

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

C.M., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Syracuse, NY, Employer

Docket No. 14-212
Issued: April 11, 2014

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 5, 2013 appellant, through her attorney, filed a timely appeal from a September 9, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 beginning November 29, 2012 causally related to her October 25, 2006 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 30, 2006 appellant, then a 43-year-old nurse, filed a traumatic injury claim alleging that on October 25, 2006 she sprained her left shoulder moving a patient. OWCP assigned the claim file number xxxxxx945.

On December 17, 2012 appellant, under file number xxxxxx945, filed a recurrence of disability claim beginning November 29, 2012 causally related to a February 6, 2006 employment injury. She indicated that after her injury she intermittently performed modified duty and experienced neck and back pain. The employing establishment stated on the form that it had moved appellant's computer screen to in front of her keyboard due to her neck pain.

On December 21, 2012 OWCP noted that it had initially administratively handled the claim as a minor injury. It now accepted appellant's October 25, 2006 traumatic injury claim for left shoulder bursitis.

By letter dated December 26, 2012, OWCP informed appellant of the definition of a recurrence of disability and requested additional factual and medical information. It requested that she explain how she injured her back and neck on October 25, 2006.

In a January 5, 2013 response, appellant attributed her disability to continually lifting and moving patients and using a computer. She performed modified duty after she injured her low back on April 4, 2012 working on a patient.

Appellant returned to work on February 11, 2013.

By decision dated March 14, 2013, OWCP found that appellant had not established that she sustained a recurrence of disability on November 29, 2012 causally related to her accepted employment injury. It determined that she did not establish that her neck and back pain were due to her left shoulder bursitis. OWCP further found that appellant did not submit any supporting medical evidence.

In a report dated March 8, 2013, Dr. Renee S. Melfi, a Board-certified physiatrist, evaluated appellant for shoulder and neck pain radiating into her left arm. He stated:

“[Appellant] reports [a] work[-]related injury [on] November 29, 2012. It sounds more like cumulative onset kind of disorder. She cannot indicate to me a specific injury, other than she was taken out of work on November 29, 2012. Apparently there was a previous history of left shoulder bursitis, work related, which she is at this point in some way relating to the November 2012 injury and neck pain. She cannot provide a more descriptive history than that.”

Dr. Melfi reviewed the results of diagnostic studies and diagnosed a work-related injury, mild degenerative disc disease at C4-5, C5-6 and C6-7, hyperreflexia and abnormal reflexes. He found that she could continue working with the same restrictions.

On March 21, 2013 appellant, through her attorney, requested a telephone hearing before an OWCP hearing representative.

A September 21, 2007 magnetic resonance imaging (MRI) scan study of the cervical spine showed mild degenerative changes at C5-6 and C5-7. An August 25, 2011 nerve conduction study showed carpal tunnel syndrome and a left C5-T1 radiculopathy. A September 20, 2012 MRI scan study of the lumbar spine revealed a small disc protrusion at L5-S1. A January 10, 2013 cervical MRI scan study showed mild spinal canal stenosis at C4-6 and C6-7. Electrodiagnostic studies performed on March 22, 2013 showed mild left C5-6 and C6-7 radiculopathy.

In a report dated June 4, 2013, Dr. Hassan S. Shukri, a neurologist, diagnosed radiculitis and opined that appellant was disabled from November 29, 2012 to February 11, 2013. He noted that she had initially sustained an injury on October 25, 2006. Dr. Shukri found that appellant's neck injury was due to a shoulder and arm injury.

A hearing was held on July 18, 2013. Appellant asserted that she had difficulty finding a physician who took workers' compensation cases. She related that, prior to stopping work on November 29, 2012, she worked with limitations due to pain in her neck and shoulders. The employing establishment escorted appellant from work on November 29, 2012 because it was no longer able to accommodate her restrictions. Appellant related that she was not under workers' compensation at that time. She returned to work on February 11, 2013. Appellant did not obtain medical treatment during her time off work from November 29, 2012 to February 11, 2013. Appellant's attorney asserted that she had established a recurrence of disability as the employing establishment withdrew her limited-duty employment. He noted that Dr. Shukri did address her neck problems which was being pursued under a different case.

By decision dated September 9, 2013, OWCP's hearing representative affirmed the September 9, 2013 decision. He noted that there was no evidence that appellant was working limited duty as a result of her accepted left shoulder bursitis. The hearing representative further found that the medical evidence did not establish that she was disabled due to her bursitis.

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.²

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.³ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the

² 20 C.F.R. § 10.5(x).

³ *Carmen Gould*, 50 ECAB 504 (1999).

disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁴

ANALYSIS

On December 21, 2012 OWCP accepted appellant's October 2006 claim for left shoulder bursitis. On December 17, 2012 appellant alleged that she sustained a recurrence of disability beginning November 29, 2012. The employing establishment indicated that at the time she stopped work it had modified her computer screen to accommodate her neck pain. There is no evidence that appellant was performing limited duty as a result of her accepted left shoulder bursitis.

In a report dated March 8, 2013, Dr. Melfi reviewed appellant's complaints of neck and shoulder pain radiating into her left arm. He indicated that she related a history of employment-related left shoulder bursitis that she was "in some way relating to the November 2012 injury and neck pain." Dr. Melfi diagnosed an unspecified work injury, mild degenerative disc disease at C4-5, C5-6 and C6-7, hyperflexia and abnormal reflexes. He advised that appellant could work with restrictions. Dr. Melfi did not, however, find that she was unable to work beginning November 29, 2012 due to her accepted left shoulder bursitis and thus his opinion is of little probative value.⁵

On June 4, 2013 Dr. Shukri noted that appellant had a history of an injury on October 25, 2006. He diagnosed radiculitis and attributed her neck injury to an arm and shoulder injury. Dr. Shukri opined that appellant was disabled from work for the period November 29, 2012 to February 11, 2013. He did not, however, specifically relate the diagnosed condition of radiculitis and the period of disability to the October 25, 2006 employment injury or provide any rationale for his opinion. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.⁶

Appellant also submitted the results of diagnostic testing; however, reports of MRI scan studies and other diagnostic tests which do not contain an opinion on causal relationship are of little probative value.⁷

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 and 20 C.F.R. §§ 10.605 through 10.607

⁴ *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁵ *See R.C.*, 59 ECAB 546 (2008) (the issue of disability for work must be resolved by competent medical evidence).

⁶ *See Jean Culliton*, 337 ECAB 728 (1996).

⁷ *See J.C.*, Docket No. 13-202 (issued May 6, 2013); *L.G.*, Docket No. 11-142 (issued August 12, 2011).

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability beginning November 29, 2012 causally related to her October 25, 2006 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 2014
Washington, DC

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

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

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