

FACTUAL HISTORY

On September 28, 2010 appellant, then a 59-year-old housing management assistant, filed a traumatic injury claim (Form CA-1) alleging that she tripped over a can of paint that day and sustained a broken left shoulder. By decision dated November 17, 2010, OWCP accepted the claim for closed fracture of the left humerus and authorized physical therapy. By decision dated May 4, 2012, OWCP accepted a closed dislocation of the left shoulder, closed fracture of left upper humerus (surgical neck), left supraspinatus sprain of shoulder and upper arm, left shoulder impingement syndrome, left adhesive capsulitis of shoulder and left rotator cuff sprain of shoulder and upper arm.

On May 4, 2012 appellant requested that her claim be expanded to include a cervical condition. She submitted additional medical records.

On June 25, 2012 OWCP referred a statement of accepted facts, the case record and a series of questions to a district medical adviser for an opinion on whether appellant's cervical condition was related to the accepted injury and the need for cervical spine surgery. On June 26, 2012 Dr. Daniel D. Zimmerman, a medical adviser, concluded that OWCP should not authorize cervical spine surgery as appellant's condition appeared to be unrelated to her September 28, 2010 traumatic injury.

By decision dated June 29, 2012, OWCP denied appellant's cervical condition finding that the medical evidence of record failed to establish that it was causally related to the September 28, 2010 injury. It also denied authorization for cervical spine surgery.

By letter dated July 3, 2012, appellant, through counsel, requested a hearing before the Branch of Hearings and Review.

New medical evidence included the July 25 and September 10, 2012 reports from Dr. J. Charles Mace, a Board-certified neurological surgeon, who began treating appellant on June 13, 2012 and believed that her 2010 fall while at work was the prevailing factor in her need for surgical treatment of the cervical spine and radiculopathy. Dr. Mace reported that the prevailing factor causing appellant's treatment for cervical radiculopathy and cervical stenosis at C5-6 was the fall at work where she injured her rotator cuff and developed neck and left arm symptoms.

A hearing was held on November 8, 2012. Following the hearing, appellant submitted additional treatment and surgical notes dated June 21 to September 28, 2012 from Dr. Mace, diagnostic reports dated May 29 to September 24, 2012, a treatment note from Dr. Jonben D. Svoboda dated August 2, 2012, treatment notes from Bill Hampton, a nurse practitioner, dated June 13 to August 24, 2012, lab reports and an unsigned treatment note dated June 13, 2012.

By decision dated January 23, 2013, OWCP's hearing representative denied appellant's claim finding that the medical evidence failed to establish that her cervical condition was due to the accepted injury. She noted that no medical evidence was submitted following appellant's November 8, 2012 hearing. The hearing representative concluded that Dr. Mace failed to provide a reasoned medical opinion, based on an accurate medical and factual history.

By letter dated February 5, 2013, appellant, through counsel, requested reconsideration of the January 23, 2013 decision. Counsel argued that the hearing representative did not consider or discuss the medical evidence submitted following the hearing. He resubmitted treatment and surgical notes.

By decision dated March 14, 2013, OWCP denied appellant's request for reconsideration finding that she did not raise a substantive legal question or include new and relevant evidence.²

LEGAL PRECEDENT -- ISSUE 1

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.³ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁴ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

By decision dated June 29, 2012, OWCP denied appellant's claim for a cervical condition finding that the medical evidence of record failed to establish a causal relationship to the September 28, 2010 injury. Appellant requested a hearing before the Branch of Hearings and Review which was held on November 8, 2012. Following the hearing, she submitted medical evidence that included treatment and surgical notes dated June 21 to September 28, 2012 from Dr. Mace, diagnostic reports dated May 29 to September 24, 2012, a treatment note from

² The Board notes that appellant submitted additional evidence after OWCP rendered its March 14, 2013 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

³ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁴ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁵ *James Mack*, 43 ECAB 321 (1991).

Dr. Svoboda dated August 2, 2012, treatment notes from Mr. Hampton dated June 13 to August 24, 2012, lab reports and an unsigned treatment note dated June 13, 2012.

By decision dated January 23, 2013, OWCP's hearing representative denied appellant's claim, noting that no additional medical evidence was submitted following the November 8, 2012 hearing.⁶ The record, however, reflects that OWCP received additional medical evidence after the November 8, 2012 hearing and prior to the issuance of the January 23, 2013 decision. The hearing representative did not review the evidence in her decision and the Board is precluded from reviewing such evidence for the first time on appeal.⁷ As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim properly submitted to OWCP be reviewed and addressed.⁸ The Board also notes that in the March 14, 2013 nonmerit decision, OWCP stated that appellant had not submitted new evidence. Therefore the evidence submitted prior to January 23, 2013 was not reviewed.

The case will be remanded to OWCP to consider the evidence submitted. Following such further development as OWCP deems necessary, it shall issue an appropriate *de novo* decision on the claim.⁹

CONCLUSION

The Board finds that the case is not in posture for decision.

⁶ The Board notes that the decision addressed and made note of Dr. Mace's July 25 and September 10, 2012 reports which were received prior to the hearing.

⁷ All evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value should also be acknowledged. Whenever possible, reference the evidence by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).

⁸ See *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, 41 ECAB 548 (1990) (OWCP did not consider new evidence received four days prior to the date of its decision); see *Linda Johnson*, 45 ECAB 439 (1994).

⁹ Given the disposition of the first issue as this case is not in posture for decision, the second nonmerit issue is moot.

ORDER

IT IS HEREBY ORDERED THAT the March 14 and January 23, 2013 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further proceedings consistent with this opinion.

Issued: January 7, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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