

FACTUAL HISTORY

This case was previously before the Board. In a decision dated June 9, 2011, the Board affirmed OWCP's July 13, 2010 decision, finding that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on October 6, 2009 causally related to her October 14, 2008 employment injury.² The facts of the case, as set forth in the prior decision, are incorporated by reference.

By letter dated September 20, 2011, appellant, through her attorney, requested reconsideration and submitted additional evidence.

In an April 12, 2010 report, Dr. Thomas Haher, a Board-certified orthopedic surgeon, diagnosed herniated disc cervical no myelopathy and neck pain. He indicated that the date of injury was October 14, 2008 and opined that appellant's percentage of temporary impairment was 100 percent.

In a March 4, 2011 magnetic resonance imaging (MRI) scan of the cervical spine report, Dr. Christopher Vaughn, a Board-certified radiologist, diagnosed degenerative changes of the cervical spine, small right foraminal disc protrusion at C3-4, disc osteophyte complex at C5-6, three to four millimeter central disc protrusion at C6-7 and mild-to-moderate left-sided neural foraminal narrowing due to facet arthropathy at C7-T1.

Appellant also resubmitted the following evidence: two x-ray reports dated October 2, 2009; a November 6, 2009 MRI scan of the cervical spine; and a March 7, 2011 report by Dr. Walter H. Short, a Board-certified orthopedic hand surgeon.

By decision dated November 30, 2011, OWCP denied modification of the prior decision, finding that the evidence submitted did not establish that appellant sustained a recurrence of disability on October 6, 2009 causally related to the employment injury.

LEGAL PRECEDENT

A person seeking benefits under FECA³ has the burden of establishing the essential elements of her claim. 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.⁴ A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and

² Docket No. 10-2175 (issued June 9, 2011). OWCP accepted that on October 14, 2008 appellant, then a 51-year-old accounting technician, sustained right bicipital tenosynovitis and right Gamekeeper's thumb.

³ 5 U.S.C. §§ 8101-8193.

⁴ See *R.S.*, 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁵ Where no such rationale is present, medical evidence is of diminished probative value.⁶

ANALYSIS

OWCP accepted appellant's claim for right bicipital tenosynovitis and right Gamekeeper's thumb. The issue is whether appellant established that she was totally disabled commencing October 6, 2009 due to her October 14, 2008 employment injury.

OWCP did not accept a cervical condition causally related to appellant's October 14, 2008 employment injury. Although Drs. Haher and Vaughn provided firm diagnoses, they provided medical reports regarding a cervical condition. The issue here is a recurrence of the accepted medical conditions. Thus, these medical reports are immaterial in nature.

The two x-ray reports dated October 2, 2009, the November 6, 2009 MRI scan and the March 7, 2011 report from Dr. Short were previously considered and found insufficient to establish appellant's claim.

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 October 14, 2008 employment injury nor a change in the nature and extent of the injury-related condition. Therefore, appellant did not meet her burden of proof to establish disability as a result of a recurrence.

On appeal appellant's attorney contends that OWCP's decision was contrary to fact and law. For the reasons stated above, the Board finds the attorney's argument is unsubstantiated.

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 establish that she sustained a recurrence of disability on October 6, 2009 causally related to her October 14, 2008 employment injury.

⁵ See *I.J.*, 59 ECAB 408 (2008); *Nicole Brusco*, 33 ECAB 1138, 1140 (1982).

⁶ See *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988); *Ronald C. Hand*, 49 ECAB 113 (1997).

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 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