

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

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**D.W., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Schwenksville, PA, Employer**

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**Docket No. 11-1499  
Issued: February 2, 2012**

*Appearances:*

*Jeffrey P. Zeelander, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On June 13, 2011 appellant, through her attorney, filed a timely appeal from a June 1, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) finding that she did not establish a recurrence of a medical condition. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 sustained a recurrence of a medical condition beginning on or around April 20, 2011 causally related to her June 27, 1997 employment injury.

**FACTUAL HISTORY**

On June 27, 1997 appellant, then a 43-year old rural carrier, filed a traumatic injury claim alleging that she sustained a puncture wound to the forearm when she was bit by a dog in the

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

performance of duty. OWCP accepted the claim for an open wound of the left forearm, neck sprain, thoracic sprain, bilateral sprains of the shoulders and bicipital tenosynovitis.<sup>2</sup>

In a report dated June 8, 2006, Dr. James J. Nicholson, an osteopath, found that appellant had “persistent chronic weakness [and] increased paresthesias with altered function” following a dog bite. He determined that she could continue her modified employment with permanent restrictions and recommended that she return as needed (PRN).

On March 22, 2011 appellant requested that OWCP reopen her case so that she could have an evaluation as required by the employing establishment. She related that she did not know that she had to see her physician yearly to keep the claim opened.

By letter dated March 22, 2011, OWCP advised appellant to file a notice of recurrence of a medical condition. On April 4, 2011 appellant’s attorney noted that it had “coded this case as administratively closed and her physician will not see her unless they have something from [OWCP] indicating that the claim remains open. It appears that the [employing establishment] will put [appellant] out of work shortly without current medical.”

On April 8, 2011 counsel argued that Board case law provided that OWCP should “allow injured workers to continue to see their physicians notwithstanding an ‘administrative closure.’”

On April 20, 2011 appellant filed a notice of recurrence of a medical condition causally related to her June 27, 1997 employment injury. On April 28, 2011 OWCP informed her of the evidence required to establish a recurrence of disability, including a rationalized report from her attending physician addressing whether her current condition was due to the accepted work injury.

On April 25, 2011 OWCP advised counsel that the last medical report in the file was from 2006. It indicated that appellant sought medical treatment due to the employing establishment’s request for an updated report addressing the extent of disability. OWCP informed counsel that this did not constitute a recurrence of a medical condition.<sup>3</sup>

By decision dated June 1, 2011, OWCP found that appellant had not established an employment-related recurrence of a medical condition on or around April 20, 2011. It noted that it had not received any supporting medical evidence. OWCP indicated that medical treatment was not authorized and that prior authorization, if any, was terminated.

On appeal, counsel argues that OWCP improperly terminated her authorization for medical benefits without establishing that she no longer had residuals of her work injury. He contends that its action in administratively closing cases was a method for terminating medical

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<sup>2</sup> By decision dated February 12, 2002, OWCP granted appellant a schedule award for a five percent permanent impairment of the left arm.

<sup>3</sup> In a letter dated April 27, 2011, counsel again asked that OWCP remove the administrative closure of the case so that appellant could obtain an appointment with her physician to evaluate the accepted conditions and also to determine if she was entitled to an additional schedule award.

benefits. Counsel cited as support *Sandra Jones*,<sup>4</sup> where the Board held that OWCP's refusal to authorize a change in physicians as appellant did not allege a recurrence of a medical condition was an abuse of discretion. He alleges that, as in *Jones*, OWCP erred in placing the burden of proof on appellant to show that she needed to see her physician for an appointment. Counsel also contended that the Board should instruct OWCP to pay reasonable attorney fees.

### **LEGAL PRECEDENT**

Section 10.5(y) of OWCP's regulations provide in pertinent part:

“Recurrence of medical condition means a documented need for further medical treatment after release from treatment of the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a ‘need for further medical treatment after release from treatment’ nor is an examination without treatment.”<sup>5</sup>

OWCP's procedure manual provides:

“*After 90 days of Release from Medical Care* (Again, this should be based on the physician's statement or instruction to return PRN or computed by the [claims examiner] from the date of last examination.) The claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury.”<sup>6</sup> (Emphasis in the original.)

### **ANALYSIS**

OWCP accepted that appellant sustained an open wound of the left forearm, neck sprain, thoracic sprain, bilateral shoulder strain and bicipital tenosynovitis when she was bit by a dog on June 27, 1997. On June 8, 2006 in the most recent medical report of record, Dr. Nicholson listed findings of weakness and loss of sensation and function after a dog bite. He determined that appellant could work modified employment and recommended that she return as needed.

In a statement dated March 22, 2011, appellant maintained that OWCP should reopen her case so she could obtain a medical report to provide the employing establishment. On April 20, 2011 she filed a notice of an employment-related recurrence of a medical condition. Appellant did not submit any medical evidence supporting that she experienced a recurrence of a medical condition or that she received treatment for her accepted condition between 2006 and 2011. As she was more than 90 days after release from medical care with instructions to return PRN, she had the responsibility to submit an attending physician's report containing a description of the objective findings and supporting causal relationship between her current condition and the

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<sup>4</sup> Docket No. 05-1562 (issued March 7, 2006).

<sup>5</sup> 20 C.F.R. § 10.5(y).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (May 2003).

previously accepted work injury.<sup>7</sup> Appellant did not submit such evidence and thus failed to meet her burden of proof.<sup>8</sup>

On appeal, counsel argued that OWCP improperly terminated appellant's medical benefits. OWCP, however, did not terminate medical benefits for the June 27, 1997 traumatic injury claim but instead found that appellant was not entitled to medical benefits due to a recurrence of a medical condition. It denied appellant's request for medical coverage based on her failure to submit an attending physician's report supporting a causal relationship between the need for further medical treatment in April 2011 and the previously accepted work injury.<sup>9</sup>

Counsel maintained that the Board's finding in *Sandra Jones* supported that she did not need to establish a recurrence of a medical condition for OWCP to authorize treatment by a physician. The issue in *Jones*, however, was whether OWCP abused its discretion in denying a request to change treating physicians without appellant establishing a recurrence of a medical condition. The current issue is whether appellant has established a need for further medical treatment due to her accepted work injury. The issue is medical in nature and can only be resolved through the submission of probative medical evidence from a physician.<sup>10</sup>

Counsel also argued that the Board should instruct OWCP to pay attorney's fees. The Board's sole function regarding attorney's fees, however, is to determine whether actions taken by OWCP constitute an abuse of discretion.<sup>11</sup> As OWCP has not issued a decision regarding attorney's fees, this issue is not before the Board on the current appeal.<sup>12</sup>

### CONCLUSION

The Board finds that appellant has not sustained a recurrence of a medical condition beginning on or around April 20, 2011 causally related to her June 27, 1997 employment injury.

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<sup>7</sup> *Id.*

<sup>8</sup> *See J.F.*, 58 ECAB 124 (2006).

<sup>9</sup> *Id.*

<sup>10</sup> *Gloria J. McPherson*, 51 ECAB 441 (2000); *L.G.*, Docket No. 09-1517 (issued March 3, 2010).

<sup>11</sup> *See V.T.*, 58 ECAB 133 (2006).

<sup>12</sup> *See* 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 1, 2011 is affirmed.

Issued: February 2, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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