

that the medical evidence established a consequential injury. Appellant's attorney requests that OWCP pay appellant's outstanding medical bills from Metropolitan Health Group, Dr. Rudolf Vaclav Hamsa, an orthopedic surgeon, and Dr. John D. Olson, a neurologist, for treatment related to the accepted employment injury.

FACTUAL HISTORY

On July 12, 2007 appellant, then a 23-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that she sustained a head and neck injury that same day while in the performance of duty.

By decision dated July 27, 2007, OWCP accepted appellant's claim for neck sprain.

On September 4, 2009 appellant filed a notice of recurrence. She reported that when she returned to work she was limited due to the fact that pulling, casing and delivering mail caused excessive stress and strain on her right upper body region, right clavicle, back and right arm. The employing establishment indicated that the date of recurrence was September 4, 2009. It reported that appellant was provided limited-duty work within her medical restrictions until her release to full duty from her physician on September 24, 2007 without restrictions.

An April 22, 2009 report from Dr. Hamsa diagnosed cervical discogenic sprain with post-traumatic spondylitis, traumatic bulging at C5-6 and to a lesser degree, C6-7, tension headache syndrome and thoracic sprain with spondylitis.

In a June 30, 2009 magnetic resonance imaging (MRI) scan report, Dr. Lawrence W. Glorioso, III, a Board-certified radiologist, diagnosed posterior bulging of the C5-6 intervertebral disc and reversal of the cervical lordosis indicating muscle spasm.

Dr. Hamsa indicated on August 6, 2009 that the June 30, 2009 MRI scan revealed that the C6-7 level had shrunk and settled down somewhat. He reported that appellant still had stiffness and deep aching with a reduced range of motion with no sustained spasm and that the radicular component continued to be in the basilar regions bilaterally, the left more than the right and into the upper back, midline. Dr. Hamsa opined that her situation was fairly stable except for the inflammatory spondylitis. In a September 3, 2009 progress report, he indicated that appellant was seen on a semi-emergent basis and was in significant distress and showed the inability to totally utilize the right dominant extremity in a free manner and with the weight of the arm. Appellant was having extreme difficulty pulling her mail. Dr. Hamsa opined that she showed signs of a ruptured disc at C6-7 and had a manifest of the 6 root into and through the shoulder, directly into the posterior of the right upper arm which could be C5-6. He referred appellant to Dr. Olson for an electromyogram (EMG) and nerve conduction studies.

On September 23, 2009 Dr. Olson conducted an EMG and nerve conduction study of the right upper extremity and diagnosed right C7 radiculopathy.

By letter dated November 4, 2009, OWCP requested additional factual and medical information from appellant. It allotted her 30 days to submit additional evidence and respond to its inquiries.

In a November 30, 2009 narrative statement, appellant indicated that her duties upon returning to work were casing, pulling of letters, flat mail, loading packages and curbside delivery. She had been experiencing intense sharp pains in her neck, which radiated down her arm, muscle spasms and a burning sensation of the right upper arm and body region and muscle tightening in her right hand.

In a November 30, 2009 report, Dr. Hamsa reiterated his diagnosis and indicated that appellant was not able to continue her work activities after October 3, 2009. He reported that she wore an arm sling and was scheduled to undergo cervical facet/nerve blocks at C5-6 and C6-7 on the right side. Dr. Hamsa opined that appellant did not completely recover from the original injury, returned to regular duty and was unable to perform. He stated that lingering signs and symptoms have been described and any aspects of recurrence or increased problems would be on the basis of appellant's attempt to do her regular scope of job activity.

By decision dated December 30, 2009, OWCP denied appellant's claim for a recurrence of total disability on the basis that the medical evidence submitted was insufficient to establish that she sustained a recurrence of disability commencing September 4, 2009 causally related to the July 12, 2007 employment injury.

On January 7, 2010 appellant requested an oral hearing.

On September 16, 2009 Dr. Hamsa reiterated his diagnosis and reported that appellant had flares with acute cervical spasm, a moderate tension headache with moderate pain involving the right dominant extremity, increased by extended use. He indicated on October 12, 2009 that appellant remained with adjusted activity and was in and out of a sling for support of the right upper extremity due to traction pain syndrome with the already demonstrated disc lesions at C5-6 and C6-7.

Dr. Michael Serou, a Board-certified radiologist, reported on January 19, 2010 that the right shoulder radiograph was unremarkable. In another radiological report of the cervical spine bearing the same date, he diagnosed slight reversal of cervical curvature that may be due to spasm and indicated that it was an otherwise unremarkable cervical spine radiograph.

In a January 19, 2010 report, Dr. Gregory Stewart, a physician Board-certified in physical medicine and rehabilitation, indicated that originally he diagnosed cervical spine injury secondary to motor vehicle crash with a right C7 radiculopathy on EMG, however, at present appellant's bigger problems were due to inactivity. He diagnosed right elbow medial epicondylitis and opined that appellant had rotator cuff syndrome. Dr. Stewart recommended reentering a course of physical therapy.

Dr. Olson reported on January 20, 2010 that appellant complained of neck pain with radiation into the right arm, right arm and hand weakness and right shoulder pain that seems to be separate from the neck pain. Upon neurological examination, he reported that Dr. Hamsa's C6-7 findings correlated with the C7 nerve root and opined that she had also sustained a shoulder injury. Dr. Olson opined that it was obvious that appellant's condition was directly attributable to the July 12, 2007 employment injury as there had been no subsequent accident and she had continued to be symptomatic and received medical treatment. He stated that she was able to

work in a light-duty status but was recently terminated because her position was no longer available. Appellant was unable to take a job as a full-duty letter carrier due to continuing shoulder complaints associated with carrying the heavy bag.

Dr. Hamsa reported on January 25, 2010 that appellant was at first mutually able to continue her light-duty work and stated that he was not aware of the exact mechanism for which she was now not at duty.

In a February 19, 2010 report, Dr. Stewart diagnosed cervical spine pain, rotator cuff syndrome and right elbow medial epicondylitis with a component of reflex sympathetic dystrophy.

On May 11, 2010 Dr. Patrick H. Waring, a physician Board-certified in anesthesiology and pain medicine, conducted fluoroscopic cervical medial branch facet nerve block steroid injections at the right C4, C5 and C6 levels. His pre- and post-procedure diagnoses were cervical spondylosis and cervicgia.

Appellant's attorney notified OWCP on July 7, 2010 that appellant had agreed to a review of the written record by an OWCP hearing representative.

By decision dated September 21, 2010, an OWCP hearing representative denied appellant's claim for a recurrence based on a review of the written record conducted on September 2, 2010. The hearing representative affirmed the December 30, 2009 OWCP decision, finding that the medical evidence submitted was insufficient to establish that appellant sustained a recurrence of disability commencing on September 4, 2009 causally related to the accepted employment injury.

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.² This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or 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 his or her established physical limitations.³

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total

² 20 C.F.R. § 10.5(x). *See T.S.*, Docket No. 09-1256 (issued April 15, 2010).

³ *Id.*

disability and to show that he cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.⁴

ANALYSIS

On July 27, 2007 OWCP accepted appellant's claim for neck sprain. The issue on appeal is whether she has established a recurrence of disability commencing on September 4, 2009 as a result of her July 12, 2007 employment injury. Although the record indicates that appellant had worked in a limited-duty capacity for a period of time, she did not submit evidence to show that the requirements of her job changed from the time she began work. Therefore, she has the burden of proof to show a spontaneous change in her medical condition or a change in the nature and extent of her injury-related condition.

In a series of medical reports, Dr. Hamsa diagnosed cervical discogenic sprain with post-traumatic spondylitis, traumatic bulging at C5-6 and to a lesser degree, C6-7, tension headache syndrome and thoracic sprain with spondylitis. On September 3, 2009 he indicated that appellant was seen on a semi-emergent basis after having extreme difficulty pulling her mail and opined that she showed signs of a ruptured disc at C6-7 and had a manifest of the 6 root into and through the shoulder, directly into the posterior of the right upper arm which could be C5-6. On November 30, 2009 Dr. Hamsa concluded that appellant was not able to continue her work activities after October 3, 2009. He further concluded that appellant did not completely recover from the original injury, returned to regular duty and was unable to perform. Although Dr. Hamsa suggested that, any recurrence or increased problems would be on the basis of her attempt to do her regular scope of job activity, he did not provide any rationale explaining how her employment duties resulted in a change in her employment-related condition or why she was totally disabled for work. Therefore, his reports are insufficient to establish appellant's claim.

The reports of Drs. Waring, Glorioso and Serou also provided firm diagnoses based on various diagnostic tests. However, due to the nature of their reports, they did not offer any opinion on causal relationship. The Board has held that 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.⁵ Thus, these reports are insufficient to establish appellant's claim.

On January 20, 2010 Dr. Olson opined that appellant had sustained a shoulder injury and stated that it was obvious that her condition was directly attributable to the July 12, 2007 employment injury. On February 19, 2010 Dr. Stewart diagnosed rotator cuff syndrome and right elbow medial epicondylitis with a component of reflex sympathetic dystrophy. OWCP did not accept a shoulder, right elbow or rotator cuff condition causally related to appellant's July 12, 2007 employment injury prior to the filing of her claim on September 4, 2009. For conditions not accepted by OWCP as employment related, she has the burden of proof to

⁴ See *A.M.*, Docket No. 09-1895 (issued April 23, 2010). See also *Joseph D. Duncan*, 54 ECAB 471, 472 (2003); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁵ See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997).

establish causal relationship.⁶ Appellant has failed to do so. The issue here is a recurrence of accepted medical conditions. Thus, these medical reports are immaterial in nature.

The Board finds that the evidence submitted by appellant does not provide adequate rationale to show a spontaneous change in her medical condition which has resulted from the July 12, 2007 employment injury nor a change in the nature and extent of the injury-related condition. Moreover, appellant has not shown a change in her light-duty requirements. Therefore, she did not meet her burden of proof to establish disability as a result of a recurrence.

On appeal, appellant's attorney contends that OWCP should have referred appellant to an IME to resolve conflicting medical opinions in the case record under 5 U.S.C. § 8123(a) or, alternatively, found that the medical evidence established a consequential injury. Due to the deficiencies in the reports, the Board finds no conflict in the medical opinion evidence and no evidence of a consequential injury. Thus, the Board finds that the attorney's argument is not substantiated.

With regard to appellant's attorney's contention that the September 21, 2010 OWCP hearing representative's decision referred to an incorrect date of recurrence, the Board notes that the hearing representative affirmed the December 30, 2009 OWCP decision, finding that appellant did not sustain a recurrence of disability commencing September 4, 2009 causally related to the July 12, 2007 employment injury.

OWCP, however, did not adjudicate the issue of appellant's incurred medical expenses. On appeal, appellant's attorney requested that OWCP pay appellant's outstanding medical bills from Metropolitan Health Group, Dr. Hamsa and Dr. Olson for treatment related to the accepted employment injury. Ordinarily, the employing establishment will authorize treatment of a job-related injury by providing the employee a properly executed CA-16 within four hours.⁷ Under section 8103 of FECA, OWCP has broad discretionary authority to approve unauthorized medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances, to be determined on a case-by-case basis.⁸ The Board finds that the circumstances of the case warrant additional development of this issue. The case will be remanded to OWCP for further development, to be followed by the issuance of a *de novo* decision on this issue.

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.

⁶ See *Jaja K. Asaramo*, 55 ECAB 104 (2004).

⁷ See *Val D. Wynn*, 40 ECAB 666 (1989); see also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (September 1995).

⁸ 5 U.S.C. § 8103; 20 C.F.R. § 10.304. See *L.B.*, Docket No. 10-469 (issued June 2, 2010); see also Federal (FECA) Procedure Manual, *id.*

CONCLUSION

The Board finds that appellant did not meet her burden to establish that she sustained a recurrence of total disability commencing September 4, 2009 causally related to the July 12, 2007 employment injury. The case will be returned to OWCP for consideration of whether her medical expenses should be reimbursed.

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2010 decision of the Office of Workers' Compensation Programs is affirmed and the case is remanded for further development regarding the reimbursement of medical expenses.

Issued: April 13, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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