

FACTUAL HISTORY

On January 16, 2007 appellant, then a 37-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that while in the performance of duty that same day she sustained a neck injury after she slipped and fell on ice. OWCP accepted the claim for sprain of neck. Appellant returned to full-time and full-duty work on January 31, 2007 based on a report by Dr. Gregory C. Buhler, an occupational medicine specialist, who released her to regular duty that same day.

On March 30, 2011 appellant, through her attorney, filed a notice of recurrence. She reported that she was unable to perform her job duties due to continued pain and discomfort in her neck.

In an April 7, 2011 report, Julie A. Bearce, a nurse practitioner, diagnosed cervicgia and cervical strain.

On April 12, 2011 Dr. Frederick A. Buck, a Board-certified plastic surgeon, indicated that appellant was seen for continued pain following a January 16, 2007 employment injury. He reported that appellant was self-limiting on cervical rotation, lateral side-bending, forward flexion and neck extension and had some spasm over the superior pole of the bilateral trapezius muscle. Dr. Buck diagnosed bilateral cervical strain, bilateral trapezius strain and right C5-6 slight nerve root impingement.

In an April 14, 2011 report, Dr. Harold Hess, a Board-certified neurosurgeon, indicated that appellant slipped at work in January 2007 and had neck pain and stiffness ever since then. On May 26, 2011 he stated that a neurologic examination showed her to be neurologically intact. Dr. Hess diagnosed C4-5 and C5-6 disc herniation and opined that appellant's condition was a direct result of her employment injury in 2007. He released her to work with the following restrictions: no lifting over five pounds; no pushing and/or pulling over five pounds; basically restricted to sedentary work.

In a November 1, 2011 letter, OWCP requested additional evidence in support of the claim and afforded appellant 30 days to respond to its inquiries.

Subsequently, appellant submitted an April 7, 2011 magnetic resonance imaging (MRI) scan showing paracentral disc/spur complex at C4-5 and C5-6 and some loss of cervical lordosis and a November 23, 2011 report from Angie Leroux, a nurse, who indicated that Dr. Buck was no longer affiliated with Concentra Medical Center.

By decision dated December 9, 2011, OWCP denied appellant's recurrence claim on the basis that the medical evidence submitted was insufficient to establish that she sustained a recurrence of her medical condition commencing March 30, 2011 causally related to the employment injury.

On January 6, 2012 appellant, through her attorney, requested a review of the written record by an OWCP hearing representative and submitted a January 6, 2011 narrative statement and a January 17, 2007 report from Dr. Buhler who diagnosed cervical strain.³

By decision dated May 8, 2012, an OWCP hearing representative affirmed the December 9, 2011 decision.

On March 5, 2013 appellant, through her attorney, requested reconsideration and submitted a legal brief from counsel, a May 24, 2012 computerized tomography (CT) scan of the cervical spine, which revealed degenerative changes and spurring at C4-5 and C5-6 and a May 24, 2012 cervical myelogram showing mild degenerative changes in the cervical spine. She also submitted reports dated May 17, 2012 through February 14, 2013 from Dr. Hess. On June 7, 2012 Dr. Hess reviewed appellant's cervical myelogram followed by CT scan and found mild broad-based C4-5 and C5-6 disc protrusions with cervical spondylosis at both levels. He opined that she was "probably suffering from cervical discogenic pain" and explained that it was "well known that trauma can produce a tear in the annulus of a disc leading to degenerative disc disease and the condition is known as discogenic pain." Dr. Hess reiterated that appellant's current symptoms and pathology were causally related to her employment injury.

In a June 20, 2012 report, Dr. Curtis D. Johnson, a Board-certified pain medicine specialist, diagnosed right-sided cervical radiculopathy due to right-sided disc spur at C4-5 and C5-6. He indicated that appellant first developed neck pain in January 2007 when she slipped and fell. Appellant rated her pain greater than 4 out of 10 on a daily basis and indicated that she had difficulty with sleeping.

By decision dated April 19, 2013, OWCP denied modification of the May 8, 2012 decision.

LEGAL PRECEDENT

A recurrence of a medical condition is defined as a documented need for further medical treatment after release from treatment for the accepted condition or injury.⁴ Continuous treatment for the original condition or injury is not considered a recurrence of a medical treatment nor is an examination without treatment.⁵ As distinguished from a recurrence of disability, a recurrence of a medical condition does not involve an accompanying work stoppage.⁶ It is the employee's burden to establish that the claimed recurrence is causally related

³ On May 13, 2011 appellant, through her attorney, filed a claim for leave buyback for the period March 30 through May 13, 2011.

⁴ 20 C.F.R. § 10.5(y).

⁵ *Id.*

⁶ *Id.* at § 10.5(x).

to the original injury.⁷ Causal relationship is a medical issue that can generally be resolved only by rationalized medical opinion evidence.⁸

ANALYSIS

OWCP accepted that on January 16, 2007 appellant sustained a neck sprain. Appellant returned to full-time and full-duty work on January 31, 2007. On March 30, 2011 she submitted a recurrence claim indicating that she suffered residuals of her employment injury. The issue on appeal is whether appellant has established a recurrence of her medical condition commencing March 30, 2011 causally related to her accepted employment injury. The Board finds that she did not submit sufficient evidence to establish a recurrence.

In his reports, Dr. Hess indicated that appellant slipped at work in January 2007 and had neck pain and stiffness ever since then. He diagnosed C4-5 and C5-6 disc herniation and opined that her condition was a direct result of her employment injury in 2007. On June 7, 2012 Dr. Hess reviewed appellant's cervical myelogram followed by CT scan and found mild broad-based C4-5 and C5-6 disc protrusions with cervical spondylosis at both levels. He opined that she was "probably suffering from cervical discogenic pain" and explained that it was "well known that trauma can produce a tear in the annulus of a disc leading to degenerative disc disease and the condition is known as discogenic pain." The reports from Dr. Hess are insufficient to establish that appellant sustained a recurrence of her accepted medical condition. His conclusion that she was "probably suffering from cervical discogenic pain" is of a speculative and equivocal nature.⁹ To be of probative value, a physician's opinion on causal relationship should be one of reasonable medical certainty.¹⁰ Moreover, Dr. Hess failed to provide sufficient medical rationale explaining how appellant's symptoms beginning on March 30, 2011 were causally related to the January 16, 2007 employment injury. For these reasons, the Board finds that she did not meet her burden of proof.

On April 12, 2011 Dr. Buck indicated that appellant was seen for continued pain following a January 16, 2007 employment injury and diagnosed bilateral cervical strain, bilateral trapezius strain and right C5-6 slight nerve root impingement. On June 20, 2012 Dr. Johnson indicated that she first developed neck pain in January 2007 when she slipped and fell and diagnosed right-sided cervical radiculopathy due to right-sided disc spur at C4-5 and C5-6. The reports from Drs. Buck and Johnson are insufficient to establish that appellant sustained a recurrence of her accepted medical condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ Drs. Buck and Johnson failed to provide sufficient medical rationale explaining how appellant's symptoms beginning on March 30, 2011 were

⁷ *Id.* at § 10.104. See also *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

⁸ See *Jennifer Atkerson*, 55 ECAB 317 (2004).

⁹ See *Michael R. Shaffer*, 55 ECAB 339 (2004).

¹⁰ See *Beverly R. Jones*, 55 ECAB 411 (2004).

¹¹ See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997).

causally related to the January 16, 2007 employment injury. For this reason, the Board finds that she did not meet her burden of proof with these submissions.

In his January 17, 2007 report, Dr. Buhler diagnosed cervical strain. His report was over five years old at the time that OWCP issued its April 19, 2013 decision. The Board has held that stale medical evidence cannot form the basis for current evaluation of residual symptomatology or disability determination.¹² The Board finds that Dr. Buhler's January 17, 2007 report was stale medical evidence and therefore insufficient to establish appellant's claim.

The April 7, 2011 report from Ms. Bearce, a nurse practitioner and the November 23, 2011 report from Ms. Leroux, a nurse, are of no probative value as they are not physicians under FECA.¹³ As such, the Board finds that appellant did not meet her burden of proof with these submissions.

The April 7, 2011 MRI scan, May 24, 2012 CT scan and May 24, 2012 cervical myelogram are diagnostic in nature and therefore do not address causal relationship. As such, the Board finds that they are insufficient to establish appellant's claim.

The Board finds that the evidence submitted by appellant lacks adequate rationale to establish a causal connection between the alleged recurrence of her medical condition and the accepted employment injury. Thus, appellant did not meet her burden of proof to establish a claim for a recurrence.

On appeal, counsel contends that OWCP's decision is contrary to fact and law. For the reasons stated above, the Board finds the attorney's arguments are not substantiated.

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 her medical condition commencing March 30, 2011 causally related to her January 16, 2007 employment injury.

¹² See *Keith Hanselman*, 42 ECAB 680 (1991); *Ellen G. Trimmer*, 32 ECAB 1878 (1981) (reports almost two years old deemed invalid basis for disability determination and loss of wage-earning capacity).

¹³ 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

ORDER

IT IS HEREBY ORDERED THAT the April 19, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board