

On appeal, appellant contends that OWCP incorrectly listed her accepted condition as a neck sprain rather than a herniated disc as demonstrated by a magnetic resonance imaging (MRI) scan. She further contends that her condition has never healed.

FACTUAL HISTORY

OWCP accepted that on September 21, 1998 appellant, then a 64-year-old housekeeper, sustained a neck sprain when she tripped while sweeping stairs at work. She filed a claim for recurrence of disability as of September 29, 1998, which OWCP accepted as work related.²

On January 19, 2012 appellant filed a claim for recurrence of disability on January 17, 2012. She stated that, following her accepted September 21, 1998 employment injury, she was limited in performing her usual work duties. Appellant had multiple temporary assignments that included floor machine operator, bed maker, hospitality coordinator and clerk. Due to her permanent partial disability she was assigned to a clerk position to accommodate her restrictions.

In a January 17, 2012 medical report, Dr. John T. Whalen, an attending Board-certified orthopedic surgeon, obtained a history of the September 21, 1998 employment injury and appellant's medical treatment and social background. He noted her neck symptoms which included constant burning and occasional sharp pain at the base of the cervical spine. Appellant had intermittent left shoulder pain and a history of shoulder surgery in 2006. She had infrequent general soreness along the left lateral upper arm, constant numbness in her elbow going into the dorsum of the forearm and hand into the fourth through fifth digits on the left. Appellant also had general soreness in the first web space between her first and second digits on the left hand. She dropped things and experienced occasional unsteadiness and light-headedness, weakness and difficulty with buttons and zippers. Appellant had 50 percent neck pain and 50 percent arm symptoms. She rated her pain as 6 out of 10. On physical examination, Dr. Whalen reported essential normal findings with the exception of tenderness to palpation at the base of the cervical spine. X-rays of the cervical spine showed spondylosis at C5-6 greater than C6-7 with some reversal of normal cervical lordosis. Dr. Whalen reviewed a December 14, 2011 MRI scan of the cervical spine which showed mild spinal stenosis at C5-6 with narrowing in the left greater than right neuroforamen and posterior cervical disc/osteophyte formation with foraminal stenosis left greater than right at C6-7. He advised that appellant had cervical spondylosis and foraminal stenosis with disc osteophyte formation. Appellant also had left cubital tunnel syndrome. Dr. Whalen advised that she may have had double crush syndrome.

In an October 19, 1998 report, Dr. Leonides T. Fernando, a Board-certified radiologist, advised that an MRI scan of appellant's cervical spine demonstrated small focal central C5-6 disc herniation with mild impression of the cervical cord.

² On June 17, 1999 appellant filed a claim for recurrence of disability as of June 16, 1999. The record does not contain a decision issued by OWCP regarding the causal relationship between the claimed recurrence of disability and the accepted September 21, 1998 employment injury.

By letter dated February 16, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It addressed the factual and medical evidence she needed to submit.

In an undated statement, appellant related that nothing specific occurred on January 17, 2012. Since her original injury, she had a deteriorating injury that caused total numbness, pain and loss of strength with no relief. Appellant noted that an October 1998 MRI scan showed a herniated disc.

In a March 6, 2012 report, Dr. Whalen noted appellant's continuing neck pain and left arm symptoms. He stated that cervical x-rays performed on that date showed spondylosis at C5-6 greater than C6-7. There was no clear increased angulation or translation. Dr. Whalen stated that nerve conduction studies performed by Dr. Tang³ on February 27, 2012 showed left ulnar neuropathy of the elbow just above the medial epicondyle and mild left carpal tunnel. There was no evidence of cervical radiculopathy. Dr. Whalen reiterated his prior diagnoses of cervical spondylosis and foraminal stenosis with disc/osteophyte formation and possible double crush syndrome. He also diagnosed mild spinal stenosis. Dr. Whalen requested authorization for surgery to treat appellant's cubital tunnel and carpal tunnel. He concluded that she continued to have a 50 percent moderate partial disability causally related to her September 21, 1998 work injury.

In an April 26, 2012 decision, OWCP denied appellant's claim for a recurrence of total disability as of January 17, 2012, finding that the evidence did not establish either a change in the nature and extent of her injury-related condition or in the light-duty position.

In a May 8, 2012 report, Dr. Whalen advised that appellant had ongoing neck pain and improved arm symptoms. Appellant was status post ulnar nerve transposition.

In an appeal request form dated June 24, 2012, appellant requested a telephone hearing with an OWCP hearing representative.

In a July 26, 2012 decision, OWCP's Branch of Hearings and Review denied appellant's request. It found that she filed the request more than 30 days after the April 26, 2012 decision. The Branch of Hearings and Review further denied appellant's request under its discretionary authority as the case could equally well be addressed by requesting reconsideration before OWCP and submitting new evidence to establish that she sustained a recurrence of disability.

LEGAL PRECEDENT -- ISSUE 1

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.⁴ This term also means an inability to work that takes place when a

³ The Board notes that Dr. Tang's professional qualifications are not of record.

⁴ 20 C.F.R. § 10.5(x).

light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁵

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.⁶

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁷

ANALYSIS -- ISSUE 1

OWCP accepted that on September 21, 1998 appellant sustained a neck sprain while in the performance of duty. Following this injury, appellant returned to light-duty work. She claimed a recurrence of disability as of January 17, 2012. Appellant must demonstrate either that her condition has changed such that she could not perform the activities required by her modified job or that the requirements of the limited light-duty job changed. The Board finds that the record contains no evidence that the limited light-duty job requirements were changed or withdrawn or that appellant's employment-related condition changed such that it precluded her from performing limited light-duty work.

Dr. Whalen's January 17, 2012 report provided a history of the September 21, 1998 employment injury and listed findings on examination. He diagnosed cervical spondylosis and foraminal stenosis with disc osteophyte formation, left cubital tunnel syndrome and possible double crush syndrome. These are conditions not accepted by OWCP. In a May 8, 2012 report, Dr. Whalen noted appellant's ongoing neck pain and improved arm symptoms. He stated that she was status post ulnar nerve transposition. Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸ Dr. Whalen did not provide an opinion addressing whether appellant

⁵ *Id.*

⁶ *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁷ *James H. Botts*, 50 ECAB 265 (1999).

⁸ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Willie M. Miller*, 53 ECAB 697 (2002); *Michael E. Smith*, 50 ECAB 313 (1999).

sustained a recurrence of total disability as of January 17, 2012 causally related to the September 21, 1998 employment injury. The Board notes that his double crush syndrome diagnosis is speculative in nature.⁹ As noted, OWCP has not accepted appellant's claim for any of the above-noted diagnosed cervical and left arm conditions. Dr. Whalen's opinion is insufficiently rationalized to establish that these conditions are employment related.¹⁰ While he opined in a March 6, 2012 report that appellant had 50 percent moderate partial disability causally related to the accepted employment injury and diagnosed mild spinal stenosis, he did not provide sufficient rationale in support of his opinion on causal relationship between the accepted employment-related cervical injury and the alleged disability.¹¹ Dr. Whalen did not explain how this disability was causally related to the accepted injury. For the stated reasons, the Board finds that his reports are insufficient to establish appellant's recurrence claim.

Dr. Fernando's October 19, 1998 diagnostic test results regarding appellant's cervical spine are insufficient to establish her claim for a recurrence of total disability.¹² This evidence does not contain any opinion addressing her disability for work as of January 17, 2012 or how any disability was causally related to the accepted injury.

Appellant has not met her burden of proof in establishing that there was a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited light-duty requirements which would prohibit her from performing the limited light-duty position she assumed after she returned to work.

On appeal, appellant contended that OWCP incorrectly identified her accepted condition as a neck sprain rather than a herniated disc as shown by an MRI scan. For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation.¹³ Dr. Fernando's October 19, 1998 MRI scan demonstrated a small focal central C5-6 disc herniation with mild impression of the cervical cord; but he did not provide an opinion addressing whether the diagnosed cervical disc condition was related to the September 21, 1998 employment-related tripping incident. The Board finds there is insufficient medical evidence to establish that this cervical condition is employment related.¹⁴

⁹ Medical opinions that are speculative or equivocal in character are of little probative value. See *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹⁰ See *G.A.*, Docket No. 09-2153 (issued June 10, 2010) (for conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship).

¹¹ See cases cited, *supra* note 8.

¹² *Id.*

¹³ See *Jaja K. Asaramo*, *supra* note 8; *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁴ See *C.R.*, Docket No. 11-1445 (issued January 26, 2012).

Appellant further contended on appeal that her condition had never been medically documented as healed. For the reasons stated above, the Board finds that she did not submit sufficiently rationalized medical evidence establishing that she sustained a recurrence of disability as of January 17, 2012 due to her accepted September 21, 1998 employment injury.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides:

“Before review under section 8128(a) of this title (related to reconsideration), a claimant for compensation not satisfied with a decision of the Secretary under subsection(a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on [her] claim before a representative of the Secretary.”¹⁵

ANALYSIS -- ISSUE 2

Appellant requested a telephone hearing with an OWCP hearing representative in an appeal form dated June 24, 2012. As the hearing request was made more than 30 days after issuance of the April 26, 2012 OWCP decision, her request for a hearing was untimely filed and she is not entitled to an oral hearing as a matter of right.

OWCP properly exercised its discretion in denying a hearing upon appellant’s untimely request by determining that the issue could be equally well addressed by requesting reconsideration and submitting new evidence. The only limitation on OWCP’s authority is reasonableness. Abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to logic and deductions from known facts.¹⁶ There is no evidence of record that OWCP abused its discretion by denying appellant’s request for a hearing under these circumstances. The Board finds, therefore, that OWCP properly denied her request for a hearing.

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 has not met her burden of proof to establish that she sustained a recurrence of total disability on January 17, 2012 causally related to her accepted employment injury. The Board further finds that OWCP properly denied appellant’s request for a hearing before its hearing representative.

¹⁵ 5 U.S.C. § 8124(b)(1).

¹⁶ See *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the July 26 and April 26, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 23, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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