

2003 work injury.² The Board found that the October 5, 2010 opinion of Dr. Patrick N. Rhoades, the attending Board-certified physiatrist and specialist in pain medicine, was speculative and not well rationalized. Dr. Rhoades did not adequately explain how, physiologically or biomechanically, the work incident caused myofascial pain syndrome, damaged facet joints, injured a tendon or ligament or aggravated appellant's hypertension. He did not identify what objective evidence led him to that conclusion. Dr. Rhoades did not ground his theory in the established facts of appellant's case. The facts of this case, as set out in the Board's prior decisions, are hereby incorporated by reference.

Appellant's representative requested reconsideration. She argued that a conflict in medical opinion arose on whether appellant's neck and back conditions were related to the cancer she previously had, which was in full remission. Counsel argued that Dr. Alice Martinson, the Board-certified orthopedic surgeon and referral physician upon whose opinion OWCP terminated compensation, was on one side of the conflict, while Dr. Rhoades, Dr. Vikas Mahavni, appellant's Board-certified obstetrician and gynecologist with a subspecialty in oncology, and Dr. James H. Rhee, a Board-certified physiatrist with a subspecialty in pain medicine, were on the other side.

Appellant's representative submitted an October 25, 2012 narrative report from Dr. Rhoades. When Dr. Rhoades first saw appellant on July 20, 2004 she had given him a history of working inside a cage when a forklift ran into the cage, crushing her inside the cage and mail fell on top of her. He noted that she had, on that visit, symptoms consistent with myofascial pain syndrome, cervical pain and herniated cervical disc and an epidural injection meant radiculopathic symptoms. Appellant had low back pain with complaints of radiation, justifying the diagnosis of sciatica. "That was in 2004 and she's had all of these symptoms since that time." Dr. Rhoades addressed the issue of causation:

"It is my feeling that all of [appellant's] symptoms were caused by the work incident of June 11, 2003 and that the description of it as only a strain was incorrect. As far as her psychological stress, certainly that occurred due to the pain but also subsequent cancer, which was very stressful for her. [Appellant] did overcome the cancer completely, but following that, many of her medications were being denied stated that they were to treat her cancer pain, which was absolutely ridiculous. We actually had letters from her oncologist stating that her cancer was in remission and was not causing pain and that any need for pain medication arose from her industrial injury. I do not think the conditions that were listed were developed from the industrial injury. I do not think they were aggravations or precipitations. I think the initial diagnoses of cervical strain and left shoulder strain were a misdiagnosis and that in fact the injuries were much more significant than that."

² Docket No. 11-1117 (issued December 2, 2011). OWCP had accepted that on June 11, 2003 appellant, then a 51-year-old casual clerk, sustained left shoulder/arm strain and cervical strain in the performance of duty when she used her left arm to push some carts (cages on wheels) to prevent them from falling on her. In an earlier appeal, Docket No. 09-646 (issued October 6, 2009), the Board found that OWCP properly terminated compensation for appellant's June 11, 2003 left shoulder/arm and cervical muscle strain.

In a decision dated January 10, 2013, OWCP reviewed the merits of appellant's claim and denied modification of its prior decision.

Appellant's representative argue that OWCP's burden to terminate remains unmet in the report of Dr. Martinson, which, she emphasizes, was not probative on the matter of appellant's cancer. She argued that the Board's October 6, 2009 decision was unsupported by the facts and contrary to law. Alternatively, appellant seeks an order directing OWCP to resolve a medical conflict between Dr. Martinson and appellant's physicians, Drs. Rhoades and Mahavni and a decision on whether appellant has any residual or consequential illness, injury or disease to the cervical, thoracic or lumbar spines or otherwise, causally related to the work injury.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of her duty.³ Where OWCP meets its burden of proof to justify the termination of compensation benefits, the burden switches to the claimant to establish that any subsequent medical condition or disability is causally related to the accepted employment injury.⁴

The claimant must submit a rationalized medical opinion that supports a causal connection between his or her current condition or disability and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the employment injury and must explain from a medical perspective how the current disabling condition is related to the injury.⁵

ANALYSIS

Appellant's reconsideration request revisited issues previously addressed and adjudicated by the Board, such as the statement of accepted facts and accepted medical conditions and Dr. Rhoades' disagreement with Dr. Martinson, the referral physician upon whose opinion OWCP terminated compensation. The Board will not readjudicate those issues. The decisions and orders of the Board are final as to the subject matter appealed and such decisions and orders are not subject to review except by the Board. The decisions and orders of the Board are final upon the expiration of 30 days from the date of issuance unless the Board has fixed a different period of time therein.⁶

³ 5 U.S.C. § 8102(a).

⁴ *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity); *Maurice E. King*, 6 ECAB 35 (1953).

⁵ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁶ 20 C.F.R. § 501.6(d).

OWCP accepted appellant's claim for left shoulder/arm strain and cervical strain. It met its burden of proof to justify the termination of compensation for the accepted muscle strains. Dr. Martinson's opinion constituted the weight of the medical opinion evidence. Dr. Rhoades, who had disagreed with Dr. Martinson, failed to provide sound medical reasoning to explain how the accepted muscle strains in 2003 persisted with continuing medical attention. His disagreement with Dr. Martinson was immaterial to the issue of muscle strain. The Board observed: "Dr. Rhoades and Dr. Mahavni may disagree with Dr. Martinson about whether appellant's ovarian cancer has anything to do with her current complaints; however, such disagreement is not germane to whether she has residuals of the [accepted] June 11, 2003 injury." Following OWCP's termination of compensation, the burden of proof switched to appellant, as a matter of law, to establish that any subsequent medical condition or disability was causally related to the June 11, 2003 work injury.

In a October 25, 2012 report, Dr. Rhoades reviewed appellant's first visit on July 20, 2004. "[Appellant's] injury occurred when she was working inside a cage for the U.S. Postal Service. A forklift ran into the cage and crushed her inside of the cage and mail fell on top of her." This history of injury is not supported by the contemporaneous and probative evidence of record. The history that appellant gave her medical providers on the day of the injury was that a metal cage struck her left arm, which was found to be tender on examination. Six days later she gave a more detailed account: "Patient states was working in my regular job when I turned around a truck had pushed carts (cage on wheels) my way. To avoid them falling on me I tried to prevent that by pushing them with my left arm." When she filed her claim for compensation that same day, appellant stated that a coworker had hit her with a cage on the left side of her body.

When Dr. Rhoades saw appellant on July 20, 2004, the history of injury obtained was that she was now inside a cage. A forklift ran into that cage, crushing her inside of it and mail fell on top of her. This is a significantly inaccurate history of injury. The opinion Dr. Rhoades provides based on such a history is of diminished probative value.⁷ It is not surprising that he believes that appellant sustained something more significant than a left shoulder/arm strain and cervical strain. On March 5, 2008 appellant told Dr. Rhoades that she was standing by mail cages when a forklift tipped them over. She was trying to hold them up. They weighed 1,200 pounds apiece and there were several of them.⁸ The record supports only that carts (metal cages on wheels) were pushed in her direction and one of them struck her left arm, which she extended to push against it.

Appellant was seen in the emergency room on the date of injury. Notably, she reported that a metal cage had struck her left arm. The mechanism was described as blunt, her left arm pain moderate. There was tenderness over the anterior upper arm. All other findings were

⁷ See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions). *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete).

⁸ Dr. Rhoades did not question the change in history. Nine days later, appellant advised Dr. Rhee, the psychiatrist, that she was pushed up against a forklift while working in a cage and was trying to restrain some boxes of mail from falling on her.

negative, including normal range of motion. Appellant was diagnosed with a left upper extremity contusion, given ice packs, prescribed Tylenol and discharged. Her primary care physician released her to modified duty as of June 20, 2003, which she performed until her tour assignment ended one week later.

One year later appellant claimed stabbing, throbbing and aching pain down the right lower extremity (greater than left), frontal headaches that were global and happening everyday and photophobia. How the June 11, 2003 work injury caused myofascial pain syndrome/myalgia, degenerative disc disease, cervical facet arthropathy, bilateral sacroiliac joint dysfunction, trochanteric bursitis, multilevel facet joint hypertrophy, hip/pelvic pain, lumbago or sciatica or weakened appellant to the point that she could not stand long enough to do dishes at home, Dr. Rhoades did not convincingly explain.⁹ The issue is not whether the diagnoses are established; the issue is how, from a physiological or biomechanical point of view, the June 11, 2003 work injury caused appellant's currently diagnosed condition based on a reasonable medical certainty. The Board has previously addressed how temporal relationships are not sufficient to establish causation. The Board has previously addressed the need to avoid speculation: Dr. Rhoades simply stated "it is my feeling" that all of appellant's current symptoms were caused by the June 11, 2003 work injury, particularly as he does not have an accurate history of the events surrounding that injury. Medical conclusions unsupported by rationale are of diminished probative value.¹⁰

The Board finds that Dr. Rhoades' October 25, 2012 report has little probative value. It does not create a conflict with Dr. Martinson on whether appellant continued to suffer from the accepted left shoulder/arm strain and cervical strain after March 28, 2008. The Board finds that appellant has not met her burden to establish that her medical condition or wage loss after March 28, 2008 was causally related to the June 11, 2003 work injury. Accordingly, the Board will affirm OWCP's January 10, 2013 decision.

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. Evidence that is repetitive or cumulative however and arguments that attempt to relitigate issues that have already been decided by the Board, are not sufficient to require OWCP to reopen this case for a merit review.¹¹

CONCLUSION

The Board finds that appellant has not met her burden to establish that her medical condition or wage loss after March 28, 2008 was causally related to the June 11, 2003 work injury.

⁹ A February 15, 2008 magnetic resonance imaging scan showed no cervical herniated disc.

¹⁰ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

¹¹ Evidence that repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case. *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984). Evidence that does not address the particular issue involved also constitutes no basis for reopening a case. *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 14, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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