicated that she had a history of depression and again it is felt that her continued complaints and disability are related to nonorganic factors, rather than to a problem in her upper extremity.”

Dr. Levine found that appellant’s cervical disc herniation resulted from aging.

By decision dated November 1, 2011, OWCP denied appellant’s request to expand her claim to include a cervical or upper extremity condition due to her employment injury.

On appeal appellant’s attorney questioned the delay by OWCP in developing the claim as instructed by the Board. He was not provided with a copy of Dr. Levine’s report until November 2011. Counsel asserted that Dr. Levine was biased against appellant and refused to consider the medical evidence that she brought with her. He further argued that OWCP did not consider medical evidence from 2009 which supported her claim.

LEGAL PRECEDENT

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.³ Rationalized medical opinion evidence is medical evidence, which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors.⁴ The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty⁶ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

ANALYSIS

On a prior appeal, the Board found that OWCP met its burden of proof to terminate appellant’s compensation and authorization for medical treatment for the accepted conditions of right hand and wrist tendinitis and sprains of the right shoulder, arm, elbow and forearm. The Board determined, however, that the evidence required further development regarding whether

³ *John J. Montoya*, 54 ECAB 306 (2003).

⁴ *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁵ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *John W. Montoya*, *supra* note 3.

⁷ *Judy C. Rogers*, 54 ECAB 693 (2003).

she sustained a cervical disc herniation or other upper extremity conditions such as a rotator cuff tear or shoulder impingement due to factors of her federal employment.

On remand OWCP referred appellant to Dr. Levine, who it identified as an impartial medical examiner. However, the Board did not find a conflict regarding whether she had a cervical condition or additional upper extremity conditions due to work factors. Instead, the Board found that the evidence was sufficient to require further development. Consequently, Dr. Levine was a second opinion physician rather than an impartial medical examiner.

The Board finds that appellant has not established that she sustained a cervical or additional upper extremity conditions due to factors of her federal employment. In a report dated May 29, 2009, Dr. Barker diagnosed bilateral impingement syndrome of the shoulders with a partial rotator cuff tear, a severe myofascial strain injury to the cervical spine, upper trapezius, bilateral scapula and bilateral deltoids, multiple cervical herniated discs and bilateral bicipital tendinitis. He provided work restrictions of no lifting over five pounds or performing repetitive or overhead motions. Dr. Barker, however, did not address the cause of appellant's condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.⁸

In a report dated June 15, 2009, Dr. Levine discussed the medical evidence and listed findings on examination. He determined that appellant did not provide full effort with strength testing of the shoulder and that she had no sign of impingement or a neurological deficit. Dr. Levine measured decreased cervical and right shoulder internal rotation. He diagnosed cervical spondylosis and a cervical disc herniation consistent with aging and atypical upper extremity pain that was not work related. Dr. Levine provided rationale for his opinion by explaining that her upper extremity pain should have resolved when she stopped work if it was related to employment. He attributed her atypical pain to nonorganic factors. Dr. Levine's opinion is based on an accurate factual and medical history and supported by medical rationale; consequently, it represents the weight of the evidence.⁹

The remaining evidence is insufficient to show that appellant had an employment-related cervical or upper extremity condition. The most recent evidence supporting a causal relationship between a diagnosed condition and appellant's employment is a March 13, 2006 report from Dr. Barker. As this is more than three years before Dr. Levine's opinion, it is stale and insufficient to create a conflict of opinion.¹⁰

On appeal appellant's attorney argued that medical evidence from 2009 supports appellant's claim. While Dr. Barker listed multiple diagnoses and work restrictions in a May 29, 2009 report, he did not address the pertinent issue of causation. Thus, his opinion is of diminished probative value.¹¹ Counsel also maintained that Dr. Levine was biased as he did not

⁸ *Conard Hightower, supra* note 4.

⁹ *See Pamela K. Guesford, 53 ECAB 727 (2002).*

¹⁰ *See J.C., Docket No. 11-241 (issued September 22, 2011); Keith Hanselman, 42 ECAB 680 (1991).*

¹¹ *See Conard Hightower, supra* note 4.

consider the medical evidence that appellant brought to the examination. Dr. Levine, however, reviewed the record provided by OWCP. Appellant has not submitted any evidence to support bias by Dr. Levine and mere allegations are insufficient to establish bias.¹² Counsel also noted that OWCP delayed in developing the claim and providing him with a copy of Dr. Levine's report. The Board's jurisdiction, however, is limited to reviewing final decisions of OWCP.¹³

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 cervical or upper extremity condition causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 20, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

¹² See *L.W.*, 59 ECAB 471 (2008).

¹³ 20 C.F.R. § 501.2(c).