

FACTUAL HISTORY

On February 1, 1994 appellant, then a 52-year-old supply technician, filed a traumatic injury claim alleging that on January 24, 1994 she slipped on an icy sidewalk at work. She alleged that she sustained cervical strain and contusions to both shoulders. On June 6, 1994 OWCP accepted her claim for cervical strain. A magnetic resonance imaging (MRI) scan in November 1994 demonstrated a large disc herniation at C6-7. Appellant underwent an anterior cervical fusion authorized by OWCP on December 7, 1995.² She filed a notice of recurrence of disability on September 23, 1994 alleging that on August 16, 1994 she sustained additional disability due to her January 24, 1994 employment injury. Appellant filed additional recurrence claims on January 20, 2000 and December 5, 2002. OWCP authorized medical treatment. Appellant underwent additional cervical surgery in January 2003. On March 21, 2007 she received a schedule award for an additional 25 percent impairment of her right upper extremity. In an opinion dated October 31, 2007, an OWCP medical adviser opined that appellant sustained a cervical herniated disc on January 24, 1994. OWCP included this as an accepted condition on November 13, 2007. By decision dated March 26, 2008, appellant received a schedule award for 19 percent impairment of her left upper extremity.

Dr. Carrie Edelman, a Board-certified rheumatologist, completed a work capacity evaluation on May 4, 2008 and opined that appellant was totally and permanently disabled. In a letter dated February 10, 2009, appellant stated that she was unable to resume her employment activities. She completed a claim for compensation on March 26, 2009. Dr. Edelman completed a second work capacity evaluation on April 20, 2009 and stated that appellant could not perform her usual job as she could not sit in front of a screen, drive a truck or perform data entry. She opined that appellant fatigued easily and could not work.

On April 20, 2009 appellant filed a notice of recurrence of disability alleging that she sustained a recurrence of her January 24, 1994 employment injury on that date. The employing establishment indicated that she utilized disability retirement on October 31, 1994.

In a letter dated July 7, 2009, OWCP requested that appellant provide additional factual and medical evidence in support of her recurrence claim. Appellant submitted a narrative statement on July 13, 2009 describing her daily limitations and activities. She submitted work capacity evaluations from Dr. Peter Barcas, an osteopath dated July 9, 2009 and a similar form report from a physician whose signature is illegible.

By decision dated September 1, 2009, OWCP denied appellant's claim for recurrence.

² On August 2, 1990 appellant filed a claim for right forearm sprain under OWCP File No. xxxxxx456. OWCP accepted this claim on December 10, 1990. Appellant returned to full duty on August 9, 1990. She filed a recurrence in this claim on November 2, 1992 which OWCP denied on March 16, 1993. By decision dated August 2, 2001, OWCP granted appellant a schedule award for 44 percent impairment of her right upper extremity. Appellant appealed her recurrence claim to the Board and by decision dated January 13, 1997, the Board found that she had established her claim. Docket No. 95-254 (issued January 13, 1997). On January 5, 1994 appellant filed a notice of occupational disease alleging that she developed right lateral epicondylitis due to answering telephones, writing and data entry in the performance of her federal job under OWCP File No. xxxxxx542. OWCP accepted this claim on July 29, 1994.

Dr. Metzger completed a report on March 18, 2010 and noted appellant's complaints of neck and right upper extremity pain. He described the employment injury and found left paracervical pain with palpation and weakness with grip strength bilaterally. Dr. Metzger stated that appellant did not have a precise diagnosis that would explain why she was so profoundly symptomatic. OWCP requested additional information from her regarding her current condition in a letter dated April 22, 2010 and allowed 30 days for a response. Appellant submitted a series of notes from Dr. Metzger's office signed by a physician's assistant dated March 31 and July 2, 2010.

Appellant requested reconsideration on July 29, 2010. She submitted additional notes signed by a physician's assistant dated July 30 and August 13, 2010. Dr. Barcas completed notes dated January 19 and February 1 and 22, 2010 and diagnosed chronic neck and back pain due to her employment injuries. He noted appellant's MRI scan demonstrated degenerative discs. Dr. Nifa Alcasid, an internist, completed a note on October 30, 2009 and diagnosed fibromyalgia, chronic joint pains, arthritis and depression. He noted appellant's history of injury and opined that her "multiple injuries, systemic fibromyalgia and intermittent inflammatory arthritis" were due to her 1994 employment injury. By decision dated September 1, 2010, OWCP reviewed the merits of her claim and denied her claim for recurrence of disability.

Appellant requested reconsideration on February 1, 2011. She resubmitted the physician's assistant's notes dated July 2 and 30 and August 13, 2010. On September 20, 2010 Dr. Metzger noted appellant's increasing low back pain. He diagnosed cervical neck pain and cervical radiculopathy. Dr. Metzger completed a note on December 6, 2010 and stated that appellant believed her current symptoms were the same as those which developed as a result of her 1994 employment injury. On January 13, 2011 he stated that her treatment was due to injuries she sustained as a result of her work-related injury and that she would continue to experience chronic pain.

On January 4, 2011 Dr. Barcas completed a report noting appellant's history of injury on January 24, 1994. He also mentioned that she experienced a motor vehicle accident on August 17, 2006 which worsened some of her symptoms. Dr. Barcas reviewed his treatment of appellant and stated, "In summary, [appellant] has a history of a work-related injury in 1994 while working at the Naval Weapons Station Earle. She has had chronic neck and back pain since then and has been disabled from work."

By decision dated September 9, 2011, OWCP denied modification of its September 1, 2009 and September 1, 2010 decisions finding that appellant had not submitted sufficient medical evidence to establish a causal relationship between her current condition and her 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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.³ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing April 20, 2009 and her January 24, 1994 employment injury.⁴ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁵

ANALYSIS

In support of her claim for recurrence of disability appellant has submitted supportive medical evidence from several physicians. Dr. Edelman completed forms on May 4, 2008 and April 20, 2009 and stated that appellant could not perform her usual job as she could not sit in front of a screen, drive a truck or perform data entry. She opined that appellant fatigued easily and could not work. While these forms support appellant's claim that she was totally disabled from work, Dr. Edelman did not provide the necessary medical opinion evidence to establish that her current disability was due to her accepted employment injury of January 24, 1994. Without medical opinion explaining the causal relationship between appellant's current condition and her previously accepted condition Dr. Edelman's reports are not sufficient to meet her burden of proof.

Appellant also submitted a series of notes from Dr. Metzger's office signed by a physician's assistant. A physician's assistant is not a physician under FECA⁶ and these notes do not constitute medical evidence. As these notes were not signed by the physician the notes have no probative value in establishing appellant's claim.⁷

Dr. Metzger completed several reports describing appellant's complaints of neck and right upper extremity pain and mentioning her January 24, 1994 employment injury. He initially stated that she did not have a precise diagnosis that would explain why she was so profoundly symptomatic, but later diagnosed cervical neck pain and cervical radiculopathy. Dr. Metzger indicated that appellant believed that her current symptoms were due to her employment injury. The Board has held that a claimant's belief that a condition was caused, precipitated or aggravated by employment is not sufficient to establish causal relationship.⁸ As Dr. Metzger reported appellant's beliefs rather than providing his own medical opinion this statement is not sufficient to meet her burden of proof and establish her claimed recurrence.

³ 20 C.F.R. § 10.5(x).

⁴ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-9 (1982).

⁵ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁶ 5 U.S.C. §§ 8101-8193, 8101(2); *Thomas R. Horsefall*, 48 ECAB 180 (1996).

⁷ *Merton J. Sills*, 39 ECAB 572 (1988).

⁸ *D.I.*, 59 ECAB 158 (2007).

On January 13, 2011 Dr. Metzger stated that appellant's treatment was due to injuries she sustained as a result of her work-related injury and that she would continue to experience chronic pain. Although this statement supports a causal relationship between her current conditions and her accepted employment injury, he did not provide any detailed medical reasoning or rationale explaining why he believed that her 1994 employment injury for which she underwent two corrective surgeries continued to result in disability for work 17 years later. Without an explanation of how the 1994 injury continued to impact appellant's condition as distinguished from other factors, such as age-related degenerative changes, this report is not sufficient to meet her burden of proof.

Dr. Barcas described appellant's medical history including the January 24, 1994 employment injury and a motor vehicle accident on August 17, 2006 which worsened some of her symptoms. He stated that she had chronic neck and back pain since her 1994 employment injury. This report fails to adequately explain the relationship between appellant's accepted employment injuries and medical treatment and her currently diagnosed conditions. Dr. Barcas did not explain how her accepted cervical conditions could result in back pain and he did not differentiate between her cervical pain resulting from the 1996 motor vehicle accident. As this report lacks a detailed explanation of how appellant's current condition on or after January 14, 2009 was related to her January 24, 1994 employment injury, this report is not sufficient to meet appellant's burden of proof.

Dr. Alcasid diagnosed fibromyalgia, chronic joint pains, arthritis and depression. He opined that her multiple injuries, systemic fibromyalgia and intermittent inflammatory arthritis were due to her 1994 employment injury. Again the Board notes that this report is supportive of appellant's claim as Dr. Alcasid attributes her currently diagnosed condition to her accepted employment injury. However, the conditions diagnosed have not been accepted due to the 1994 employment injury and he did not provide any medical reasoning explaining how her traumatic cervical conditions could result in fibromyalgia, inflammatory arthritis or other "multiple injuries." Without further detail and medical rationale this report is not sufficient to meet appellant's burden of proof.

The Board finds that, contrary to appellant's argument on appeal, she has not submitted the necessary medical opinion evidence to establish that her alleged recurrence of disability on or after January 14, 2009 was due to her January 24, 1994 employment injury.

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 failed to meet her burden of proof in establishing that she sustained a recurrence of disability on January 14, 2009 due to her January 24, 1994 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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