

ISSUE

The issue is whether appellant established that the conditions of memory loss and headaches are causally related to an October 9, 2005 work injury.

FACTUAL HISTORY

This case has previously been before the Board. In a July 12, 2012 decision,³ the Board affirmed OWCP's October 12, 2011 decision in part. The Board found that OWCP met its burden of proof to terminate appellant's wage-loss and medical compensation benefits for her work-related neck sprain/strain effective February 14, 2010 based on the opinion of an impartial medical specialist, Dr. Donald Mauldin, a Board-certified orthopedic surgeon. Appellant did not establish that she had any continuing residuals of her work-related neck sprain/strain on or after February 14, 2010.⁴ The Board remanded the case for OWCP to issue a proper decision with regard to whether appellant's headaches and memory loss were employment related. The history of the case as provided in the prior Board decision is incorporated herein by reference.

OWCP requested that Dr. Mauldin provide an opinion as to whether appellant's headaches and memory loss were employment related. In a July 30, 2012 addendum, Dr. Mauldin noted that appellant's primary injury was a cervical strain and that there was never any significant structural injury. Her only chronic condition was chronic cervical-type syndrome from multilevel degenerative disc disease. Dr. Mauldin opined that there was nothing to indicate that her cervical strain would result in any type of chronic tension headaches and memory loss as it relates to a remote cervical strain. He noted that multiple clinical examiners documented significant symptom magnification but no evidence of a significant disc herniation or major structural damage. Dr. Mauldin concluded that any memory loss or tension headaches should be considered a disease of life and not secondary to the cervical strain that occurred on October 9, 2005.

³ Docket No. 12-141 (issued July 12, 2012).

⁴ OWCP referred appellant to Dr. Mauldin for an impartial evaluation to render an opinion as to whether there were any injury-related residuals and disability. In a February 15, 2010 report, Dr. Mauldin reviewed the history of injury the medical records and set forth findings on physical examinations. He provided an impression of status post cervical strain, development of chronic cervical-type syndrome. Dr. Mauldin stated that appellant's diagnosis was established years prior as a cervical strain. Appellant was found to have primarily multilevel degenerative disc disease that preexisted the cervical strain. He stated that there had not been any clear-cut documentation of major disc herniation or major spinal cord compression or neurological symptoms and that she had been treated, for the most part, as a chronic cervical syndrome. Based on his review of the record and appellant's prior complaints, Dr. Mauldin found that appellant had a cervical strain that may have transiently aggravated some exiting nerve roots, but had stabilized well before his examination. He stated that there was nothing in the record to indicate that particular mechanism of injury resulted in major damage to her cervical spine or caused permanent problems and disability. Dr. Mauldin found that appellant had been capable of returning back to work status within a two- to three-month period of time following the injury. Based on the clinical examination and diagnostic studies, there was nothing to support that appellant was totally disabled secondary to a cervical strain superimposed upon preexisting multilevel cervical spondylosis. Following a functional capacity evaluation of February 22, 2010, Dr. Mauldin concluded that appellant could return to work full time.

By decision dated August 14, 2012, OWCP found the conditions of tension headaches and memory loss were not causally related to the October 9, 2005 work injury. It gave weight to Dr. Mauldin's opinion.

On September 12, 2012 appellant requested a review of the written record. In a September 12, 2012 letter, she contended that Dr. Mauldin's opinion was insufficient to represent the weight of the medical evidence. Appellant contended that Dr. Mauldin failed to consider medical records prior to and subsequent to his February 15, 2010 evaluation. She specified Dr. Wayne H. Gordon's reports of November 13 and December 15, 2009; Dr. Steven Cyr, a Board-certified orthopedic surgeon's report of August 24, 2010; Dr. Joseph D. Eubanks' August 24, 2010 report; and the February 22, 2011 report of Dr. Yanko Yankov, a Board-certified neurologist. Appellant alleged that OWCP withheld additional reports from Dr. Mauldin subsequent to his evaluation which should have been considered. These included a June 25, 2010 report from Dr. Douglas K. Smith, a Board-certified radiologist, and the July 22 and August 24, 2010 reports of Dr. Cyr. Appellant further contended that Dr. Mauldin's opinion was not rationalized.

In a March 27, 2009 report, Dr. Yankov noted findings and diagnosed cervical spondyloarthrosis, cervical radiculopathy, cervicogenic headaches in possible combination with migraine headaches, and possible cerebellar arachnoidal cyst or cistema magna. In a January 26, 2010 report, he noted the history of injury and presented findings. Dr. Yankov indicated that the nerve conduction velocity (NCV) and electromyogram (EMG) study did not show peripheral polyneuropathy or mononeuropathy of the upper extremity or any active impingement of the cervical sensory or motor roots in the cervical spine. He stated that appellant's symptoms were consistent with cervical trauma and post-traumatic muscle changes and heaviness, causalgia of the upper extremity especially in the left. Dr. Yankov noted that sensory cervical radiculopathy could not be ruled out. In an addendum to his report, he noted appellant's complaint of severe memory loss in her short-term memory, which was very changed after her trauma. Dr. Yankov noted that the complaint of severe memory loss was difficult to incorporate to all the clinical pictures. In a June 28, 2010 report, he noted appellant's complaints of occasional strong headaches. Neurological examination was noted to have no changes with no focal neurological signs. In a February 22, 2011 report, Dr. Yankov noted that appellant's neurological examination did not change and there were no signs of clinical weakness of the lower extremities. An impression of cervical trauma with post-traumatic cervical pain related to cervical area, thoracal area and both upper extremities; low back pain; right knee pain; and right plantar pain probably related to the low back pain and appellant's walking habits. Numerous progress reports from Dr. Yankov are also of record.

In an August 24, 2010 report, Dr. Cyr, a Board-certified orthopedic surgeon, noted that appellant continued to decline neurologically and has clear evidence of cervical instability on flexion and extension x-rays as well as magnetic resonance imaging (MRI) scan studies. Dr. Cyr indicated that appellant's symptoms have progressively worsened since her November 2005 work injury. He stated that her multilevel cervical instability and disc herniations result in limited motion of the cervical spine as well as persistent upper and lower extremity dysfunction with evidence of myelopathy and radiculopathy. Dr. Cyr noted that she was seen by a local orthopedic surgeon and deemed to have no evidence of shoulder pathology and physical findings suggestive of cervical pathology. He recommended surgery (a C3-C7 decompression with a C3-

T1 posterior spinal fusion with instrumentation) to reduce worsening neurologic injury. Dr. Cyr stated that assuming a successful surgical outcome, appellant would be able to return to functional activities and full duty without restrictions postoperatively. He opined that the mechanism of injury described in November 2005 relates to appellant's persistent cervical discomfort, instability and multilevel disc herniations. Dr. Cyr noted that she failed a prolonged course of conservative measures as well as treatment by multiple different specialists, in addition to medication management and injection therapy.⁵

In a June 25, 2010 report, Dr. Douglas K. Smith, a Board-certified radiologist, reported the results of the MRI scan of the cervical spine.

By decision dated January 2, 2013, an OWCP hearing representative affirmed the August 14, 2012 decision. He found that appellant had not met her burden of proof to establish that her headaches and memory loss were causally related to the accepted work injury.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁶ Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁷ 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.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant,⁹ must be one of reasonable medical certainty¹⁰ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

ANALYSIS

OWCP accepted that appellant sustained a cervical sprain/strain due to an October 9, 2005 lifting incident at work. Based on a conflict in medical opinion as to the extent of any injury-related residuals and disability, the case was referred to Dr. Mauldin, for an impartial

⁵ Reports cited by appellant, but not in the record, include: Dr. Gordon's reports of November 13 and December 15, 2009 and Dr. Eubanks' report of August 24, 2010.

⁶ See *Katherine J. Friday*, 47 ECAB 591 (1996).

⁷ *John J. Montoya*, 54 ECAB 306 (2003).

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁰ See *John J. Montoya supra* note 6.

¹¹ *Judy C. Rogers*, 54 ECAB 693 (2003).

medical examination. In a prior appeal, the Board affirmed the termination of benefits on the basis that the weight of the medical evidence, as represented by Dr. Mauldin's February 15, 2010 opinion, established that the injury-related condition had resolved. Appellant did not establish that she had any continuing residuals or disability related to her accepted condition after February 14, 2010. The Board remanded the case for a determination as to whether appellant's headaches and memory loss were causally related to the work injury. OWCP sought a supplemental report from Dr. Mauldin regarding this issue.¹²

In a July 30, 2012 report, Dr. Mauldin noted that appellant's primary injury was cervical strain and that there was never any significant structural injury. He stated that appellant had chronic cervical type syndrome from multi-level degenerative disc disease. Dr. Mauldin opined that there was nothing to indicate that her particular cervical strain injury would result in chronic tension headaches or memory loss as it related to a remote cervical strain. He noted that multiple clinical examiners had documented significant symptom magnification but no evidence of a cervical disc herniation or major structural damage. Dr. Mauldin opined that any memory loss or tension headaches should be considered a disease of life and not secondary to the cervical strain that occurred on October 9, 2005.

The Board finds that Dr. Mauldin's opinion as set forth in his July 30, 2012 report is probative evidence and reliable. Dr. Mauldin had full knowledge of the relevant facts and previously evaluated the course of appellant's condition. His opinion is based on proper factual and medical history and he addressed both the medical records and his own examination findings in reaching a reasoned conclusion regarding the relationship of appellant's headaches and memory loss.¹³ Appellant noted that subsequent medical reports and objective testing showed significant structural damage, which put into question Dr. Mauldin's opinion. For the reasons outlined below, the subsequent medical reports do not affect Dr. Mauldin's opinion regarding whether there is a causal relationship between appellant's headaches and memory loss and the employment injury. The Board finds that Dr. Mauldin's opinion constitutes the weight of the medical evidence and establishes that appellant's headaches and memory loss are unrelated to appellant's employment injury.

The attending physician's reports, both prior to and subsequent to Dr. Mauldin's July 30, 2012 report, fail to establish that appellant's headaches and memory loss are causally related to the work injury.

Dr. Yankov noted appellant's cervicogenic headaches and complaints of memory loss which occurred after the work injury. In a March 27, 2009 report, he diagnosed cervical spondyloarthrosis, cervical radiculopathy, cervicogenic headaches in possible combination with migraine headaches, and possible cerebellar arachnoidal cyst or cistema magna. In a January 26,

¹² Dr. Mauldin is deemed a second opinion specialist with regard to his opinion on the causal relationship of appellant's headache and memory loss conditions as the record is devoid of a conflict of medical opinion on this issue.

¹³ See *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given to each individual report).

2010 report, Dr. Yankov noted that NCV and EMG study did not show peripheral polyneuropathy or mononeuropathy of the upper extremity or any active impingement of the cervical sensory or motor roots in the cervical spine. He opined that appellant's symptoms were consistent with cervical trauma and post-traumatic muscle changes and heaviness, causalgia of the upper extremity especially in the left. Dr. Yankov also noted appellant's complaint of severe loss to her short-term memory, which was very changed after her trauma. He stated that the complaint of severe memory loss was difficult to incorporate to all the clinical pictures. Dr. Yankov noted appellant's neurological examination had no changes with no focal neurological signs or signs of clinical weakness of the lower extremities. He provided an impression of cervical trauma with post-traumatic cervical pain related to cervical area, thoracal area and both upper extremities; low back pain; right knee pain; and right plantar pain probably related to the low back pain and appellant's walking habits. These reports are insufficient as Dr. Yankov failed to offer sufficient opinion regarding the cause of appellant's memory loss condition or how the work injury would cause or contribute to appellant's headaches and memory loss.

In an August 24, 2010 report, Dr. Cyr indicated that appellant's neurological symptoms have progressively worsened since her November 2005 work injury. There was objective evidence of multilevel cervical instability and disc herniations as well as persistent upper and lower extremity dysfunction with evidence of myelopathy and radiculopathy. He noted that she was seen by a local orthopedic surgeon and deemed to have no evidence of shoulder pathology and physical findings suggestive of cervical pathology. Dr. Cyr recommended a C3-C7 decompression with a C3-T1 posterior spinal fusion with instrumentation to reduce worsening neurologic injury. He opined that the mechanism of injury described in November 2005 relates to appellant's persistent cervical discomfort, instability and multilevel disc herniations. Dr. Cyr noted that appellant failed a prolonged course of conservative measures as well as treatment by multiple different specialists, in addition to medication management and injection therapy. He noted that appellant's neurological symptoms progressively worsened since her November 2005 work injury and opined that the mechanism of injury described in November 2005 relates to appellant's persistent cervical discomfort, instability and multilevel disc herniations. However such generalized statements do not establish causal relationship because the physician largely relied on appellant's allegations. He did not provide adequate medical rationale explaining how the work injury caused or aggravated the memory loss or headache conditions.¹⁴ Additionally, Dr. Cyr offered no opinion as to the cause of appellant's headaches or cervical complaints. The Board finds that his reports are insufficient to establish that appellant's headaches and memory loss are causally-related to the employment injury.

The June 25, 2010 MRI scan report from Dr. Smith is diagnostic in nature and therefore does not address causal relationship. As such, it is insufficient to establish appellant's claim.

Appellant has not submitted any rationalized medical evidence to support her allegation that her headaches and memory loss are causally related to the employment injury. She failed to meet her burden of proof.

¹⁴ See K.W., Docket No. 10-98 (issued September 10, 2010).

On appeal appellant contends that multiple cervical MRI scan since her 2005 injury revealed disc herniation at C4-C7 with irritated or impingement of the exiting nerve roots which cause pain and headaches and Dr. Mauldin failed to provide any consideration to those reports. The Board has already addressed the deficiencies of this claim. 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 her headaches and memory loss are causally related to the work injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated January 2, 2013 is affirmed.

Issued: December 4, 2013
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