

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 12, 2008 appellant, a 39-year-old letter carrier, sustained a traumatic injury in the performance of duty when she slipped with a tray of mail in her hand and fell into a hamper. She described the nature of her injury as “neck and shoulder.” Appellant did not stop work.

Appellant received medical attention the next morning at Concentra Medical Center (Concentra). Her diagnosis was right cervical strain, right trapezius strain and right shoulder strain. Appellant was given medication and returned to full-time limited duty. On April 14, 2008 she was released from medical care. Appellant felt that her pattern of symptoms was better with no pain, and her physical therapist recommended she be discharged. On examination, she had full range of motion and no pain, tenderness or swelling. Neurological findings were normal. Appellant’s cervical strain was resolved. She had obtained maximum medical improvement with no permanent partial disability. Appellant was released to regular duty.

On November 19, 2012 appellant sought medical attention for unbearable pain. Dr. Alejandro Alam, an internist with Concentra, noted work restrictions and diagnosed cervical strain with radiculopathy to the left upper extremity and referred appellant to an orthopedic surgeon.

On November 26, 2012 appellant filed a notice of recurrence, indicating that she sustained a recurrence of medical condition on October 24, 2012 causally related to her March 12, 2008 employment injury. She explained that she had pain off and on since the 2008 injury. Appellant controlled it with over-the-counter medication, but now the pain was unbearable.

On December 3, 2012 appellant noted that she was in her usual state of health until October 24, 2012. She started having pain and discomfort in the left shoulder area that then progressed to numbness and tingling radiating down her left upper extremity in the left hand. Appellant denied any new trauma or precipitating events. X-rays showed loss of the normal cervical lordosis with degenerative changes noted in multiple levels, as well as anterior osteophyte formation. Dr. Gregory Lee, a general orthopedist, interpreted the x-rays as follows: “Loss of the normal cervical lordosis consistent with cervical spine strain/strain [sic] and muscle spasm with mild-to-moderate degenerative disc disease and mild spondylosis.” He diagnosed mild-to-moderate degenerative disease and mild spondylosis of the cervical spine, together with cervical radiculopathy affecting the left upper extremity. Dr. Lee continued appellant on medication and prescribed physical therapy.

On December 12, 2012 OWCP explained that appellant’s traumatic injury claim in 2008 appeared to be a minor injury resulting in minimal or no lost time from work and that such cases are administrative handled to allow for payment of a limited amount of medical expenses. Further, the merits of her claim were not formally considered. As appellant was now claiming a recurrence, OWCP advised that it was accepting appellant’s 2008 traumatic injury claim for cervical strain, resolved, and right shoulder sprain, resolved. It noted that she was discharged from medical care with a resolved cervical strain and shoulder strain.

On December 20, 2012 OWCP informed appellant that no further action was warranted on her recurrence claim. Because the accepted conditions had resolved, further benefits were denied. "Therefore, we cannot consider a recurrence on conditions that have resolved and where further benefits were disallowed."

By January 14, 2013 appellant was significantly improved. On January 28, 2013 Dr. Lee found that her cervical radiculopathy had resolved. He advised that the more she stayed on top of her home exercise and stretching program, the less likely it was that she would have a flare up. Dr. Lee released appellant to her usual job without restrictions.

Appellant requested reconsideration. She advised that Dr. Lee was willing to testify that her recurrence was consistent with the March 12, 2008 injury.

In a decision dated April 3, 2013, OWCP reviewed the merits of appellant's case and denied modification of its prior decision. It found that she had not submitted a well-rationalized medical opinion supporting that her condition in October 2012 was related to her March 2008 employment injury. "Although the cervical area is involved in 2008 and 2012 it does not necessarily follow that the symptoms of 2012 are related to the original injury."

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of justifying the termination of compensation.² The fact that OWCP accepted the claim for a limited period does not shift the burden of proof to the employee. The burden is on OWCP with respect to the period subsequent to the date of termination.³

ANALYSIS -- ISSUE 1

In its December 12, 2012 decision, OWCP accepted appellant's March 12, 2008 traumatic injury claim for cervical strain, resolved and right shoulder sprain, resolved. It therefore has the burden to establish that the accepted medical conditions had, in fact, resolved.

When appellant first sought medical attention the morning after her employment injury at Concentra, her diagnosis was right cervical strain, right trapezius strain, and right shoulder strain. By April 14, 2008 the medical staff at Concentra had released her from medical care. Appellant had no pain, and her physical therapist recommended that she be discharged. Her physical examination was entirely normal: full range of motion with no pain, no tenderness, and no swelling. Neurological findings were normal. Appellant's cervical strain, in particular, was found to be resolved.

As the medical evidence one month after the employment injury confirmed that appellant had fully recovered with no residuals, the Board finds that OWCP has met its burden to show

² *Edwin Lester*, 34 ECAB 1807 (1983).

³ *See Raymond M. Shulden*, 31 ECAB 297 (1979); *Anna M. Blaine (Gilbert H. Blaine)*, 26 ECAB 351 (1975).

that the accepted medical conditions had resolved. The Board will therefore affirm OWCP's April 3, 2013 decision on the issue of limited acceptance.

LEGAL PRECEDENT -- ISSUE 2

A "recurrence of medical" condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury where there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment.⁴

An employee who claims a recurrence of medical condition has the burden of proof to establish causal relationship by the weight of substantial, reliable and probative evidence. This burden requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the employee's need for additional medical care is causally related to the accepted injury and supports that conclusion with sound medical reasoning.⁵

ANALYSIS -- ISSUE 2

Appellant claims that her medical condition beginning October 24, 2012 was a recurrence of her March 12, 2008 employment injury. She therefore has the burden to show that she sustained a recurrence of medical condition.

Appellant explained that she was in her usual state of health until October 24, 2012, when she started having pain and discomfort in the left shoulder area that then progressed to numbness and tingling radiating down her left upper extremity in the left hand. She denied any new trauma or precipitating events. Appellant added that she had pain off and on since the 2008 injury, which she controlled with over-the-counter medication; but now the pain was unbearable.

Although appellant stated that her orthopedist, Dr. Lee, was willing to testify that her recurrence was consistent with the March 12, 2008 injury, he never provided a narrative report to that effect. Dr. Lee would have to account for the medical evidence contemporaneous to the employment injury, which showed that appellant fully recovered from the accepted sprain/strains in one month's time.

Although Dr. Alam diagnosed cervical strain with radiculopathy to the left upper extremity and listed work restrictions, he did not address the issue of causal relationship. Thus, his report is insufficient to support appellant's claim.

In the absence of a well-reasoned medical opinion supporting appellant's claim of recurrence, the Board finds that she has not met her burden to show that she sustained a

⁴ 20 C.F.R. § 10.5(y).

⁵ *J.L.*, Docket No. 13-1371 (issued October 24, 2013).

recurrence of medical condition beginning October 24, 2012. The Board will affirm OWCP's April 3, 2013 decision on the issue of recurrence.

CONCLUSION

The Board finds that OWCP has met its burden to show that the accepted cervical strain and right shoulder sprain have resolved. The Board also finds that appellant has not met her burden to show that she sustained a recurrence of medical condition on October 24, 2012.

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 11, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board