United States Department of Labor
Employees' Compensation Appeals Board

A.P., Appellant	)	
	)	**Docket No. 11-1931**
and	)	**Issued: April 4, 2012**
	)	
U.S. POSTAL SERVICE, SOUTHEASTERN PROCESSING & DISTRIBUTION CENTER, Southeastern, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 25, 2011 appellant, through her attorney, filed a timely appeal from a June 6, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her recurrence claim. Pursuant to the Federal Employees' Compensation Act[1] (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 met her burden of proof to establish that she sustained a recurrence of her medical condition commencing June 14, 2009 causally related to her employment injuries.

On appeal, counsel contends that the medical opinion of an attending physician is sufficient to establish that appellant's need for right shoulder surgery is causally related to her accepted injuries.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on June 7, 2008 appellant, then a 57-year-old mail handler, sustained a sprain, impingement syndrome and rotator cuff tendinosis of the right shoulder as a result of pulling equipment at work. She accepted a modified nixie position effective June 9, 2008 and continued to receive medical treatment.

On June 16, 2009 appellant filed a claim for a recurrence of a medical condition on June 14, 2009.

In a report dated June 22, 2009, Dr. Brett R. Horwitz, an attending Board-certified orthopedic surgeon, obtained a history that several days prior appellant was cutting bundles of mail when she experienced increasing discomfort in her right shoulder. Appellant was evaluated in a hospital emergency room. Dr. Horwitz advised that appellant had persistent and chronic impingement syndrome of the right shoulder and was a candidate for arthroscopic subacromial decompression.

Hospital emergency room records dated June 16, 2009 listed a history that appellant sustained a right shoulder injury two days prior. Appellant experienced moderate pain. She was found to have right shoulder impingement syndrome.

By letter dated July 21, 2009, OWCP advised appellant that the evidence submitted was insufficient to establish her recurrence claim. It requested additional factual and medical evidence.

A June 16, 2009 report from Dr. David H. Forsted, a Board-certified radiologist, stated that an x-ray showed no acute abnormality in the right shoulder.

In reports dated April 10, 2008 through October 29, 2009 and an April 16, 2009 work capacity evaluation form, Dr. Horwitz listed findings on physical examination. He diagnosed conditions including impingement syndrome of the left shoulder; persistent and chronic impingement syndrome of the right shoulder, secondary to overuse and repetitive stressful work activities and resistant to conservative management; acute exacerbation of right shoulder tendinitis; resolving right rotator cuff tendinitis; recurrent left rotator cuff tendinitis and exacerbation of repetitive stress disorder of both shoulders with adhesive capsulitis of the right shoulder. Dr. Horwitz addressed appellant's medical treatment plan which included occupational and physical therapy. He advised that she could continue to perform modified work with restrictions.

A June 23, 2008 report of Dr. Melvin L. Turner, a Board-certified radiologist, stated that a magnetic resonance imaging (MRI) scan of the right shoulder demonstrated mild distal infraspinatus tendinopathy and minimal supraspinatus tendinopathy at a described myotendinous junction and mild to moderate acromioclavicular (AC) joint osteoarthritis. In a May 11, 2009 report, Dr. Turner advised that an MRI scan of the right shoulder demonstrated focal thickening of the anterior aspect of the supraspinatus tendon which could represent calcific tendinitis of the supraspinatus. There was moderate tendinopathy of the supraspinatus and infraspinatus without a full thickness rotator cuff tear and moderate osteoarthritis of the right AC joint.

In a report dated July 11, 2003, Dr. Evan S. Kovalsky, a Board-certified orthopedic surgeon, advised that appellant had left shoulder pain with early osteoarthritis in the left AC joint and tendinitis and impingement.

Appellant submitted reports from physical therapists who addressed the treatment of her right shoulder pain and impingement.

A September 16, 2003 report of Dr. Lisa Klein, a Board-certified radiologist, stated that an MRI scan of the left shoulder demonstrated mild tendinopathy of the supraspinatus tendon, but no evidence of a rotator cuff tear. There was moderately severe degenerative change of the left AC joint with some edema surrounding the AC joint and mildly down-sloping acromion. An MRI scan of the left knee revealed multiloculated high signal intensity posterior to the medial aspect of the knee joint which probably represented a multiloculated complex Bakers' cyst. An MRI scan of the left shoulder demonstrated pain with mild tendinosis and AC joint osteoarthritis.

In a November 9, 2009 decision, OWCP denied appellant's claim, finding that the medical evidence was insufficient to establish that she sustained a recurrence of her medical condition commencing June 14, 2009 causally related to the June 7, 2008 employment injuries. It found that the medical evidence supported a new exposure to employment factors on June 14, 2009. OWCP advised appellant to file a new traumatic injury claim.

By letter dated November 11, 2009, appellant, through her attorney, requested an oral hearing. In a March 5, 2010 statement, appellant described the alleged June 14, 2009 recurrence of her medical condition. She was cutting bundles of magazines and trying to fill up a machine with two coworkers when her right shoulder began to hurt. Appellant later advised her supervisor that she needed to go to a hospital for medical treatment. She stated that her limited-duty position required her to prep mail for five hours a day and sweep mail for one hour.

In a prescription with an illegible date, Dr. Horwitz ordered a transcutaneous electrical nerve stimulation (TENS) unit. In reports dated September 16, 2009 through January 4, 2010, he reiterated the diagnosis of persistent impingement syndrome of the right shoulder and found that appellant could perform modified-duty work with restrictions. In reports dated March 3 and April 14, 2010, Dr. Horwitz addressed the treatment of appellant's right shoulder impingement syndrome arthroscopic subacromial decompression.

In a May 10, 2010 decision, an OWCP hearing representative affirmed the November 9, 2009 decision, finding that the medical evidence submitted was insufficient to establish that appellant sustained a recurrence of her medical condition. It noted that she sought medical treatment for increased symptoms related to a new traumatic incident on June 14, 2009.

On October 7, 2010 appellant, through her attorney, requested reconsideration.

In reports dated March 3 through September 30, 2010, Dr. Horwitz reiterated that appellant could perform modified-duty work with restrictions. He diagnosed chronic right shoulder impingement syndrome and recommended physical therapy and surgery. In a May 29, 2010 prescription, he ordered a heating pad.

In a decision dated January 10, 2011, OWCP denied modification of the May 10, 2010 decision. The medical evidence submitted was found to be insufficient to establish that appellant sustained a recurrence of her medical condition commencing June 14, 2009 causally related to her accepted injuries.

By letter dated March 14 2011, appellant, through her attorney, requested reconsideration.

In reports dated January 6 through April 20, 2011, Dr. Horwitz reiterated the diagnosis of persistent impingement syndrome with subacromial bursitis and rotator cuff tendinitis of the right shoulder secondary to a work-related injury that required surgery.

In a June 6, 2011 decision, OWCP denied modification of the January 10, 2011 decision.

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.[2] Continuous treatment for the original condition or injury is not considered a recurrence of a medical condition nor is an examination without treatment.[3] As distinguished from a recurrence of disability, a recurrence of a medical condition does not involve an accompanying work stoppage.[4] It is the employee's burden to establish that the claimed recurrence is causally related to the original injury.[5] Causal relationship is a medical issue that can generally be resolved only by rationalized medical opinion evidence.[6]

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of a medical condition on June 14, 2009. OWCP accepted that on June 7, 2008 she sustained a sprain, impingement syndrome and rotator cuff tendinosis of the right shoulder while in the performance of duty. Following these injuries, appellant worked in modified nixie position. On June 16, 2009 she filed a recurrence claim, contending that her accepted right shoulder conditions had worsened such that she required arthroscopic surgery causally related to the accepted conditions. Appellant failed, however, to submit sufficient rationalized medical opinion evidence to establish that she required further medical treatment due to her accepted condition.

[2] 20 C.F.R. § 10.5(y).

[3] *Id.*

[4] *Id.* at § 10.5(x).

[5] *Id.* at § 10.104. *See also Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

[6] *See Jennifer Atkerson*, 55 ECAB 317 (2004).

The reports of Dr. Horwitz, an attending physician, found that appellant had several right shoulder conditions, including persistent impingement syndrome with subacromial bursitis and rotator cuff tendinitis of the right shoulder were secondary to the work-related injury and to overuse and repetitive stressful work activities and necessitated arthroscopic surgery. His initial report of June 22, 2009 noted that appellant experienced discomfort in her right shoulder several days prior while cutting bundles of mail, thereby requiring her to undergo treatment in an emergency room. This history clearly identified new trauma as the basis for appellant's seeking medical care. To this extent she was advised by OWCP to file a new traumatic injury claim. Dr. Horwitz did not adequately explain the nature of the relationship between appellant's current conditions and proposed surgery and the accepted right shoulder conditions resulting from the June 7, 2008 employment injury. The Board has held that a medical opinion not fortified by rationale is of diminished probative value.[7] Dr. Horwitz prescribed a TENS unit and heating pad. This evidence did not contain any opinion addressing the cause of appellant's conditions. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[8]

The June 16, 2009 hospital emergency room records also fail to provide any opinion as to the cause of appellant's chronic right shoulder conditions and proposed surgery. It was noted that she injured her right shoulder at work and found that she had right shoulder impingement syndrome, but did not provide an opinion addressing how the accepted 2008 injury had deteriorated to the extent that additional care was necessary or the need for surgery in 2010. The Board finds that the hospital records are insufficient to establish appellant's claim.

Similarly, Dr. Forsted's June 16, 2009 x-ray report did not provide an opinion addressing whether appellant had a right shoulder condition that required surgery causally related to the June 7, 2008 injuries. He stated that the x-ray showed no acute abnormality in the right shoulder. The Board finds, therefore, that Dr. Forsted's report does not support appellant's claim.

The reports of Dr. Turner, Dr. Kovalsky and Dr. Klein are similarly insufficient to establish appellant's claim. The 2003 reports of Dr. Klein and Dr. Kovalsky predate the period of recurrence by six years and are not relevant to that issue. The diagnostic reports of Dr. Turner from 2008 and 2009 also predate the June 14, 2009 incident implicated by appellant in this claim.

The reports from appellant's physical therapists are of no probative medical value because a physical therapist is not a physician as defined under FECA.[9]

On appeal, counsel contended that the medical opinion of Dr. Horowitz was sufficient to establish that the proposed right shoulder surgery was due to the accepted injuries. For the reasons stated, the Board finds that Dr. Horwitz's reports are not sufficiently rationalized to establish appellant's claim.

[7] *Cecilia M. Corley*, 56 ECAB 662 (2005).

[8] *Michael E. Smith*, 50 ECAB 313 (1999).

[9] *See* 5 U.S.C. § 8101(2); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

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 did not meet her burden of proof to establish that she sustained a recurrence of a medical condition commencing June 16, 2009 causally related to her accepted injuries.

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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