

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

B.L., Appellant

and

**DEPARTMENT OF JUSTICE, FEDERAL
BUREAU OF PRISONS, Butner, NC, Employer**

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**Docket No. 08-769
Issued: July 17, 2008**

Appearances:

Daniel F. Read, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On January 11, 2008 appellant timely appealed the May 11, 2007 merit decision of the Office of Workers' Compensation Programs, which denied her claim for recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.¹

ISSUE

The issue is whether appellant sustained a recurrence of disability on January 14, 2007, causally related to her January 27, 2003 employment injury.

¹ The record on appeal includes additional medical evidence that postdates the Office's May 11, 2007 decision. The Board cannot consider evidence for the first time on appeal. The review of a case shall be limited to the evidence in the case record which was before the Office at the time of its final decision. 20 C.F.R. § 10.501.2(c) (2007).

FACTUAL HISTORY

Appellant, a 50-year-old registered nurse, injured her upper back in the performance of duty on January 27, 2003. She was participating in self-defense training when she was flipped onto her back by a fellow trainee. The Office accepted appellant's claim for thoracic strain (File No. 06-2079293).² On July 21, 2003 appellant returned to work in a limited-duty capacity. She was released to resume her regular, full-time duties on August 1, 2003.³ Appellant sustained another employment-related traumatic injury on May 7, 2004. This claim (File No. 06-2116017) was similarly accepted for thoracic strain.

On March 16, 2007 appellant filed a recurrence of disability claim. She alleged that she sustained a recurrence of disability on January 14, 2007, causally related to her January 27, 2003 employment injury.⁴

Appellant submitted physical therapy records from April and July 2006. During that period she had received treatment for anterior and posterior thoracic pain and neck pain. Appellant also submitted physical therapy records from January 23, 2007. At that time, she was being treated for thoracic back, neck and low back pain. The Office also received treatment notes from Dr. Jeffries covering the period February 13 to March 20, 2007. During this five-week period, Dr. Jeffries treated appellant for unspecified joint pain (arthralgia), spinal stenosis (lumbar region), cervicalgia, headache and hypertension.

On April 3, 2007 the Office sent appellant a recurrence development letter outlining the type of evidence necessary to prove her claim. It also noted that appellant's January 27, 2003 traumatic injury claim had been closed since her August 1, 2003 release to return to work without restrictions. Additionally, the Office noted that appellant sustained another employment-related thoracic strain on May 7, 2004, which remained open for medical care. It suggested that perhaps appellant might wish to withdraw her current claim and submit another one under the appropriate claim.

The Office subsequently received a March 29, 2007 report from Dr. Patricia K. Naslund, a Board-certified neurologist, who noted that she had treated appellant for headaches and neck pain. Dr. Naslund also reported that appellant had experienced increasing spasms in her right upper trapezius that required trigger point injections and muscle relaxants.

In an April 15, 2007 report, Dr. Jeffries noted that appellant had been his patient since 2001, and in February 2003, he had evaluated her for upper back, shoulder and neck pain as a result of "being thrown" during a self-defense class at work. Appellant's course of treatment included pain medicines and physical therapy until August 2003. Following treatment, she reportedly had done pretty well for approximately 18 months. However, Dr. Jeffries noted that

² A January 29, 2003 x-ray of the thoracic spine showed no abnormalities.

³ Dr. Thomas L. Jeffries, a Board-certified family practitioner, was appellant's treating physician at the time.

⁴ Appellant filed a similar claim for disability beginning January 14, 2007 under claim File No. 06-2116017. Appellant's counsel inquired about combining the various back injury claim files, however, the Office advised that it was not their policy to combine files for cases that were in a closed or denied status.

beginning in 2005, and especially during the past year, appellant had complained more frequently of trapezius pain. He explained that appellant received many pain medicines and different treatment modalities, including physical therapy and referral to a neurologist. Dr. Jeffries reported that appellant seemed to function well most of the time, but she complained of episodes of “severe” muscle spasm that apparently made work difficult. According to him, the muscle spasm and pain were located in the same area appellant injured in 2003. Dr. Jeffries further explained that there was no objective test that could prove appellant’s pain was from her 2003 injury, however, he attested to the fact that the areas of tenderness were the same. He also noted that he was unable to conclude why appellant’s pain seemed worse now. Dr. Jeffries further stated that appellant had undergone many diagnostic studies that revealed no evidence of significant pathology. But he explained that the lack of objective evidence did not preclude the possibility of significant pain. Additionally, Dr. Jeffries surmised that perhaps appellant’s work duties caused her to posture in such a way that recreated the movement of her spine during her 2003 injury. He also noted that appellant’s complaints over the past year had increased significantly. From January to April 2007, Dr. Jeffries reported seeing appellant approximately 30 times, and during most of those visits shoulder and back pain were her foremost complaints.

By decision dated May 11, 2007, the Office denied appellant’s claim for recurrence of disability beginning January 14, 2007.

LEGAL PRECEDENT

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵ This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to her work-related injury or illness is withdrawn -- except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force -- or when the physical requirements of such an assignment are altered so that they exceed her established physical limitations.⁶ Moreover, when the claimed recurrence of disability follows a return to light-duty work, the employee may satisfy her burden of proof by showing a change in the nature and extent of the injury-related condition such that she was no longer able to perform the light-duty assignment.⁷

Where an employee claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing that the recurrence of disability is causally related to the original injury.⁸ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical

⁵ 20 C.F.R. § 10.5(x).

⁶ *Id.*

⁷ *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

⁸ 20 C.F.R. § 10.104(b); *Carmen Gould*, 50 ECAB 504 (1999); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

history, that the condition is causally related to the employment injury.⁹ The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.¹⁰

ANALYSIS

The majority of evidence appellant submitted in conjunction with her March 16, 2007 notice of recurrence does not address the relevant issue of causation. This includes appellant's physical therapy records from April and July 2006 and January 2007. Dr. Jeffries' treatment notes for the period February 13 to March 20, 2007 also do not specifically address causation. Moreover, none of his reported diagnoses have been accepted by the Office as employment related. The only condition accepted thus far was thoracic strain and this particular diagnosis is noticeably absent from Dr. Jeffries' February 13 to March 20, 2007 treatment records. Instead, Dr. Jeffries referenced diagnostic codes (ICD-9) for arthralgia, lumbar spinal stenosis, cervicgia, headache and hypertension. Dr. Naslund's March 29, 2007 report is similarly deficient in that she mentions having treated appellant for headache, neck pain and right upper trapezius spasm, but fails to address causal relationship or even reference either of appellant's two prior thoracic strains.

As noted, appellant's burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that her condition is causally related to the employment injury.¹¹ In his April 15, 2007 report, Dr. Jeffries noted that appellant's current muscle spasm and pain were located in the same area she injured in 2003. He too neglected to mention appellant's May 7, 2004 thoracic strain. In fact, Dr. Jeffries erroneously reported that, "during 2004, [appellant] did pretty well."

Dr. Jeffries also reported that appellant's "many" diagnostic studies revealed no evidence of significant pathology. He admitted there was no objective basis upon which to prove that appellant's current pain was from her 2003 injury. Additionally, Dr. Jeffries stated that he was unable to conclude why appellant's pain seemed worse now than before. His only apparent rationale for linking her current complaints to her 2003 employment injury was that the "areas of tenderness [were] the same."

Dr. Jeffries also posited that "perhaps [appellant's] work duties cause[d] her to posture in such a way that recreate[d] the movement of her spine during her injury in 2003." His conjecture suggests that appellant's latest complaints were not "caused by a spontaneous change in a medical condition," but were the result of "new exposure to the work environment." If Dr. Jeffries' speculation is correct, then appellant did not sustain a "recurrence" of her January 27, 2003 employment injury as that term is defined under 20 C.F.R. § 10.5(x).

⁹ See *Helen K. Holt*, *supra* note 8.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

¹¹ See *Helen K. Holt*, *supra* note 8.

Dr. Jeffries' April 15, 2007 report does not represent a rationalized medical opinion on causal relationship. At a minimum, his report is not based on a "complete and accurate factual and medical history." Dr. Jeffries' opinion is also speculative and lacks any underlying objective evidence. The Board finds that the medical evidence does not establish that appellant's claimed recurrence of disability beginning January 14, 2007 is causally related to her January 27, 2003 employment injury, which was accepted for thoracic strain. The Office, therefore, properly denied appellant's March 16, 2007 claim for recurrence of disability.

CONCLUSION

Appellant has not established that she sustained a recurrence of disability on January 14, 2007, causally related to her January 27, 2003 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 11, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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