

repetitive work duties over time.² OWCP accepted that she sustained a joint ganglion of her left wrist, aggravation of right hand tenosynovitis and adhesive capsulitis of her left shoulder. Appellant returned to full-duty work for the employing establishment in 2005.

In a May 1, 2007 report, Dr. Kostas J. Constantine, an attending Board-certified orthopedic surgeon, stated that he had not seen appellant in a year and a half to two years. He noted that appellant still complained of intermittent left wrist, elbow and shoulder pain and that she indicated that, when her condition seems to get better “it then happens again when she overdoes it at work.” Appellant also reported that her left wrist sometimes has a recurrent ganglion. Dr. Constantine noted that, on examination, appellant continued to have left scapulothoracic bursitis but that her left rotator cuff did not seem to be tender. He recommended that appellant pop her left wrist ganglion if it returned and to apply cortisone to it. Dr. Constantine advised appellant to call him if her left wrist ganglion returned and stated, “She would like to take three weeks off to let her arm rest and then go back to full duty as tolerated and see how it does.”

Appellant stopped work on May 1, 2007 and filed a claim alleging that she sustained a recurrence of disability on that date due to her accepted work injuries. She indicated that she carried out her work duties even though the pain in her hands, wrist and left shoulder remained since she sustained her original injuries and had worsened in intensity.

In a June 4, 2007 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim for a work-related recurrence of disability.

In a June 26, 2007 note, Dr. Douglas Boardman, an attending Board-certified orthopedic surgeon, indicated that appellant was unable to return to work until diagnostic testing and a follow-up examination were completed. The record contains the findings of diagnostic testing of appellant’s neck and left shoulder that were obtained in June and July 2007. The findings showed mild joint degeneration in the left shoulder.

In an August 20, 2007 decision, OWCP denied appellant’s claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after May 1, 2007 due to her accepted work injuries. It indicated that some of the medical evidence suggested that appellant sustained a new injury at work and that she should file a traumatic or occupational injury claim if she felt that she sustained a new injury.

In several reports dated between June and August 2007, Dr. Boardman noted that appellant reported increased grinding and popping in her scapulothoracic articulation. On September 19, 2007 he performed a partial scapulectomy on appellant’s left shoulder.³ Dr. Boardman also produced a number of reports detailing appellant’s follow-up care after the surgery. By early 2008, appellant stopped complaining of left shoulder popping but continued to complain of neck pain. In a number of reports dated beginning in April 2008, Dr. Lawrence F. Cohen, an attending Board-certified orthopedic surgeon, and Dr. Michael J. DePalma, an

² Appellant indicated that she first became aware of her condition in August 1999.

³ This procedure was not authorized by OWCP as being related to the accepted left shoulder condition.

attending Board-certified physical medicine and rehabilitation physician, detailed their treatment of appellant's neck problems.

In an August 20, 2008 letter, appellant's counsel at the time requested reconsideration and argued that appellant was disabled due to a recurrence of her accepted injuries rather than any new injury. In an October 7, 2008 decision, OWCP affirmed its August 20, 2007 decision denying appellant's claim that she sustained a work-related recurrence of disability on May 1, 2007.

Appellant submitted a November 13, 2008 report in which Dr. Lauren C. Fiske, an attending Board-certified internist, indicated that she continued to report having left shoulder pain. Dr. Fiske detailed her treatment plan for appellant. In a November 14, 2008 addendum to the report, Dr. Rachel Waller, an attending Board-certified internist, indicated that she agreed with Dr. Fiske's plan. In reports dated May 16 and June 6, 2008, Dr. DePalma continued to report on appellant's condition and describe his treatment for that condition, including epidural injections. On September 24, 2009 Dr. Boardman discussed appellant's neck and left shoulder conditions. He noted that on examination appellant had good motion and strength in her shoulders.

In a November 2, 2011 letter, appellant's counsel requested reconsideration of her claim. In an April 20, 2012 decision, OWCP affirmed its October 7, 2008 decision denying appellant's recurrence of disability claim. It indicated that the new medical evidence submitted by appellant did not contain an opinion that she sustained a work-related recurrence of disability.

LEGAL PRECEDENT

An individual 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 compensation is claimed is causally related to the accepted 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 the employment injury and supports that conclusion with sound medical rationale.⁵ Where no such rationale is present, medical evidence is of diminished probative value.⁶

ANALYSIS

OWCP accepted that appellant sustained a joint ganglion of her left wrist, aggravation of right hand tenosynovitis and adhesive capsulitis of her left shoulder. Appellant returned to full-

⁴ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986). Under 20 C.F.R. § 10.5(x), a recurrence of disability is defined, in part, as "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."

⁵ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁶ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

duty work for the employing establishment in 2005. She stopped work on May 1, 2007 and filed a claim alleging that she sustained a recurrence of disability on that date due her accepted work injuries. OWCP denied appellant's claim because she did not submit sufficient medical evidence to establish that she sustained a work-related recurrence of disability on or after May 1, 2007.

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after May 1, 2007 due to her accepted work injuries.

Appellant submitted a May 1, 2007 report in which Dr. Constantine, an attending Board-certified orthopedic surgeon, stated that he had not seen her in a year and a half to two years. Dr. Constantine noted that appellant still complained of intermittent left wrist, elbow and shoulder pain and that he indicated that when appellant's condition seems to get better "it then happens again when she overdoes it at work." He did not provide any opinion that appellant sustained a recurrence of disability due to her accepted work injuries. In fact, Dr. Constantine suggested that appellant might have sustained a new work injury.⁷ He indicated that appellant reported having a recurring left wrist ganglion, but he did not provide an opinion that such a condition caused disability on or after May 1, 2007.

In a June 26, 2007 note, Dr. Boardman, an attending Board-certified orthopedic surgeon, indicated that appellant was unable to return to work until diagnostic testing and a follow-up examination were completed. He did not provide any indication that this disability was due to the accepted work injuries. On September 19, 2007 Dr. Boardman performed a partial scapulectomy on appellant's left shoulder, but this procedure was not authorized by OWCP as being related to the accepted left shoulder condition and the medical evidence of record does not otherwise establish such a relationship. Beginning in April 2008, Dr. Cohen, an attending Board-certified orthopedic surgeon, and Dr. DePalma, an attending Board-certified physical medicine and rehabilitation physician, detailed their treatment of appellant's neck problems. However, OWCP has not accepted that appellant sustained a work-related neck condition. Appellant also submitted a November 13, 2008 report in which Dr. Fiske, an attending Board-certified internist, indicated that appellant continued to report having left shoulder pain. On September 24, 2009 Dr. Boardman discussed appellant's neck and left shoulder conditions. He noted that on examination appellant had good motion and strength in her shoulders. Neither Dr. Fiske nor Dr. Boardman indicated that appellant had disability due to the accepted work-related shoulder condition.

For these reasons, appellant did not show that she sustained a recurrence of disability on or after May 1, 2007 due to her accepted work injuries.⁸

⁷ In its August 20, 2007 decision, OWCP advised appellant that she should file a traumatic or occupational injury claim if she felt that she sustained a new injury. It is unclear whether appellant filed a claim for a new work injury and the question of whether appellant sustained a new work injury is not the subject of this appeal.

⁸ Appellant submitted additional evidence after the OWCP's April 20, 2012 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

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 disability on or after May 1, 2007 due to her accepted work injuries.

ORDER

IT IS HEREBY ORDERED THAT the April 20, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 24, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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