

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

L.G, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
SAN FRANCISCO VETERANS HOSPITAL,
San Francisco, CA, Employer**

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**Docket No. 14-1137
Issued: November 14, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 14, 2014 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) merit decision dated January 30, 2014 denying her recurrence 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 the claim.

ISSUE

The issue is whether appellant established a recurrence of a medical condition due to the accepted April 4, 1988 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. In a December 19, 2005 decision, the Board affirmed in part and reversed in part OWCP's March 28, 2005 decision terminating appellant's compensation benefits effective March 28, 2005 on the grounds that she no longer had residuals of her April 4, 1988 employment injury.² The Board found that OWCP met its burden of proof to terminate appellant's compensation benefits effective March 28, 2005 with respect to the cervical strain, but had failed to meet its burden of proof in terminating her compensation benefits with respect to the condition of torticollis and hysterical conversion.³ The facts and the law of the previous Board decision are incorporated herein by reference.

By decision dated September 26, 2007, OWCP found appellant's employment as a program support clerk effective June 15, 2007 fairly and reasonably represented her wage-earning capacity with no loss of wages.

On July 5, 2011 appellant filed a recurrence claim for medical treatment. She indicated that she had not stopped work. By decision dated August 16, 2011, OWCP accepted the recurrence claim. In a September 26, 2012 letter, it noted that it had not received any medical information in over a year and administratively closed the claim.

On November 6, 2012 appellant filed a recurrence claim alleging medical treatment only. The employing establishment noted that she had not filed any new injury reports or presented any medical evidence to support a recurrence or new injury. By decision dated February 1, 2013, OWCP denied appellant's recurrence claim. It noted that her case remained closed for medical care. By decision dated May 22, 2013, its hearing representative affirmed the February 1, 2013 decision.

On November 1, 2013 appellant filed a recurrence claim seeking medical treatment related to the April 4, 1988 employment injury. She did not claim wage-loss compensation and listed the date of recurrence as December 1, 2012. Appellant stated that she had a change or worsening of her accepted work-related conditions, noting severe pain on her left neck which traveled down her left side to her shoulder and back.

In an August 15, 2013 report, Dr. Melanie Lising, a Board-certified neurologist, noted the history of injury and that appellant was transferring medical care due to insurance issues. She stated that appellant had a history of cervical dystonia and neck spasms for about 25 years. A medical history was discussed and examination findings provided. Dr. Lising diagnosed cervical dystonia with an unknown etiology. She noted that appellant had an essentially normal general neurological examination and an underlying lesion was not suspected as her movements had

² Docket No. 05-1390 (issued December 19, 2005).

³ On May 27, 1988 appellant, then a 40-year-old mail clerk, filed a traumatic injury claim alleging that on April 4, 1988 she suffered severe neck pain while in the performance of her duties. OWCP accepted the claim for a cervical strain and subsequently included the conditions of spasmodic torticollis and precipitation of hysterical conversion. Appellant stopped work on May 16, 1988, returned for a few days and stopped work completely on July 12, 1988. She was eventually placed on OWCP's periodic compensation rolls.

improved and remained stable for over 20 years. Dr. Lising's other hyperkinetic movement of spasms may be compensatory or secondary to her exposure to tardive dyskinesia.

In a November 18, 2013 letter, OWCP noted that the evidence of record was insufficient to support her claim for a recurrence of her medical condition. It requested additional medical evidence from appellant, including medical evidence that her accepted-work related condition subsequently worsened without intervening cause. Appellant was accorded 30 days to submit the requested information.

In a January 17, 2014 statement, appellant stated that her belief that repetitive lifting heavy loads of mail, sorting mail and reaching high letter boxes as a mail clerk was causing her neck pain. She submitted a description of her work duties, a statement entitled "History of the Original Injury" and a January 1, 2007 statement indicated that the pain in her right elbow from opening and closing drawers felt better after she went to a few weeks of physical therapy.

Appellant also submitted a letter to Dr. Michael M. Cohen, an orthopedic surgeon, requesting her medical records. In a June 21, 2013 letter, Dr. Cohen noted that she would no longer be under his care as of June 21, 2013 and referred her to the Neurology Clinic at UCSF Medical Center for chronic torticollis and chronic myofascial neck pain. Copies of progress notes from him dated May 3, 2006, January 1, 2007 and September 28, 2009 were received.

Appellant submitted a statement requesting transfer of care to Dr. Lising. In a December 1, 2013 report, Dr. Lising noted the history of injury and appellant's medical course. She presented examination findings and diagnosed cervical dystonia. Dr. Lising stated that the etiology of dystonia was uncertain and that she could not determine if it was directly related to appellant's prior injury as appellant was new to the center. She indicated that appellant had current disability and worsening of her dystonia that affected her ability to work with regards to being able to carry heavy objects or do tasks that required her to maintain a certain posture of her head for an extended period of time.

By decision dated January 30, 2014, OWCP denied appellant's recurrence claim of a medical condition. It found that she had not established that she required additional medical treatment due to a worsening of her accepted work-related conditions without intervening cause. OWCP noted appellant's claim remained closed for medical care.⁴

LEGAL PRECEDENT

Appellant has the burden of establishing that she sustained a recurrence of a medical condition that is causally related to her accepted employment injury. To meet her burden, she 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

⁴ OWCP advised appellant that if she believed that her repetitive activities at work caused or contributed to her current cervical condition, she may file a new claim for an occupational disease.

injury and supports that conclusion with sound medical rationale.⁵ Where no such rationale is present, the medical evidence is of diminished probative value.⁶

OWCP regulations define a recurrence of medical condition as the documented need for further medical treatment after release from treatment of the accepted condition when there is no work stoppage. Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment.⁷

OWCP procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return as needed or computed by the claims examiner from the date of last examination), a claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury.⁸

ANALYSIS

OWCP accepted that appellant sustained a cervical strain, torticollis and hysterical conversion as a result of the April 4, 1988 work injury. In its prior decision, the Board found that OWCP met its burden of proof in terminating appellant's compensation benefits for the cervical strain effective March 28, 2005, but not for the conditions of torticollis and hysterical conversion. By decision dated September 26, 2007, OWCP found appellant's employment as a program support clerk effective June 15, 2007 fairly and reasonably represented her wage-earning capacity with no loss of wages. On September 26, 2012 it noted that it had not received any medical information in over a year and therefore administratively closed the claim. In her November 1, 2013 claim for recurrence of disability, appellant attributed the increase in her neck pain to repetitive lifting heavy loads of mail, sorting mail and reaching high letter boxes as a mail clerk. The Board finds that there is presently insufficient medical evidence to establish that she required further medical treatment for a continuing employment-related condition.

There is no indication that appellant was under medical care for her accepted conditions within 90 days prior to the November 1, 2013 claim for recurrence. Therefore this case cannot be accepted without a rationalized opinion supporting causal relationship.⁹ In her reports of August 15 and December 1, 2013, Dr. Lising indicated that the etiology can be primary/idiopathic or secondary to another pathology/injury and is often difficult to distinguish.

⁵ *Ronald A. Eldridge*, 53 ECAB 218, 220 (2001).

⁶ *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *Albert C. Brown*, 52 ECAB 152, 155 (2000).

⁷ 20 C.F.R. § 10.5(y).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013). The procedure manual provides, with certain exceptions, that, within 90 days of release from medical care (as stated by the physician or computed from the date of last examination or the physician's instruction to return PRN), a claims examiner may accept the attending physician's statement supporting causal relationship between appellant's current condition and the accepted condition, even if the statement contains no rationale. *Id.* at Chapter 2.1500.4(a).

⁹ *Id.*

She diagnosed cervical dystonia with an unknown etiology. The fact that a condition's etiology is unknown or obscure neither relieves appellant of the burden of establishing a causal relationship by the weight of the medical evidence, nor shifts the burden of proof of OWCP to disprove an employment relationship.¹⁰ While Dr. Lising indicated in her December 1, 2013 report that appellant has current disability and a worsening of her dystonia which affects her ability to work, she advised the etiology of dystonia was uncertain and that she could not determine if it is directly related to appellant's prior injury. Therefore, she specifically opined that she could not attribute appellant's increase in disability and worsening of the cervical dystonia to the prior injury. Thus, Dr. Lising's opinion negates a causal relationship between the April 4, 1988 work injury and appellant's condition in 2013.

Appellant also submitted reports from Dr. Cohen dated May 3, 2006, January 1, 2007 and September 28, 2009. However these reports predate her recurrence claim filed on November 1, 2013 and, thus, are not relevant to the current claim.

Appellant must submit a rationalized medical opinion addressing the causal relationship between her current neck conditions in 2013 to her accepted condition of cervical strain in 1998. An award of compensation may not be based on surmise, conjecture, speculation or upon her own belief that there was a causal relationship between her condition and her employment.¹¹ Appellant has not submitted a rationalized medical opinion addressing causal relationship. The Board finds that OWCP properly denied appellant's claim.

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 10.607.¹²

CONCLUSION

The Board finds that appellant failed to establish a recurrence of disability causally related to her April 4, 1988 employment injury.

¹⁰ *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).

¹¹ *Patricia J. Glenn*, 53 ECAB 159, 160 (2001).

¹² OWCP properly noted that if appellant and her physician believe that repetitive activities at work caused or contributed to appellant's current cervical condition by direct cause, acceleration, temporary or permanent aggravation, she may file a new claim for an occupational disease.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated January 30, 2014 is affirmed.

Issued: November 14, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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