

FACTUAL HISTORY

On June 4, 2007 appellant, then a 55-year-old clerk, sustained a traumatic injury in the performance of duty when she tripped on a door stop and grabbed a pole to avoid falling to the ground. OWCP accepted her claim for cervical, thoracic, lumbar and right shoulder strains.² Appellant received compensation for temporary total disability on the periodic rolls beginning in October 2008. She took disability retirement on March 6, 2009.

On September 29, 2011 Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, examined appellant for a second opinion at OWCP's request. He reviewed the statement of accepted facts, together with her history of injury and the accepted muscle strains. Dr. Swartz noted a number of other medical conditions.³

Dr. Swartz described appellant's current complaints. Appellant described pain in her neck. She could feel bone-to-bone rubbing when she bent her neck. Appellant had bulging discs in her back and she could hear the bones and cartilage when she bent. She had pain in her right wrist, right elbow and right shoulder and occasionally in her left hand. Appellant occasionally woke up with numbness in both hands. Her knees ached all the time.

After describing his findings on physical examination, Dr. Swartz reviewed appellant's medical record. He explained that the accepted strains occurred over four years prior and arose from a trip and the grabbing of a pole to avoid falling to the ground. They were soft-tissue strains at best and did not result in long-term disability problems. Dr. Swartz found that the soft-tissue injuries had since resolved.

Dr. Swartz also found that appellant's low back injury was an aggravation of a preexisting chronic problem with multilevel degenerative disease, for which she had been treated intermittently over the years. The aggravation was only temporary and ceased within the first year. "All of these injuries actually reached baseline by June 5, 2008 and resolved." Appellant had no subjective or objective findings that would be related to her work injury and all of the findings on her imaging studies of the cervical, thoracic and lumbar spine and right shoulder were considered to be age-related degenerative changes. Dr. Swartz concluded that she had no injury-related disability and was capable of performing gainful employment.

On December 15, 2011 OWCP terminated appellant's medical and wage-loss benefits. It found that the weight of the medical opinion evidence rested with Dr. Swartz.

² In 2001, appellant filed a claim (OWCP File No. xxxxxx887) for a low back injury due to constant bending and lifting trays of mail. In 2008, she filed a claim (OWCP File No. xxxxxx310) for degenerative knee conditions. OWCP denied both claims.

³ Degenerative knee conditions, lower extremity vascular problems, shoulder conditions, shingles status post herpes zoster with post herpetic neuralgia, cervical radiculitis, cervical degenerative changes, right shoulder dislocation and hemangioma of the liver, gastritis, bilateral knee degenerative disease, obesity, arthralgia of knee, lumbar bulging disc, lumbar radiculopathy, cubital tunnel syndrome, carpal tunnel syndrome, lumbar spinal stenosis and ulnar neuropathy.

On July 27, 2012 appellant requested reconsideration. In addition to medical documents previously submitted, she submitted a March 9, 2012 report from her primary treating physician, Dr. Bhavesh Robert J. Pandya, Board-certified in internal and occupational medicine.⁴ Dr. Pandya noted appellant's complaints, which "any movement" aggravated. He described his findings on physical examination and diagnosed a shoulder strain, trapezius muscle, right, exacerbation, cervical radiculitis status post exacerbation, lumbar radiculopathy, stable right cubital tunnel syndrome and stable right carpal tunnel syndrome.

Based on his review of the available records, Dr. Pandya stated that the diagnoses were directly related to appellant's industrial injury on June 4, 2007. "[Appellant] has chronic medical conditions that require medical periodic follow up as in my permanent and stationary report dated March 24, 2008." He noted that she was involved in an accident on or about March 4, 2011 when the passenger train on which she was riding struck an 18-wheel tractor-trailer.⁵ Appellant sustained a whiplash injury to her neck and right shoulder and also reported intermittent pain in her right hip and right buttocks and some tingling and numbness in her right hip area. She also had pain in both wrists and both knees.

Dr. Pandya offered the following opinion:

"After reviewing all the information that I have available at the time of this report, although this nonindustrial train accident may have affected [appellant's] neck and right shoulder areas, likely leading to an exacerbation of her industrial conditions, she does have preexisting documented diagnoses as a consequence of her industrial injury. Accordingly in my opinion [appellant] current symptoms and need for continuing treatment within reasonable medical probability is secondary to her industrial conditions."⁶

In a February 11, 2013 decision, OWCP reviewed the merits of appellant's case and denied modification of its prior decision. It found that Dr. Pandya did not offer a medical explanation for his stated conclusions. Dr. Pandya did not explain why appellant's current conditions were not considered due to ongoing degenerative changes or how those conditions were related to the June 4, 2007 work injury, which occurred over five years ago. Also, he did not consider Dr. Swartz' opinion. OWCP concluded that Dr. Pandya's opinion was not of sufficient probative value to modify the termination of appellant's compensation.

⁴ Appellant returned to Dr. Pandya's office on November 21, 2011 after a 1.5-year absence.

⁵ According to a chiropractor's January 27, 2012 report: "This 59-year-old female, reports being a passenger on an Amtrak train from L.A. to Louisiana on March 4, 2011 that collided with an 18 wheeler. Patient states that she was just getting back into her seat when the collision occurred, she recalls her head being thrown forward then back and felt a snap in her neck. She states that she felt pain immediately in her neck and upper and lower back, right hip, right leg, right shoulder and the right trapezius muscle. The next day [appellant] [stated that] she was in so much pain that she could not even get out of bed or even move." The chiropractor noted that, although appellant was not working, she would not have been able to work in the eight months that she was treated in his office.

⁶ Dr. Pandya repeated this same opinion on September 28, 2012.

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁷ Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.⁸ After it has met its burden to terminate compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the accepted employment injury.⁹

It is not sufficient for the claimant to establish merely that he or she has disability for work. He or she must establish that his or her disability is causally related to the accepted employment injury. FECA provides compensation only for as long as there exists a proven physical or related impairment attributable to the injury. The claimant must submit a rationalized medical opinion that supports a causal connection between his or her current disabling condition 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.¹⁰

ANALYSIS

On December 15, 2011 OWCP terminated appellant's medical and wage-loss benefits. Appellant did not request a review of this decision by OWCP's hearing representative and did not appeal this decision to the Board. Instead, she asked OWCP to reconsider on the basis of additional evidence. OWCP having terminated compensation, the burden falls upon appellant to establish that she is entitled to continuing medical and wage-loss benefits as a result of her June 4, 2007 employment injury.

To support her request for reconsideration, appellant submitted the March 9, 2012 report from Dr. Pandya, an attending specialist in internal and occupational medicine. Dr. Pandya diagnosed a shoulder strain, trapezius muscle, right, exacerbation, cervical radiculitis status post exacerbation, lumbar radiculopathy, stable right cubital tunnel syndrome and stable right carpal tunnel syndrome. He opined that the diagnoses were directly related to the June 4, 2007 work injury.

The issue raised by OWCP's December 15, 2011 decision, however, is not whether appellant has radiculitis or radiculopathy or entrapment or compression of a peripheral nerve. OWCP did not accept these medical conditions. It accepted appellant's claim for muscle strains

⁷ 5 U.S.C. § 8102(a).

⁸ *Harold S. McGough*, 36 ECAB 332 (1984).

⁹ *Maurice E. King*, 6 ECAB 35 (1953); *see also 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).

¹⁰ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

of the cervical, thoracic and lumbar spine and right shoulder. OWCP paid medical wage-loss benefits on the basis of these accepted strains. It terminated compensation on the grounds that the weight of the medical opinion evidence as represented by Dr. Swartz established that these strains had resolved. The issue raised by OWCP's December 15, 2011 decision, therefore, is whether appellant continues to have residuals of the muscles strains for which OWCP accepted and paid compensation.¹¹

Dr. Pandya included in his diagnoses a right shoulder strain, but he did not explain how he was able to determine that this strain, in December 2011, was directly related to the June 4, 2007 work injury. He noted that appellant sustained a whiplash injury to her neck and right shoulder on or about March 4, 2011 in the collision of an Amtrak train with an 18 wheeler. From other medical evidence in the record, this was an injury in which appellant felt a snap in her neck and experienced immediate pain. This was an injury that caused pain such that she was not able to get out of bed the following day or even move. Appellant received treatment for this whiplash injury for eight months.

It was Dr. Pandya's opinion that this nonindustrial train accident may have affected appellant's neck and right shoulder areas, likely leading to an exacerbation of her industrial injury. As appellant did have preexisting diagnoses as a consequence of her industrial injury, he found that her current symptoms and need for medical treatment were secondary to her industrial conditions.

Once the work-connected character of an injury has been established, the progressive worsening or complication of that injury remains compensable so long as the worsening is not shown to have been produced by an intervening nonindustrial cause.¹²

It is not clear from Dr. Pandya's report how appellant's right shoulder strain in March 2012 represents the natural progression of the strain she sustained when she tripped at work on June 4, 2007. If the independent, intervening nonindustrial train accident exacerbated appellant's neck and right shoulder areas, as he thought was likely, then as a legal matter the train accident broke the chain of causation to the June 4, 2007 tripping incident. It is not enough for Dr. Pandya to note simply that her industrial right shoulder strain preceded the nonindustrial train accident. Dr. Pandya did not adequately address the element of causal relationship by explaining how appellant's current right shoulder strain was the direct and natural progression of the accepted June 24, 2007 employment-related strain and no longer represented an exacerbation or worsening from the March 4, 2011 train accident. His opinion on causal relation implicated an exacerbation of her right shoulder strain to the train accident.

¹¹ If appellant wishes to expand her claim for compensation to include medical conditions not previously accepted by OWCP, she may do so, but the medical opinion evidence necessary to establish such causal relationship is immaterial to whether the employment-related muscle strains she suffered on June 4, 2007 have resolved.

¹² 1 ARTHUR LARSON & LEX LARSON, *LARSON'S WORKERS' COMPENSATION LAW*, Chapter 10 (2007).

Medical conclusions unsupported by rationale are of little probative value.¹³ Dr. Pandya did not address the accepted cervical, thoracic and lumbar strains or offer medical rationale to support his conclusion that appellant's current right shoulder strain was directly related to the June 4, 2007 tripping incident. He did not discuss the nature of muscle strains, how long they typically last or why her right shoulder strain never resolved with treatment. Dr. Pandya did not address the clinical findings or opinion of Dr. Swartz, the referral orthopedic surgeon who concluded that the accepted soft-tissue injuries had resolved and who attributed the findings on appellant's imaging studies to age-related degenerative changes. Further, he did not explain how he distinguished the natural progression of the June 4, 2007 shoulder strain from the March 4, 2011 whiplash injury.

The Board finds that Dr. Pandya's opinion is of diminished weight. It is not sufficient to create a conflict with Dr. Swartz or to discharge appellant's burden to establish that she is entitled to continuing medical and wage-loss benefits for the muscle strains resulting from her employment-related tripping injury on June 4, 2007. The Board will affirm OWCP's February 11, 2013 decision.

CONCLUSION

The Board finds that appellant has not met her burden to establish that she is entitled to continuing medical and wage-loss benefits for the accepted medical conditions.

¹³ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2013
Washington, DC

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

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

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