

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

B.B., Appellant	)	
	)	
and	)	Docket No. 13-269
	)	Issued: May 1, 2013
U.S. POSTAL SERVICE, POST OFFICE, Mount Vernon, NY, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 19, 2012 appellant filed a timely appeal of the September 4, 2012 Office of Workers' Compensation Programs' (OWCP) merit decision. 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 disability causally related to her accepted June 23, 1983 employment injury.

**FACTUAL HISTORY**

Appellant, a 38-year-old letter sorting machine operator, was injured on June 23, 1983 when she was punched in the face by a coworker. She filed a claim for benefits on June 24, 1983, which OWCP accepted for aggravation of cervical spine arthritis. Appellant stopped work on June 23, 1983 and received 45 days of continuation of pay benefits. She returned to work on

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

August 29, 1983 on light duty for four hours per day. Appellant stopped work again on October 21, 1983 and did not return.<sup>2</sup>

By decision dated August 2, 1984, OWCP terminated appellant's compensation benefits, as of May 2, 1984, finding that she no longer had residuals of the accepted injury. Appellant filed a recurrence claim on July 24, 1990, which was denied by decision dated September 12, 1991. She also filed a recurrence of disability on February 15, 2000. The alleged February 15, 2000 claim for recurrence of disability was denied by OWCP on March 3, 2000.

On July 12, 2010 appellant filed a Form CA-2a claim for benefits, alleging that she sustained a recurrence of disability on July 7, 1983 which was causally related to her accepted June 23, 1983 employment injury. She stated that she stopped work on April 7, 1995 and has not returned.

By letter dated December 7, 2010, OWCP advised appellant that she should provide additional medical and factual evidence in support of her claim for a recurrence of disability.

A form report from Saint Joseph's Medical Center dated December 31, 2002 noted appellant's complaints of neck pain since 1995 and low back pain for the last two to three months. Appellant related that she had sustained injury in 1972 during a motor vehicle accident, and had sustained trauma to her head in 1995.

On March 12, 2003 Dr. Danuta Przechodzka, a specialist in physical medicine and rehabilitation, reported that appellant had a history of long-standing cervical spine pain. A magnetic resonance imaging (MRI) scan evaluation revealed C5-6 degenerative disc disease without herniation. Dr. Przechodzka related that appellant had recently started having neck pain again, with radiation. She diagnosed degenerative joint disease of the cervical spine, with myofascitis.

In a report dated October 28, 2009, Dr. Kaushik Das, Board-certified in neurosurgery, reported that appellant had a work-related injury on June 23, 1983, a second on October 21, 1983 and most recently on September 12, 1991. He did not provide any details regarding appellant's noted injuries. Dr. Das diagnosed severe degenerative disc disease of the lumbar spine, with significant herniation and spondylosis at L3-L4, causing severe spinal stenosis. He also noted a diagnosis of bilateral carpal tunnel syndrome. Dr. Das requested authorization to perform a laminectomy fusion at L3-L5. Discharge records from the Westchester Medical Center, dated December 30, 2009, indicated that appellant underwent lumbar fusion on November 24, 2009.

In an April 28, 2010 report, Dr. Das indicated that appellant underwent lumbar fusion surgery five months previously. He advised that she was doing reasonably well aside from some residual back pain and neck pain. Dr. Das reviewed an MRI scan of the cervical spine, which showed significant multilevel cervical spondylosis with compression and disc herniation at C5-6 with multilevel spondylosis. He recommended physical therapy to reduce the pain in appellant's

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<sup>2</sup> In its April 22, 2011 decision, OWCP stated that its records indicated that, at the time of the June 23, 1983 injury, appellant was on light duty due to a cervical injury she sustained in a 1979 nonwork-related automobile accident. Appellant also sustained a neck injury on February 26, 1981 while lifting a 70-pound mail sack. OWCP accepted this claim for cervical sprain/strain. None of these facts are challenged by appellant on appeal.

neck and left shoulder pain and indicated that he would reevaluate her cervical spine to determine whether surgery would ameliorate this condition. Records indicate that appellant did receive physical therapy from Northway Physical Therapy for status lumbar fusion during 2010.

Appellant was examined by Dr. Chun Siang Chen, a Board-certified neurosurgeon, on May 17, 2010. Dr. Chen related that appellant has a 27-year history of back and cervical pain, and possible carpal tunnel syndrome. He noted that MRI scan examination revealed some postoperative changes of the lumbar spine, but no fluid collection. Dr. Chen also related that appellant had cervical myelopathy associated with compression of the cervical spine, for which surgical decompression was recommended. He also recommended electromyogram studies to determine whether appellant had bilateral carpal tunnel syndrome.

Appellant was seen by Dr. Jin Li, Board-certified in electrodiagnostic medicine, on October 19, 2010. Dr. Li noted a history of chronic neck pain radiating to the hands for the past 28 years. Appellant underwent nerve conduction studies, which he reported showed chronic denervation of the left C5 to C8 nerve roots and mild bilateral neuropathy of the wrists.

On December 13, 2010 Dr. Adam Wollowick, a Board-certified orthopedic surgeon, reported that appellant had undergone L3-5 decompression and fusion in November 2009, but had increasing numbness and tingling of her left leg. He stated that a CT and MRI scans showed degenerative disc disease. Dr. Wollowick noted that appellant might require revision surgery to stabilize the L5-S1 segment. He reported on December 20, 2010 that appellant had subluxation following L3 to L5 spinal fusion and stenosis at L5-S1. Dr. Wollowick requested authorization for a CT scan to determine whether appellant would require revision surgery. On January 4, 2011 he reported that appellant's CT scan showed severe degenerative changes at L5-S1, with focal kyphosis. Dr. Wollowick noted that he had discussed further surgical intervention with appellant.

In a report dated January 11, 2011, Dr. Christine Sapka, Board-certified in physical medicine and rehabilitation, stated that she initially treated appellant for neck pain on September 28, 2004. Appellant asserted at that time that she had no previous injuries of this type. Dr. Sapka advised that she had subsequently treated her for complaints of stabbing neck pain, which radiated down to her left hand and right lower extremity. She diagnosed cervical radiculopathy, cervical disc displacement and headaches.

By decision dated April 22, 2011, OWCP denied appellant's claim, finding that the medical evidence was insufficient to establish that she sustained a recurrence of her June 23, 1983 work injury as of July 7, 1983. It stated that its records indicated that she was not working on July 7, 1983, as she was receiving continuation of pay in connection with the June 23, 1983 injury on that date.

By letter dated April 28, 2011, appellant, through her attorney, requested an oral hearing, which was held on July 26, 2011.

By decision dated September 29, 2011, an OWCP hearing representative affirmed the April 22, 2011 OWCP decision.

By letter dated February 20, 2012, appellant requested reconsideration.

In a report dated February 14, 2012, Dr. Emad F. Soliman, Board-certified in neurology, diagnosed cervical radiculopathy, carpal tunnel syndrome, as well as benign positional vertigo. He opined that appellant was 100 percent permanently disabled due to her neurological condition, which was sustained while working for the employing establishment. Dr. Soliman related that her first injury occurred on February 26, 1981 after which she was hospitalized for two weeks and then placed on limited duty with lifting activities limited to no more than 18 pounds. Appellant did return to work as a letter sorting machine operator from March 1983 to June 1983, when she allegedly was forced to lift more than 18 pounds in contravention of her physician's work restrictions. She subsequently sustained the injury in June 1983 in which she was struck on the neck by her supervisor. Dr. Soliman stated that these circumstances caused appellant to be permanently disabled.

By decision dated September 4, 2012, OWCP denied modification of the September 29, 2011 decision.

### **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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>3</sup> 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 he or 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 medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>4</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>5</sup>

In order to establish that a claimant's alleged recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between her present condition and the accepted injury must support the physician's conclusion of a causal relationship.<sup>6</sup>

### **ANALYSIS**

In the instant case, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her claimed recurrence of disability to her accepted June 23, 1983 employment injury. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted injury.

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<sup>3</sup> *R.S.*, 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

<sup>4</sup> *I.J.*, 59 ECAB 408 (2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>5</sup> *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

<sup>6</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

Regarding appellant's allegations that she became disabled on April 7, 1995 due to a recurrence of disability, the record does not contain any bridging evidence suggesting a spontaneous recurrence of disability in 1995. The history of injury she provided during an examination at the Saint Joseph's Medical Center on December 31, 2011 related that she had sustained trauma to her head in 1995. There is no history of a spontaneous return of cervical symptoms in 1995.

The reports submitted to the record substantiate that appellant does have severe degenerative disc disease of the cervical and lumbar spines, as well as possible carpal tunnel syndrome. The evidence of record however does not relate these diagnoses to appellant's June 23, 1983 injury, which was accepted for aggravation of cervical spine arthritis, after appellant was punched in the face by a coworker. In this regard, the Board notes that as of May 2, 1984 OWCP had determined that the residuals of the accepted injury had ceased.

While many of appellant's treating physicians noted long-standing cervical and low back pain, the only physicians of record who noted appellant's work injury were Drs. Das and Soliman.

In his October 28, 2009 and April 28, 2010 reports, Dr. Das related that appellant had a work-related June 23, 1983 injury, (as well as injuries on October 21, 1983 and September 12, 1991); however, he did not otherwise provide a history detailing these injuries. He offered no explanation as to how appellant's current medical conditions were causally related to the June 23, 1983 injury. The Board also notes that Dr. Das was primarily involved in the care of appellant's low back, as he performed appellant's lumbar fusion; however, he also diagnosed disc herniation at C5-6, with multilevel spondylosis. Lacking a complete medical history and any opinion regarding the cause of appellant's current conditions, his reports are of limited probative value.<sup>7</sup>

Dr. Soliman stated in his February 14, 2012 report that appellant had initially injured her neck on February 26, 1981 and returned to work as a letter sorting machine operator from March 1983 until her June 23, 1983 work incident. He diagnosed cervical radiculopathy, carpal tunnel syndrome and benign positional vertigo and concluded that the circumstances he described, all of which were work related, had rendered her 100 percent permanently disabled due to her neurological condition. However, these statements are broad and vague as they do not explain whether appellant's accepted June 23, 1983 employment injury contributed to her claimed condition and/or disability for which he treated appellant. Such explanation is particularly important as there is a significant lack of bridging medical evidence from 1983. Although Dr. Soliman refers to the initial June 23, 1983 work injury, he failed to sufficiently explain whether appellant sustained a recurrence of disability due to the accepted injury.<sup>8</sup>

Appellant has not submitted a physician's reasoned opinion in which the physician explains, with medical rationale, that she did sustain a recurrence of disability causally related to

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<sup>7</sup> See *A.D.*, 58 ECAB 149 (2006).

<sup>8</sup> See *Mary A. Ceglia*, 55 ECAB 656 (2004) (appellant has the burden of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound rationale).

the June 23, 1983 work injury.<sup>9</sup> For these reasons, the medical evidence is insufficient to establish a recurrence of a medical condition causally related to the accepted injury. The Board affirms the denial of appellant's claim for a recurrence of disability beginning July 7, 1983.

**CONCLUSION**

The Board finds that appellant has not met her burden to establish that she was entitled to compensation for a recurrence of disability causally related to her accepted June 23, 1983 work injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 4, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>9</sup> The Board notes that the record contains several reports from physical therapists who treated appellant for her accepted cervical condition. However, these reports are of no probative value, as physical therapists are not considered physicians under FECA and, as a result, they are not competent to provide a medical opinion. *Barbara J. Williams*, 40 ECAB 649 (1989); *A.C.*, Docket No. 08-1453 (issued November 18, 2008); 5 U.S.C. § 8101(2).