

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

B.S., Appellant

and

**U.S. POSTAL SERVICE, AIRMAIL CENTER,
Seattle, WA, Employer**

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**Docket No. 15-1189
Issued: August 21, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 4, 2015 appellant filed a timely appeal from a November 19, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 has met her burden of proof to establish a recurrence of a medical condition commencing June 28, 2013 causally related to her accepted December 10, 2002 employment injury.

FACTUAL HISTORY

This case has previously been before the Board with respect to the termination of appellant's compensation benefits. In an August 4, 2006 decision,² the Board affirmed OWCP's

¹ 5 U.S.C. § 8101 *et seq.*

² Docket No. 06-0729 (issued August 4, 2006).

termination of appellant's benefits on November 17, 2005 and its determination that she had not established any continuing residuals from her accepted employment-related thoracic strain after that date. In decisions dated February 13, 2009 and March 27, 2012, the Board affirmed OWCP decisions finding that appellant's requests for reconsideration were insufficient to warrant merit review of her claim.³ The facts and circumstances surrounding the prior Board decisions are herein incorporated by reference. The relevant facts are set forth below.

On February 21, 2003 OWCP accepted that on December 10, 2002 appellant, then a 45-year-old mail handler dock technician, sustained a thoracic strain as a result of pushing a mail hamper. In September 2004, she retired on disability from the employing establishment.

On July 5, 2013 appellant filed a claim for a recurrence of medical condition on June 28, 2013 causally related to her accepted December 10, 2002 employment injury. She alleged that she experienced a stabbing sharp pain while walking to check her mail and that she could barely move. Appellant sought medical treatment on July 1, 2013 from Dr. Robert B. Kaler, a Board-certified family practitioner.

By letter dated October 9, 2013, OWCP advised appellant of the factual and medical evidence necessary to establish her recurrence claim.

In an undated statement, appellant described the symptoms she experienced in her thoracic area, right hand, and back. She stated that her thoracic area symptoms arose after she walked one quarter of a block from her residence to the mailbox area to check for her mail. Appellant further stated that she did not have any hobbies or participate in any sports or home improvement.

Appellant submitted a July 21, 2004 thoracic magnetic resonance imaging (MRI) scan report from Dr. Alexander D. Serra, a Board-certified radiologist. Dr. Serra provided an impression of mild-to-moderate thoracic disc disease with 20 percent partial compression fracture at T6 (chronic) and secondary kyphosis.

In a June 23, 2009 thoracic MRI scan report, Dr. Aria Parker, a Board-certified radiologist, provided an impression of mild disc desiccation and small bulging compatible with degenerative disc disease at T5-6, T6-T7, and T7-T8. She also found a prominent osteophyte extending from the left facet into the canal causing an impression on the thecal sac and mild canal stenosis at the T4 vertebral body level.

A progress note by Dr. Kaler dated July 1, 2013 provided examination findings and assessed appellant as having cervical disc disorder, cervicothoracic strain, and chronic pain syndrome.

In a November 19, 2014 decision, OWCP denied appellant's recurrence claim as she failed to submit sufficient medical evidence to establish a causal relationship between her current conditions and her accepted December 10, 2002 work injury.

³ Docket No. 08-2168 (issued February 13, 2009); Docket No. 11-2001 (issued March 27, 2012).

LEGAL PRECEDENT

A recurrence of a medical condition is defined as a documented need for further medical treatment after release from treatment for the accepted condition or injury.⁴ Continuous treatment for the original condition or injury is not considered a recurrence of a medical treatment nor is an examination without treatment.⁵

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.⁶

ANALYSIS

The Board finds that appellant did not establish a recurrence of a medical condition commencing June 28, 2013. OWCP accepted that on December 10, 2002 appellant sustained a thoracic strain while working as a mail handler dock technician. Appellant retired on disability in September 2004. On July 5, 2013 appellant filed a recurrence claim alleging that her current thoracic conditions were causally related to the accepted condition.

Dr. Serra's July 21, 2004 thoracic MRI scan reports provided an impression of mild-to-moderate thoracic disc disease with 20 percent partial compression fracture at T6 (chronic) and secondary kyphosis. Dr. Parker's June 23, 2009 thoracic MRI scan report provided an impression of mild disc desiccation and small bulging compatible with degenerative disc disease at T5-6, T6-T7, and T7-T8. She also found a prominent osteophyte extending from the left facet into the canal causing an impression on the thecal sac and mild canal stenosis at the T4 vertebral body level. While these reports predate appellant's recurrence claim, it is noted that neither Dr. Serra nor Dr. Parker explained or offered any medical rationale as to how her accepted thoracic strain deteriorated over the years and resulted in the diagnosed thoracic conditions.

Dr. Kaler diagnosed cervical disc disorder, cervicothoracic strain, and chronic pain syndrome in his July 1, 2013 progress report but did not address causal relationship. The cervical conditions and chronic pain syndrome have not been accepted by OWCP. It was appellant's burden of proof to establish causal relationship.⁷ This progress note is insufficient to establish her claim.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a recurrence of a medical condition commencing June 28, 2013

⁴ 20 C.F.R. § 10.5(y).

⁵ *Id.*

⁶ *E.O.*, Docket No. 11-1099 (issued February 24, 2012); *J.B.*, Docket No. 11-1410 (issued January 5, 2012).

⁷ *See Jaja K. Asaramo*, 55 ECAB 200 (2004).

causally related to the accepted December 10, 2002 employment injury. Appellant did not meet her burden of proof.

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 a recurrence of a medical condition commencing June 28, 2013 causally related to her accepted December 10, 2002 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 19, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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