

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

E.S., Appellant

and

**ENVIRONMENTAL PROTECTION AGENCY,
Philadelphia, PA, Employer**

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**Docket No. 08-2235
Issued: March 11, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 12, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated May 6, 2008. Pursuant to 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 in establishing that she sustained a recurrence of disability on April 3, 2000 causally related to her December 15, 1999 employment injury.

FACTUAL HISTORY

This case has previously been before the Board. In a February 11, 2003 decision,¹ the Board found an unresolved conflict of medical opinion between appellant's attending physician, Dr. Charles E. Wilkins Jr., a Board-certified orthopedic surgeon and an Office referral physician,

¹ Docket No. 03-57 (issued February 11, 2003).

on whether appellant's neck condition on and after December 15, 1999 was causally related to her accepted cervical strain. The Office undertook further development and referred appellant to Dr. Menachem M. Meller, a Board-certified orthopedic surgeon, for an impartial medical examination. By decision dated July 28, 2005, it denied appellant's claim for a recurrence of disability based on Dr. Meller's February 9, 2005 report. Appellant requested an oral hearing and by decision dated March 1, 2006, the hearing representative affirmed the Office's decision. In a decision dated February 1, 2007,² the Board found that Dr. Meller did not attribute appellant's condition or disability after December 15, 1999 to her accepted cervical strain and that the weight of the medical evidence did not establish a recurrence of disability. The facts and the circumstances of the case as set out in the Board's prior decision are adopted herein by reference.

On January 31, 2008 appellant requested reconsideration and submitted a factual statement and a January 30, 2008 report from Dr. Wilkins. She contended that the Office should have accepted cervical radiculitis as resulting from her employment injury and that Dr. Meller's report was not entitled to the weight of the medical opinion evidence. Dr. Wilkins noted appellant's history of injury on December 15, 1999 and diagnosed cervical radiculitis through an electromyogram on January 27, 2000. He stated that, in April 2000, appellant experienced a recurrence of radiating right arm pain and that this condition was identical in distribution to her original presentation. Dr. Wilkins stated that appellant's recurrence of disability was the direct result of her December 15, 1999 injury. He opined that appellant's onset of cervical radiculitis was distinctly different from ordinary age-related degenerative discogenic change as found by Dr. Meller. Dr. Wilkins stated that appellant's absence from work in December 1999 and April 2000 were the "direct result of the documented attack of cervical radiculitis resulting from her work-related injury of December [15,] 1999."

By decision dated May 6, 2008, the Office denied modification of the prior decisions finding that Dr. Wilkins' report was not sufficient to overcome the weight accorded Dr. Meller's reports as the impartial medical examiner.

LEGAL PRECEDENT

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. The burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concluded that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician's conclusion.³

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury. In this regard, medical evidence of bridging symptoms between the recurrence of the accepted injury must support the

² Docket No. 06-1754 (issued February 1, 2007).

³ *Ricky S. Storms*, 52 ECAB 349 351-52 (2001).

physician's conclusion of a causal relationship. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁴

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background must be given special weight.⁵

ANALYSIS

The Board, previously found that the report of Dr. Meller, a Board-certified orthopedic surgeon and impartial medical specialist, was entitled to special weight and resolved the conflict on medical opinion evidence regarding appellant's alleged recurrence of disability. Appellant requested reconsideration before the Office and submitted an additional report from Dr. Wilkins, a Board-certified orthopedic surgeon and her attending physician, who was on one side of the conflict in medical opinion that Dr. Meller resolved.

Dr. Wilkins opined that appellant's appropriate diagnosis was cervical radiculopathy rather than cervical strain and stated that she sustained a recurrence of this condition in April 2000, which resulted in her disability for work. He disagreed with Dr. Meller's opinion that appellant's condition was age related and opined that an onset of cervical radiculitis was distinctly different from ordinary age-related degenerative discogenic change. While Dr. Wilkins described appellant's accepted employment injury, his diagnosis and opined that this condition was due to her employment, he failed to provide the necessary medical reasoning to explain why his diagnosis of cervical radiculopathy was correct rather than age-related degeneration as found by Dr. Meller. He also failed to discuss why this condition would recur. Dr. Wilkins was on one side of the conflict that Dr. Meller resolved. The additional report from Dr. Wilkins is insufficient to overcome the weight accorded Dr. Meller as the impartial medical examiner or to create a new conflict.⁶

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a recurrence of disability on April 3, 2000.

⁴ *Id.*

⁵ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

⁶ *Jaja K Asaramo*, 55 ECAB 200, 205 (2004).

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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