

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

J.R., Appellant)	
)	
and)	Docket No. 14-458
)	Issued: May 13, 2014
U.S. POSTAL SERVICE, POST OFFICE,)	
Blue Springs, MO, Employer)	
)	

Appearances:
Edward L. Daniel, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 23, 2013 appellant, through her representative, filed a timely appeal from the July 17, 2013 Office of Workers' Compensation Programs' (OWCP) decision which denied her claim. 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 established that she sustained a recurrence of disability on September 20, 2008 causally related to her January 10, 2007 injury.

FACTUAL HISTORY

This case has previously been before the Board.² In a May 25, 2010 decision, the Board found that the case was not in posture for decision regarding whether appellant established that she sustained a concussion causally related to her accepted employment injuries. The Board

¹ 5 U.S.C. § 8101 *et seq.*

² Docket No. 12-1099 (issued November 7, 2012) and Docket No. 09-1792 (issued May 25, 2010).

remanded the case for referral to an impartial medical specialist to resolve a conflict in medical opinion. In a November 7, 2012 decision, the Board affirmed the March 13, 2012 OWCP decision which found that appellant did not establish a recurrence of disability on September 20, 2008 causally related to her January 10, 2007 injury. The Board found that she did not submit reasoned medical opinion evidence. The facts and history contained in the prior appeal are incorporated by reference.³

The record includes a September 10, 2008 report from Dr. John W. Ellis, Board-certified in family medicine, who noted appellant's history pertaining to a January 15, 2008 motor vehicle accident. Dr. Ellis stated that "[s]he was stopped. Appellant's Ford Taurus was hit from the rear by a pickup that had been hit by Cadillac, driving the pick up into the back of her car. She was dazed, but not unconscious. Appellant was already undergoing physical therapy for her neck. At the time, she had more pain in her neck. [Appellant] does not think it changed her memory, thinking, dizziness or headaches." The emergency room records from January 15, 2008 reveal that appellant was in a three car motor vehicle collision and rear-ended. Appellant had upper back and neck pain, rated 7 out of 10, and was currently in physical therapy for "whip lash." The police report drawings reveal appellant was in the first car of the three cars.

On April 29, 2013 appellant's representative requested reconsideration and submitted a new report from Dr. James A. Stuckmeyer, a Board-certified orthopedic surgeon, who explained that the January 15, 2008 motor vehicle accident was minor and did not cause or contribute to appellant's "preexisting work[-]related conditions resulting in her disability for work nine months later on September 20, 2008." Appellant's representative contended that Dr. Stuckmeyer concluded that the accident did not have any impact or relevance to appellant's ongoing diagnoses or disability for work subsequent to September 20, 2008.

In a February 10, 2013 report, Dr. Stuckmeyer noted appellant's history of injury and his prior evaluations. He reiterated that on January 10, 2007, while performing her duties delivering mail, she was struck from behind by a large vehicle. Dr. Stuckmeyer explained that, at his initial examination, he found a "direct and proximate result of the accident, [appellant] sustained an injury to her head, cervical spine, thoracolumbar spine, and right buttock region." He outlined her treatment in his initial report. Appellant had daily headaches, straggled with memory issues, was "always dizzy" and had ongoing symptoms of neck pain. She had radiating pain into the left upper extremity, symptoms of numbness and tingling, and persistent symptoms of thoracolumbar pain with pain radiating into the right buttock region and difficulty with activities of prolonged standing, walking, lifting and bending. At the initial examination on August 8, 2011, Dr. Stuckmeyer noted that appellant had a complicated orthopedic evaluation and that prior to the work accident, she was completely asymptomatic. He opined that as a direct, proximate, and prevailing factor of the accident occurring on January 10, 2007, appellant sustained multiple trauma. Dr. Stuckmeyer diagnosed occipital neuralgia, unresponsive to occipital nerve blocks; chronic cervical strain with left upper extremity radiculopathy; chronic thoracic strain with absence of radiculopathy; lumbosacral strain with radicular symptoms in the right buttock; left shoulder impingement syndrome, partial rotator cuff tear, nonresponsive to conservative modalities; and chronic bi-temporal headaches, vertigo and significant memory issues. He advised that she was permanently and totally disabled as a result of the multiple injuries she sustained as a direct result of the January 10, 2007 accident. Dr. Stuckmeyer

³ The record reflects that she retired on March 23, 2009. Appellant had a nonemployment-related motor vehicle accident on January 15, 2008, a year after the January 10, 2007 employment injury.

reevaluated appellant on January 8, 2013. Appellant informed him that she was involved in a second motor vehicle accident, which she described as a “fender bender” on January 15, 2008 and was evaluated at a hospital. Upon review of his initial summary, Dr. Stuckmeyer noted that appellant had cervical spine x-rays and the films revealed evidence of spasms. Appellant informed him that it was a minor motor vehicle accident and that the medical records preceding the second collision revealed ongoing issues in multiple body parts, which he outlined on August 8, 2011. Dr. Stuckmeyer stated that “the second motor vehicle accident occurring on January 15, 2008, would not change my opinions.” He also advised that the medical records related to that incident indicated that it was a “fender bender.” Dr. Stuckmeyer opined that appellant had “no overall change in her condition” since his initial evaluation and related that her ongoing conditions were a direct result of the January 10, 2007 injury at work. He repeated his diagnoses and opined that the accident on January 15, 2008 “had no impact, relevance to the patient’s ongoing diagnoses since the medical records clearly reflect that these conditions preexisted the January 2008 “fender bender.”

In a letter dated May 13, 2013, appellant’s representative submitted reports dated June 29, 2007 and November 19, 2008 from Dr. Terrie L. Price, a licensed clinical neuropsychologist. She noted appellant’s history of injury and treatment and diagnosed cognitive disorder NOS (not otherwise specified), depression disorder NOS, anxiety disorder NOS, dysomnia, deferred, status postconcussion from motor vehicle crash, and reported history of previous blows to the head and possible concussion. Dr. Price noted that appellant related that she was in a motor vehicle accident on January 10, 2007, when she was struck from behind. Appellant reported that her headaches worsened such that she found it difficult to cope with the situation and that she last worked for the employer on September 5, 2008. Dr. Price noted that appellant indicated “she missed work because of headache, not getting her period, and hurting.” In relating appellant’s history, Dr. Price noted Dr. Ellis’ opinion and stated that appellant was also seen by a Dr. French on October 6, 2008, for headache and memory loss as well as some tremor and poor coordination of uncertain etiology.⁴ She noted that Dr. French stated that some of appellant’s symptoms might be related to her accident but was not certain that all of her symptoms were related. Dr. Price noted results of psychological testing and opined that it was likely that psychological factors were impacting appellant’s test performance as well as her functional presentation. Appellant’s psychological assessment and her self-report suggested that she saw herself as experiencing significant and disabling pain and feeling increasingly less able to manage stress that triggered and exacerbated her pain. Dr. Price noted that appellant also felt “under pressure from her employer and feels increasingly unable to work. Appellant feels increasingly taxed by pressure and demands.” Dr. Price recommended more aggressive treatment of her pain through behavior pain management counseling and psychiatric consultation toward improving her functional abilities and strategies for decreasing pain. She provided an axis one diagnosis of pain disorder, cognitive disorder and depressive disorder.

By decision dated July 17, 2013, OWCP denied modification of its prior decisions.

LEGAL PRECEDENT

Section 10.5(x) of OWCP’s regulations provide that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a

⁴ Dr. French’s report is not of record.

medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.⁶

Appellant has the burden of establishing that she sustained a recurrence of a medical condition⁷ that is causally related to her accepted employment injury. To meet her burden, appellant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁸ Where no such rationale is present, the medical evidence is of diminished probative value.⁹

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.¹⁰

ANALYSIS

OWCP accepted appellant's claim for thoracic strain, lumbar strain, contusion of the face, scalp and neck, left, left shoulder sprain, and postconcussion syndrome. Appellant returned to regular duty on March 27, 2007. On January 15, 2008 she had a nonwork motor vehicle accident. Appellant subsequently claimed a recurrence of total disability beginning September 20, 2008.¹¹

However, there is no rationalized medical opinion which sufficiently explains why appellant had a recurrence of disability on September 20, 2008 causally related to her January 10, 2007 injury. In the most recent prior appeal, the Board noted that there were no bridging medical records from February 5 until September 10, 2008 regarding appellant's inability to work. The Board explained that this was especially important in light of the fact that appellant had a motor vehicle accident on January 15, 2008 and retired on March 23, 2009.

⁵ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

⁶ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

⁷ 20 C.F.R. § 10.5(y) (2002).

⁸ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁹ *Mary A. Ceglia*, 55 ECAB 626 (2004); *Albert C. Brown*, 52 ECAB 152 (2000).

¹⁰ *Walter D. Morehead*, 31 ECAB 188 (1986).

¹¹ Appellant retired on March 23, 2009.

On reconsideration, appellant submitted a February 10, 2013 report from Dr. Stuckmeyer who initially reiterated his diagnoses and opinion on causal relationship from his August 8, 2011 report, which was previously considered by the Board. Dr. Stuckmeyer attempted to explain why the January 15, 2008 nonwork accident did not impact his opinion. He indicated that, on January 8, 2013, he reevaluated appellant and she informed him that she was involved in a second motor vehicle accident, which she described as a “fender bender” on January 15, 2008 and was evaluated at a hospital. Dr. Stuckmeyer noted that in his initial summary, he stated that appellant had cervical spine x-rays which revealed evidence of spasms and repeated that appellant informed him that it was a minor accident. He noted that the medical records preceding the second collision revealed ongoing issues in multiple body parts, which he outlined in his August 8, 2011 report. Dr. Stuckmeyer opined that the January 15, 2008 motor vehicle accident did not change his opinion and asserted that medical records related to that incident indicated that it was a “fender bender.” However, the Board is unconvinced by this opinion as he does not appear to have an accurate understanding of the incident.¹² In his September 10, 2008 report, Dr. Ellis noted the history of the January 15, 2008 motor vehicle accident, indicating that “[s]he was stopped. Appellant’s Ford Taurus was hit from the rear by a pickup that had been hit by Cadillac driving the pickup into the back of her car. She was dazed, but not unconscious. Appellant was already undergoing physical therapy for her neck. At the time, she had more pain in her neck. Appellant does not think it changed her memory, thinking, dizziness or headaches.” Dr. Stuckmeyer did not provide sufficient reasoning to explain how an incident that left appellant “dazed, but not unconscious” could be characterized as minor and having no impact on appellant. This is especially important, as the initial emergency room records also reveal that appellant had upper back pain and neck pain. Without further explanation or rationale, this report is of limited probative value and does not support a recurrence of disability on September 20, 2008 causally related to the January 10, 2007 injury.

In a November 19, 2008 report, Dr. Price noted that the history of injury included a motor vehicle crash on January 10, 2007, when appellant was struck from behind. She related that appellant reported that she started getting worse in the summer and her headaches worsened such that she found it difficult to cope with the situation. Dr. Price indicated that appellant last worked for the employing establishment on September 5, 2008 and indicated that appellant indicated that “she missed work because of headache, not getting her period, and hurting.” Furthermore, she left “because of the headache and she could not handle it anymore. Dr. Price states that she was in unbearable pain when she would get home from work.” She also related that appellant felt “under pressure from her employer and feels increasingly unable to work. Dr. Price feels increasingly taxed by pressure and demands.” She also recommended treatment options. While Dr. Price referenced opinions of other physicians regarding the possible causes of appellant’s condition, she did not offer her own opinion regarding whether appellant had a recurrence of disability beginning September 20, 2008 causally related to her accepted employment injury. 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.¹³ Dr. Price’s June 29, 2007 report is insufficient as it predated the alleged recurrence of disability.

¹² See *Leonard J. O’Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

¹³ See *J.F.*, Docket No. 09-1061 (issued November 17, 2009) (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).

Accordingly, the Board finds that appellant has not met her burden of proof in this case as she has not submitted sufficiently reasoned medical opinion explaining why her recurrence of disability beginning September 20, 2008 was caused or aggravated by the January 10, 2007 employment injury and not the result of her subsequent motor vehicle accident.

On appeal, appellant's representative argued that Dr. Stuckmeyer's opinion was sufficiently rationalized. However, as noted above, the Board found that he provided insufficient medical reasoning, based on an accurate factual background, to explain his conclusion on causal relationship. 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 established that she sustained a recurrence of disability on September 20, 2008 causally related to her January 10, 2007 injury.

ORDER

IT IS HEREBY ORDERED THAT the July 17, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2014
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