

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

C.F., Appellant)
and) Docket No. 14-194
DEPARTMENT OF VETERANS AFFAIRS,)
HUNTINGTON VETERANS) Issued: June 23, 2014
ADMINISTRATION MEDICAL CENTER,)
Huntington, WV, Employer)
)

Appearances:

Steven J. Dunn, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 30, 2013 appellant, through her attorney, filed a timely appeal of an October 7, 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 has established a recurrence of disability on and after December 29, 2012 causally related her accepted November 16, 2010 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 29, 2010 appellant, then a 39-year-old program specialist, filed a traumatic injury claim alleging that on November 16, 2010 she felt pain in her right shoulder, arm and hand while moving a bookcase. OWCP accepted the claim for cervical intervertebral disc disorder with radiculopathy and myelopathy. Appellant returned to work for four hours a day in February 2011 and later increased to eight hours without restrictions at the end of September 2011.

A January 15, 2013 report by Dr. Amy Lynch, an examining osteopath and Board-certified physiatrist, noted the occupational employment injury and medical histories and conducted a physical examination. Diagnoses included: right shoulder joint pain secondary to cervical disc disorder and myelopathy; constipation due to medicine used to treat appellant's cervical injury; cervical disc disorder with myelopathy; and chronic pain. Appellant related feeling pain secondary to her cervical disc disorder with myelopathy. She was currently teleworking from Des Moines, IA. Appellant related that her pain increased to the point where she was unable to work. Physical therapy was recommended as well as limiting her to working one-hour a day for five days a week while in therapy.

In a February 28, 2013 report, Dr. Michael Jacoby, an examining Board-certified neurologist, noted the medical and employment injury history, performed a physical examination and reviewed medical evidence. He noted that appellant returned to full-time work in the fall of 2011, but has not worked since December 2012. Dr. Jacoby related that she currently was in a different job position than one she held at the time of her employment injury on November 16, 2010. He diagnosed cervical disc disorder with myelopathy and left arm pain. In concluding, Dr. Jacoby noted that myelopathic features were lacking and he was "unable to objectify [appellant's] complaints of pain." He recommended that she be seen by a pain specialist.

In an April 11, 2013 progress report, Dr. Lynch provided physical findings. Diagnoses included: carpal tunnel syndrome, neck pain, cervical disc disorder with myelopathy and chronic pain secondary to cervical disc disorder with myelopathy.

In an August 3, 2013 letter, appellant requested OWCP to expand her claim to include all her extremities. She alleged that the crushing of her spinal cord and corrective spinal cord surgery affected all her extremities and speech. Appellant noted that she suffers from great pain, weakness and very limited endurance.

Appellant filed a claim for a recurrence of disability beginning December 29, 2012. She stated that her neck symptoms became increasingly worse on December 11, 2012 and that the pain became paralyzing and more frequent over the next few weeks. Appellant submitted medical and factual evidence in support of her claim.

In a January 10, 2013 disability note, Dr. Sarah C. Tallman, a treating osteopath and Board-certified internist, reported that appellant had been under her care from December 26, 2012 and recommended that appellant be allowed to telework from home through January 21, 2013.

On June 20, 2013 Dr. Robert W. Macht, a treating Board-certified surgeon, noted appellant's employment injury and medical histories. He related that she returned to full-duty work in September 2011. Diagnoses included postoperative state of neck with fusion and right arm injury. Dr. Macht opined that appellant was totally disabled as she is precluded from prolonged sitting and using computers, which is what her current job duties required. In concluding, he concluded that she was permanently disabled from working.

Dr. Lynch, in a March 5, 2013 work status report, diagnosed cervical disc disorder with radiculopathy and myelopathy. She prescribed physical therapy and recommended that appellant be off work for eight weeks or through April 30, 2013. In a report dated April 12, 2013, Dr. Lynch indicated that appellant was totally disabled from working for the period April 11, 2013 through April 11, 2014. In an undated report, she recommended that appellant be off work for the period June 11, 2013 through June 11, 2014. Dr. Lynch indicated that appellant was disabled from working due to weakness in her four extremities, neck pain and bilateral arm pain. She opined that appellant's symptoms were aggravated by her employment duties requiring using and working on a computer.

By letter dated August 26, 2013, OWCP informed appellant that the evidence of record was insufficient to support her claim for a recurrence of disability due to her accepted employment injury. Appellant was advised as to the type of medical and factual evidence required to establish her claim and given 30 days to provide this information.

In a September 10, 2013 report, Dr. Lynch noted the employment injury, employment history and provided physical examination findings. She noted that appellant was released to full-duty work in September 2011 when she accepted a job offer with Department of Homeland Security as a space management specialist. Appellant related that in December 2012 her symptoms of fatigue, weakness and pain worsened. She was unsure of the cause, but believed "it was a culmination of continued work of 40 hours a week." Dr. Lynch reported that appellant's pain was exacerbated by using a mouse and computer work. Diagnosed conditions include cervical disc disorder, chronic pain due to cervical disc disorder and abnormal gait due to cervical disc disorder. Dr. Lynch stated that appellant's computer work exacerbates her pain. In concluding, she related that following appellant's surgery her pain and disability never resolved and that she returned to full-duty work at her request in September 2012. She stated that appellant demonstrated right upper extremity weakness, difficulty with gait and balance and continued with her neck and bilateral upper extremity chronic pain.

By decision dated October 7, 2013, OWCP denied appellant's recurrence claim.

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.² If the disability results from new exposure to work factors, the legal

² 20 C.F.R. § 10.5(x). See also A.M., Docket No. 09-1895 (issued April 23, 2010); *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

chain of causation from the accepted injury is broken and an appropriate new claim should be filed.³

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and establish that she cannot perform limited-duty work.⁴

ANALYSIS

OWCP accepted that appellant sustained cervical intervertebral disc disorder with radiculopathy and myelopathy as the result of her November 16, 2010 employment injury. Appellant accepted a position with the Department of Homeland Security and returned to full-duty work in September 2012. She claims that she sustained a recurrence of total disability on and after December 29, 2012 due to her accepted November 16, 2010 employment injury. OWCP denied appellant's recurrence claim on October 7, 2013. The issue on appeal is whether appellant submitted sufficient evidence supporting her claim for a recurrence of disability. The Board finds that she failed to establish her recurrence claim.

In support of her claim, appellant submitted medical evidence from Drs. Lynch and Macht indicating periods of total disability. She also submitted disability notes from Dr. Tallman on January 16, 2013. On June 20, 2013 Dr. Macht opined that appellant was totally disabled from working as she is precluded from using computers and prolonged sitting. He noted that she had returned to full-duty work in September 2011 and that she was now totally disabled from her current employment duties. In various reports and disability notes, Dr. Lynch diagnosed cervical disc disorder with radiculopathy and myelopathy indicated that appellant was disabled from working for the period March 2013 through June 2014. The histories given by Drs. Lynch and Macht do not adequately address how appellant's disability beginning December 29, 2012 was causally related to her November 16, 2010 employment injury especially as she was returned to full-duty work in September 2011. Both physicians attributed appellant's inability to work to either her bilateral arm pain or discogenic pain. The Board has consistently held that pain is a symptom, not a compensable medical diagnosis.⁵ In addition, Dr. Lynch in undated and September 10, 2013 reports appears to attribute appellant's increased pain and resulting disability to a new work injury, *i.e.*, aggravation by her employment duties involving computer work and use of a mouse. Further, neither Dr. Lynch nor Dr. Macht provided sufficient rationale explaining how appellant's diagnosed condition and disability commencing December 29, 2012 were causally related to the accepted condition.⁶ They

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997); K.C., Docket No. 08-2222 (issued July 23, 2009); *Cecelia M. Corley*, 56 ECAB 662 (2005); *Donald T. Pippin*, 54 ECAB 631 (2003).

⁴ *Cecelia M. Corley*, 56 ECAB 662 (2005).

⁵ C.F., Docket No. 08-1102 (issued October 10, 2008); *Robert Broome*, 55 ECAB 339 (2004).

⁶ See *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

provided no rationale or explanation as to why appellant's disability was due to the accepted November 16, 2010 employment injury and, thus their opinions are of diminished probative value.⁷

Appellant also submitted a January 28, 2013 report from Dr. Jacoby diagnosing cervical disc disorder with myelopathy and left arm pain. As Dr. Jacoby did not offer any opinion regarding her recurrence of disability on December 29, 2012, this report is of diminished probative value.⁸

Appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of disability beginning December 29, 2012 causally related to her November 16, 2010 work injury. Therefore, the Board finds that she did not meet her burden of proof.

On appeal, counsel contended that OWCP's decision is contrary to fact and law. For reasons stated above, the Board finds that the weight of the medical evidence does not establish that appellant's recurrence of disability beginning December 29, 2012 was causally related to her accepted November 16, 2010 employment injury.

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 in establishing that she sustained a recurrence of disability on and after December 29, 2012 causally related her accepted November 16, 2010 employment injury.

⁷ *Albert C. Brown*, 52 ECAB 152 (2000).

⁸ *See Sandra D. Pruitt*, 57 ECAB 126 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 7, 2013 is affirmed.

Issued: June 23, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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