

FACTUAL HISTORY

This case has previously been on appeal before the Board.² In a December 3, 2008 decision, the Board affirmed the February 11, 2008 decision of OWCP, which found that appellant had not established permanent impairment related to her accepted cervical condition. The facts and history contained in the prior appeal are incorporated by reference. The relevant facts include that on September 30, 2004 appellant's claim was accepted for cervical disc herniation at C4-5, C5-6 and C6-7.

In May 31, 2012 reports, Dr. Samuel J. Chmell, a Board-certified orthopedic surgeon, noted that appellant had a substantial worsening of her work-related cervical disc herniation. He advised that her neck pain became excruciating and began radiating down her left arm with repetitive typing and head movements at work. He noted that a cervical spine magnetic resonance imaging (MRI) scan on March 15, 2012 revealed spinal stenosis at C5-6 and C6-7 with spondylosis and arthritis. Dr. Chmell opined that the MRI scan showed material worsening of appellant's work-related condition, especially when compared to an April 28, 2004 MRI scan, where she had small disc herniations at C5-6 and C6-7. He stated that the disc herniations had worsened to the point that she had spinal stenosis, spondylosis and arthritis. Dr. Chmell noted that due to the "worsening/reoccurrence of this accepted condition, [appellant] is fully incapacitated for duty. These opinions are based upon a reasonable degree of medical and orthopedic surgical certainty." He continued to treat appellant and placed her off work noting that she was fully incapacitated for duty as of May 31, 2012.

On June 1, 2012 appellant claimed a recurrence of disability as of May 31, 2012, noting that her cervical disc herniation condition was still active over the years and that her condition had worsened. The employing establishment indicated that she was transferred to the Department of Veterans Affairs (DVA) effective February 22, 2004. It advised that the recurrence occurred while working at DVA.

In a letter dated September 6, 2012, OWCP informed appellant of the type of evidence needed to support her claim.

In an October 15, 2012 report, Dr. Fernando Techy, an orthopedic surgeon, stated that appellant presented with complaints of neck and back pain that became worse over the past seven months. He advised that he was unable to find a focal deficit and her problem might be fibromyalgia. In a November 28, 2012 report, Dr. Leslie Schwindel, a resident orthopedic surgeon working under Dr. Techy, noted appellant's continuing complaints. She noted that appellant was morbidly obese with decreased range of neck motion. Dr. Schwindel advised that appellant's neck pain was exacerbated in March 2012 with a heavy lifting work injury. In a December 12, 2012 report, Dr. Techy advised that appellant reviewed her record and related that it incorrectly stated that she had exacerbated her neck pain due to a March 2012 heavy lifting work injury. Appellant related that the original injury was created by a heavy lifting episode in 1997 and "the pain she was currently experiencing, was not a direct result of any work-related

² Docket No. 08-1142 (issued December 3, 2008). On June 30, 2004 appellant, then a 41-year-old bill resolution specialist, filed an occupational disease claim which OWCP accepted for cervical disc herniation at C4-5, C5-6 and C6-7.

injury, but rather started spontaneously while she was at home.” Dr. Techy diagnosed cervical myelopathy and cervical stenosis at C4-5, C5-6 and C6-7 with a mild right foraminal stenosis at C4-5 and moderate central stenosis at C5-6 and C6-7 with possible myelomalacia behind the bodies of C5-6 and C6-7.”³

By decision dated March 4, 2013, OWCP denied appellant’s claim for a recurrence. It found that the evidence was insufficient to establish that she was disabled due to a material change or worsening of her accepted work-related conditions.

Appellant requested a hearing, which was held on July 18, 2013. She noted that, on March 15, 2012, she was awakened by unbearable pain in her neck and shoulder with severe sharp pain down her arm to her fingers, which were completely numb and tingling. Appellant indicated that she went to the emergency room. She explained that testing revealed an alteration in her herniated cervical disc and she was taken off work. Appellant indicated that she had no hobbies or nonfederal employment and continually had neck, shoulder, back and arm pain due to her herniated disc. She questioned why her claim was closed as she was in need of continued medical treatment due to her accepted herniated cervical discs, which had not resolved. During the hearing appellant confirmed that in February 2004 she began working for DVA performing the same type of work. Further, she indicated that she stopped work on December 31, 2011 due to a specific work incident which resulted in a diagnosis of post-traumatic stress disorder and did not return to work.⁴ OWCP received copies of previously submitted reports.

Dr. Chmell continued to submit reports. In a March 29, 2013 report, he opined that appellant had “a spontaneous change of her work-related condition of cervical disc herniations.” Dr. Chmell noted that, on March 14, 2012, she “awoke from her sleep with excruciating pains in her neck and left shoulder area. [Appellant] spent the day on bed rest taking medications. On the next day [March 15, 2012], her pain had worsened with radiation from her neck all the way down to the fingers of her left hand. [Appellant] had excruciating pain and called the paramedics.” Dr. Chmell advised that appellant had emergency treatment and that a computerized tomography (CT) scan of the cervical spine “demonstrated a spontaneous material change with worsening of her accepted cervical condition. [Appellant] was treated for cervical radiculopathy.” He noted that she had a cervical spine MRI scan on November 6, 2012 which “demonstrated a substantial material change and worsening of her accepted work-related condition, especially when compared to the MRI scan of her cervical spine performed on [April 28, 2004] where she just had small disc herniations at C5-6 and C6-7 levels from her original work injury.” Dr. Chmell explained that these disc herniations had markedly worsened where appellant now had spinal stenosis, spondylosis, arthritis and marked spinal cord and nerve root compression. He opined that “due to this spontaneous worsening and reoccurrence of

³ An October 15, 2012 cervical spine x-ray revealed intact vertebrae with moderate disc space narrowing at C5-6 and to a lesser degree C6-7. An October 15, 2012 lumbosacral spine x-ray revealed minimal spurring at L2 and L3, with moderate narrowing at L4-5. A November 6, 2012 cervical spine MRI scan compared findings to an April 28, 2004 study and noted greater moderate posterior bulge at C5-6 intervertebral disc with associated moderate central canal stenosis and a more pronounced herniated disc at the C6-7 level.

⁴ The record reflects that appellant filed a claim for an emotional condition on December 30, 2011 when threatened by a veteran at work. That claim was accepted for post-traumatic stress disorder. Appellant stopped work on December 31, 2011 and is currently on the periodic rolls receiving compensation for wage loss.

[appellant's] accepted work-related condition, she remains fully incapacitated for duty.” Dr. Chmell indicated that his partner recommended cervical spine surgery and noted that this was not previously recommended “because [appellant] did not have this progression/spontaneous worsening until now.” He opined that his opinion was “based upon a reasonable degree of medical and orthopedic surgical certainty.”

In a July 1, 2013 report, Dr. Chmell noted treating appellant on numerous occasions. He explained that her original injury occurred when she was a bill resolution specialist. Duties included picking up bundles of bills in mail crates; picking up the trays intermittently eight hours five days per week; keying bills; and carrying the crate of bills to the mailroom. Dr. Chmell advised that appellant developed sharp throbbing pain down the neck, arms and shoulders with burning in her arms, numbness in her arms and hands with weakness and loss of balance. He indicated that she underwent MRI scans of the cervical spine on March 15 and November 6, 2012, which revealed disc herniations at C4-5, C5-6 and C6-7. Dr. Chmell diagnosed cervical disc herniations at C4-5, C5-6 and C6-7 and recommended surgery for appellant's cervical spine disc herniations. He opined that these disc herniations occurred from picking up bundles of bills mail crates. Dr. Chmell explained that appellant required surgery as the herniations had not resolved and would not resolve. His opinions were “based upon a reasonable degree of medical and orthopedic surgical certainty.” Dr. Chmell indicated that appellant had not recovered from the original disability as she still had three disc herniations. He noted that she returned to employment after physical therapy and medication. Dr. Chmell further noted that “there were not any precipitating factors. The accepted work-related herniated discs that happened at [appellant's] work site, from lifting mail crates, have not resolved. As a result of spontaneous changes in the disc herniations as ascertained by MRI scans, [appellant] is totally and permanently disabled. These opinions are based upon a reasonable degree of medical and orthopedic surgical certainty.”

In a July 3, 2013 statement, appellant indicated that she returned to her date-of-injury position full time but she was always in pain and continued to take medication to work through the pain. She noted that, on November 30, 2011, she picked up a box of paper and injured her stomach. Appellant explained that her case was accepted for abdominal muscle sprain. She also noted that, on December 31, 2011, a veteran came into their office and threatened with a weapon that he was “going to kill someone for taking his money. Appellant indicated that her case was accepted for post-traumatic stress.⁵ She indicated that she never stopped receiving medical treatment since her case was accepted in 2004 and that she continued to work with pain and medication until March 15, 2012 when she had unbearable cervical pain. Appellant stated that her treatment was for the same area of her accepted cervical herniations. In an August 12, 2013 statement, she reiterated that her condition had worsened, she had pain since her original injury and her cervical herniated discs never resolved. Appellant noted that her physician advised her that she would need surgery for her herniated discs.

In a September 30, 2013 decision, an OWCP hearing representative affirmed the March 4, 2013 decision. She found that the medical evidence did not support that the worsening cervical condition and need for additional treatment in 2011 and disability from in 2012 was due

⁵ These other claims are not presently before the Board.

to a spontaneous worsening of appellant's accepted work injury without any intervening work duties.

LEGAL PRECEDENT

Section 10.5(x) of OWCP's regulations provide that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁶

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.⁷

Appellant has the burden of establishing that she sustained a recurrence of a medical condition⁸ that is causally related to her accepted employment injury. To meet her burden, she must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁹ Where no such rationale is present, the medical evidence is of diminished probative value.¹⁰

ANALYSIS

OWCP accepted appellant's claim for cervical disc herniation at C4-5, C5-6 and C6-7. Appellant claimed a recurrence of disability beginning on May 31, 2012. The Board finds that she did not submit sufficient reasoned medical evidence that she had recurrent disability beginning May 31, 2012, which was causally related to her 2004 accepted cervical conditions.

Appellant submitted several reports from Dr. Chmell. This included a May 31, 2012 report in which Dr. Chmell opined that she had a substantial worsening of her work-related cervical disc herniation due to repetitive typing and head movements at work. He explained that a March 15, 2012 MRI scan showed spinal stenosis at C5-6 and C6-7 with spondylosis and arthritis and was a material worsening of appellant's accepted condition when compared to a prior MRI scan. Dr. Chmell stated that the disc herniations had worsened to where she now had spinal stenosis, spondylosis and arthritis. He indicated that due to the "worsening/reoccurrence

⁶ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

⁷ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

⁸ 20 C.F.R. § 10.5(y) (2002).

⁹ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

¹⁰ *Mary A. Ceglia*, 55 ECAB 626 (2004); *Albert C. Brown*, 52 ECAB 152 (2000).

of this accepted condition” appellant was fully incapacitated. In his March 29, 2013 report, Dr. Chmell opined that she had “a spontaneous change of her work-related condition of cervical disc herniations.” He stated that, on March 14, 2012, appellant had excruciating neck and left shoulder pain and had sought emergency treatment on March 15, 2012 where a CT scan showed “a spontaneous material change with worsening of [appellant’s] accepted cervical condition. She was treated for cervical radiculopathy.” Dr. Chmell reiterated that an MRI scan showed a “substantial material change and worsening of her accepted work-related condition.” He opined that the disc herniations had markedly worsened to the point where appellant had spinal stenosis, spondylosis, arthritis and marked spinal cord and nerve root compression, which fully incapacitated her and that surgery was now recommended. In his July 1, 2013 report, Dr. Chmell noted her work duties and advised that she developed sharp throbbing pain down the neck, arms and shoulders with burning in her arms, numbness in her arms and hands with weakness and loss of balance. He indicated that appellant had not recovered from the original disability as she still had three disc herniations and that the accepted work conditions never resolved. Dr. Chmell indicated that the recurrence that she had was a “spontaneous change and worsening of her condition.” He further noted that “there were not any precipitating factors. The accepted work-related herniated discs that happened at [appellant’s] work site, from lifting mail crates have not resolved. As a result of spontaneous changes in the disc herniations as ascertained by MRI scans, [appellant] is totally and permanently disabled. These opinions are based upon a reasonable degree of medical and orthopedic surgical certainty.”

The Board finds that Dr. Chmell’s conclusions are not sufficient to establish a recurrence of disability. Although Dr. Chmell opined that there was “no intervening trauma or aggravating activity” he did not explain appellant’s current work duties or how he arrived at his conclusion that this was a spontaneous change in her condition that resulted from the work injury without an intervening injury. This is especially important in light of the fact that appellant has not worked for the employing establishment since 2004, as she left to work for DVA and had suffered from new work injuries during that time. Dr. Chmell also attributed her symptoms and disability in his May 31, 2012 report to recent repetitive work factors. Furthermore, while appellant indicated that she was performing the same job duties, the record reflects an intervening traumatic injury on November 30, 2011 and an accepted emotional condition claim in December 2011. She stopped work on December 31, 2011 and was placed on the periodic rolls at that time. The Board notes that is unclear if he was aware of this intervening job change and intervening events.¹¹ The Board has held that medical conclusions unsupported by facts and rationale are of little probative value.¹²

In a December 12, 2012 report, Dr. Techy, noted that it had incorrectly been stated that appellant had exacerbated her neck pain in March 2012 of that year with a heavy lifting at work. He explained that she had related that the original injury was created by a heavy lifting episode in 1997 and “the pain [that appellant] was currently experiencing, was not a direct result of any work-related injury, but rather started spontaneously while she was at home.” The Board notes that while appellant related that her current condition was due to her original condition,

¹¹ See *Leonard J. O’Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

¹² *C.B.*, Docket No. 08-2268 (issued May 22, 2009).

Dr. Techy did not offer his own opinion as to the cause of the recurrence. Thus, this report is of limited probative value.¹³

OWCP also received other medical evidence that included diagnostic test reports. However, this evidence did not offer an opinion as to the cause of the claimed recurrence. 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.¹⁴

In the instant case, none of the medical reports submitted by appellant contained a rationalized opinion to explain why she could no longer perform the duties of her light-duty position and why any such disability or continuing condition would be due to a spontaneous change in the accepted condition from 2004 and not from any intervening job duties or events. As appellant has not submitted any medical evidence establishing that she sustained a recurrence of disability due to her accepted employment injury, she has not met her burden of proof.

On appeal, appellant argued that she still needs treatment. As found above, she has not established her claim for a recurrence of disability.¹⁵

CONCLUSION

The Board finds that appellant did not establish that she sustained a recurrence of disability commencing May 31, 2012 causally related to her accepted employment injury.

¹³ See *K.W.*, 59 ECAB 271 (2007) (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).

¹⁴ *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁵ To the extent that appellant is claiming a new injury, she may wish to file a new claim.

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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