

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

W.T., Appellant

and

**DEPARTMENT OF THE INTERIOR, FISH &
WILDLIFE SERVICE, Arlington, VA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 12-1965
Issued: March 11, 2013**

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 20, 2012 appellant filed a timely appeal from an April 6, 2012 decision of the Office of Workers' Compensation Programs (OWCP) 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 met her burden of proof to establish that she sustained a recurrence of a medical condition on July 18, 2011 causally related to her August 14, 1998 employment injury.

FACTUAL HISTORY

OWCP accepted that on August 14, 1998 appellant, then a 40-year-old clerk, sustained injuries to her back and right shoulder when she tripped over a box of files on the floor in the

¹ 5 U.S.C. § 8101 *et seq.*

performance of duty. Appellant stopped work. OWCP accepted appellant's claim for T11 anterior compression fracture. Appellant received disability compensation. She returned to light duty on December 14, 1998 and to full duty on December 28, 1998. The record contains no medical evidence from December 10, 1998 to January 28, 2011.

On July 18, 2011 appellant filed a claim alleging that she sustained a recurrence of her August 14, 1998 medical condition. She related that she experienced periodic back pain over the years, but that the severity of the pain had increased over the last several months. When appellant returned to work, the majority of her duties had been clerical and sedentary, but in October 2010 she changed positions to a reprographics assistant, which involved standing, lifting, bending, twisting and squatting. She believed the nature of her work aggravated and intensified her condition. Appellant gave no indication that she stopped work at the time of the claimed recurrence and she has filed no claims for disability compensation.

In an undated statement, appellant reported that she was treated with various medications without lasting results. She believed that her current condition was related to her original injury because the 1998 compression was at the T12 and recent x-rays showed that her current condition also began at the T12. Appellant stated that she could not lift anything over five pounds and must sit for 5 minutes for every 30 minutes of standing.

In an undated report, a nurse practitioner stated that she had treated appellant since August 2010 for complaints of mid-thoracic and lumbar back pain with radiculopathy that interfered with her activities of daily living. She reported that an April 2010 x-ray revealed a chronic mild compression deformity of the superior end plate of T12 with degenerative changes and mild facet disease at L5-S1. Appellant was referred to pain management.

On September 9, 2011 OWCP advised appellant that the evidence submitted was insufficient to establish her recurrence claim. It requested additional medical evidence to establish that her claimed back condition was causally related to her original injury.

In handwritten progress notes dated January 28 through August 19, 2011, a nurse practitioner listed appellant's complaints of increasing pain in the lumbar region radiating down to her right leg. Appellant explained that it was difficult to perform activities of daily living and that she was unable to do her job. In a March 24, 2011 note, the nurse practitioner reported that appellant was off work from March 22 to 24, 2011.

In an April 15, 2011 diagnostic report, Dr. Sanjay Saluja, a Board-certified diagnostic radiologist, observed no fracture or other bony abnormality of the sacrum or coccyx.

In an April 15, 2011 diagnostic report, Dr. Dimitri Misailidis, a Board-certified diagnostic radiologist, reported that appellant's bone mineral density test for her lumbar spine was within normal limits.

In a May 13, 2011 magnetic resonance imaging (MRI) scan report, Dr. John Rees, a Board-certified diagnostic radiologist, noted appellant's complaints of low back and buttock symptoms on the right. The test revealed a straightened lumbar vertebral column and mild compression of the superior endplate of T12, which appeared chronic, but no severe or asymmetric right-sided carpal or foraminal compromise. Dr. Rees diagnosed chronic mild

compression of the superior endplate of T12 without retropulsion and left paramedian disc protrusion at L5-S1 with proximity to the traversing left S1 root.

In an August 19, 2011 report, Dr. Alex Ambroz, Board-certified in occupational medicine, stated that appellant was initially examined on September 9, 2010 for complaints of mid-thoracic and lumbar back pain that interfered with her activities of daily living. He reported that conservative treatments were not successful. An April 2011 x-ray and May 2011 MRI scan revealed chronic mild compression deformity of the superior end plate of T12 with degenerative changes and mild facet disease of L5-S1. Dr. Ambroz noted that despite rest, weight limit restrictions and physical therapy appellant remained in pain. He stated that her work duties included lifting, twisting and bending and explained that these were contraindicated to her recovery. Dr. Ambroz opined that appellant was unable to perform her current role until September 19, 2011 when she would be evaluated.

In a September 2, 2011 e-mail, the employing establishment stated that in September 2010 appellant was assigned to the Image Library as a reprographics assistant. In May 2011, appellant's physician restricted appellant to lifting no more than five pounds and to rest for 5 minutes after any 30-minute work period. Her supervisor accommodated the restrictions until August 2011 when new medical evidence restricted her from any lifting, bending and twisting, which were essentially all of the reprographic duties. The employing establishment noted that appellant was given completely sedentary assignments, which would remain in effect until she was reevaluated by her physician on September 19, 2011.

OWCP referred appellant, together with a statement of accepted facts, to Dr. Robert F. Draper for a second-opinion examination to determine whether her current complaints were related to the August 14, 1998 employment injury.² In a March 29, 2012 report, Dr. Draper described appellant's August 14, 1998 employment injury and noted that her claim was accepted for T12 anterior compression fracture and contusion of the right hip and thigh. He reviewed her records from August to December 1998 and from April to May 2011. Dr. Draper noted appellant's complaints of continued back pain. He related that after her injury she returned to work at the employing establishment until February 1, 2012 when she retired.

Examination of the lumbar spine in the standing position revealed 70 degrees of forward flexion, 20 degrees of right lateral flexion, 20 degrees of left lateral flexion and 10 degrees of extension motion of the lumbar spine. Straight leg raise tests were negative bilaterally at 90 degrees in the sitting position. Examination of the right shoulder demonstrated 180 degrees of abduction and 180 degrees of forward flexion. Yergason's test, impingement test and Hawkins' sign were negative. Dr. Draper diagnosed lumbosacral strain, degenerative disc disease with left paramedian disc protrusion, not accident related and right shoulder contusion. He also reported that the T12 vertebral fracture had healed. Dr. Draper opined that appellant's current complaints were causally related to the degenerative conditions in the lumbar spine at L5-S1. He stated that her 1998 fracture had long since healed and that she did not have any current residuals of that injury. Dr. Draper stated that appellant was capable of performing modified-duty work with no lifting more than 50 pounds occasionally and 25 pounds frequently. He reported that these

² The record reveals that appellant missed her second opinion examination on February 9, 2012 due to illness and requested a rescheduled appointment.

restrictions were due to the underlying degenerative condition in the lumbar spine and not the accepted injury.

In a decision dated April 6, 2012, OWCP denied appellant's recurrence claim finding insufficient medical evidence to establish that her current medical condition was causally related to the August 14, 1998 employment injury. It relied on the March 29, 2012 second-opinion examination report which determined that her current lumbar condition resulted from degenerative changes and was not related to the August 14, 1998 employment injury.

LEGAL PRECEDENT

Section 8103(a) of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.³ OWCP must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to effect the purposes specified in FECA.⁴ The only limitation on OWCP's authority is that of reasonableness.⁵

A recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment, nor is an examination without treatment.⁶

To establish a recurrence of medical condition, a claimant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the claimed condition is causally related to the employment injury, and who, supports that conclusion with sound medical rationale. Where no such rationale is present, the medical evidence is of diminished probative value.⁷

OWCP procedures state that, after 90 days of release from medical care (as stated by the physician or computed from the date of the last examination or the physician's instruction to return as needed), a claimant is responsible for submitting an attending physician's report that contains a description of the objective findings and supports a causal relationship between the claimant's current condition and the accepted condition. The medical evidence on causal relationship should be as conclusive as the evidence required to establish the original claim.⁸

³ 5 U.S.C. § 8103(a).

⁴ *Marjorie S. Geer*, 39 ECAB 1099 (1988).

⁵ *Daniel J. Perea*, 42 ECAB 214 (1990).

⁶ 20 C.F.R. § 10.5(y).

⁷ *T.Y.*, Docket No. 12-393 (issued August 3, 2012).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5.b (May 2003).

ANALYSIS

OWCP accepted that on August 14, 1998, appellant sustained a back injury when she tripped over a box of files on the floor in the performance of duty. She stopped work and returned to full duty on December 28, 1998. It appears that appellant was able to perform her work duties without medical treatment from 1998 to 2011. On July 18, 2011 appellant filed a claim alleging that she sustained a recurrence of the August 14, 1998 employment injury. OWCP denied her claim finding insufficient medical evidence to establish that her current conditions were causally related to the August 14, 1998 employment injury.

The record demonstrates that appellant did not stop work or claim compensation for wage loss; rather she is claiming a recurrence of medical condition. Appellant has the burden of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes based on sound medical rationale that her current condition is causally related to the August 14, 1998 employment injury.⁹ The Board finds that she failed to submit sufficient medical evidence to establish that the condition for which she seeks compensation beginning July 18, 2011 was causally related to her accepted employment injury.

Appellant submitted an August 19, 2011 report from Dr. Ambroz, who examined her for complaints of mid-thoracic and lumbar back pain. Dr. Ambroz noted that an April 2011 x-ray and May 2011 MRI scan revealed chronic mild deformity of the superior end plate of T12 with degenerative changes and mild facet disease of L5-S1. He stated that appellant's work duties included lifting, twisting and bending and opined that she was unable to perform her current duties until September 19, 2011 when she would be examined. Although Dr. Ambroz noted her complaints of back pain, he did not provide a medical diagnosis of appellant's claimed condition or address how her current symptoms related to the August 14, 1998 work injury. He did not acknowledge what medical conditions OWCP accepted as work related. Dr. Ambroz did not provide a medical opinion explaining whether appellant's current back symptoms were causally related to the August 14, 1998 work injury. His report is of diminished probative value on the issue of causal relationship and is insufficient to establish her recurrence claim.¹⁰

Appellant submitted various diagnostic reports from Drs. Saluja, Misailidis and Rees, who noted her complaints of low back pain but found no evidence of a fracture or other bony abnormality. In a May 13, 2011 MRI scan report, Dr. Rees diagnosed chronic mild compression of the superior endplate of T12 without retropulsion and left paramedian disc protrusion at L5-S1. Although Dr. Rees provided a medical diagnosis, he did not offer any opinion on the cause of appellant's back condition. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ Dr. Rees' report is insufficient to establish appellant's claim.

⁹ *Supra* note 7.

¹⁰ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *A.D.*, 58 ECAB 149 (2006); *see C.V.*, Docket No. 12-1095 (issued November 9, 2012).

¹¹ *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

Similarly, the various progress notes from a nurse practitioner are also insufficient to establish appellant's claim because a nurse practitioner is not a physician as defined under FECA. Thus, these reports are of no probative value.¹²

OWCP referred appellant's claim to Dr. Draper for a second-opinion examination to determine whether her current condition was related to the August 14, 1998 employment injury. In a March 29, 2012 report, Dr. Draper described the August 14, 1998 work injury and noted that OWCP accepted appellant's claim for anterior compression fracture. He reviewed appellant's medical records from August to December 1998 and from April to May 2011 and noted appellant's complaints of continued back pain. Dr. Draper conducted an examination and diagnosed lumbosacral strain, degenerative disc disease with left paramedian disc protrusion and right shoulder condition. He stated that appellant's T12 vertebral fracture had healed and opined that her current complaints were causally related to the degenerative conditions in the lumbar spine, which were not accident related. Dr. Draper concluded that she did not have any current effects of the 1998 employment injury.

The Board finds that Dr. Draper's second-opinion report represented the weight of the medical evidence as it was well rationalized and based on an accurate factual and medical history. Dr. Draper reviewed appellant's history and conducted an examination. He determined that the record revealed that her August 14, 1998 compression fracture had healed and that she did not suffer any current effects of the 1998 work injury. Dr. Draper concluded that the medical evidence established that appellant's current back symptoms were related to her degenerative conditions in the lumbar spine and not the August 14, 1998 work injury. Thus, the Board finds that his report constitutes the weight of the medical evidence to establish that appellant's current back condition was not related to her accepted work injury.

The record contains no other medical evidence that attempts to explain the causal relationship, if any, between appellant's current condition and the August 14, 1998 employment injury. The Board notes that in appellant's July 18, 2011 recurrence claim she reported that she was transferred to a new position in October 2010 and alleged that her new position involved standing, lifting, bending, twisting and squatting. To the extent that appellant's description of the recurrence implicated exposure to new work activities over a period of time, she may have the basis of a new occupational disease claim.¹³

Because the medical evidence fails to establish that appellant sustained a recurrence of medical condition on July 18, 2011 causally related to her August 14, 1998 employment injury, the Board finds that she has not met her burden of proof to establish her claim.

¹² Section 8102(2) provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹³ OWCP regulations provide that an occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

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 medical condition on July 18, 2011 causally related to her August 14, 1998 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 6, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 7, 2013
Washington, DC

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

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

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