



recurrence of disability.<sup>3</sup> He contends that the reports of Dr. Melissa Y. Macias, an attending neurosurgeon, were sufficient to demonstrate that appellant sustained a recurrence of disability beginning on October 10, 2008 causally related to a right elbow contusion and calcific tendinitis of the right shoulder sustained in a May 5, 2008 motor vehicle collision.

### **FACTUAL HISTORY**

This case has previously been before the Board. By order issued May 13, 2013 under File No. xxxxxx098,<sup>4</sup> the Board remanded the case to OWCP to double File No. xxxxxx613, with the current file. The facts of the case as set forth in the Board's prior order are hereby incorporated by reference. The relevant history is set forth.

OWCP accepted that on May 5, 2008 appellant, then a 52-year-old maintenance mechanic, sustained a right elbow contusion and calcific tendinitis of the right shoulder when he struck his arm on a steering wheel during a front end collision that occurred in the performance of duty. Dr. Guy Racette, an attending Board-certified family practitioner, diagnosed a right elbow contusion due to the May 5, 2008 collision. X-rays were negative for fracture. Dr. Racette released appellant to full duty as of May 5, 2008. In a May 16, 2008 follow-up report, he diagnosed right lateral epicondylitis caused by the May 5, 2008 contusion. Dr. Racette released appellant to full duty. He found that appellant attained maximum medical improvement as of June 4, 2008.

On January 26, 2010 under File No. xxxxxx613, appellant claimed a recurrence of disability (Form CA-2a) commencing October 10, 2008, when he began to experience numbness in both hands, with severe left upper arm pain beginning in January 2010. Imaging studies in August 2009 showed "damage to spine not present in x-rays taken on February 1, 2008 -- four months before accident." Appellant missed work on January 22, 2010 due to his symptoms but did not otherwise stop work. He submitted additional medical evidence.

In a February 5, 2008 report, Dr. Joshua T. Woody, an attending Board-certified orthopedic surgeon, noted that appellant had been involved in a motor vehicle accident while in military service. He opined that appellant had a normal cervical and thoracolumbar spine based on clinical findings and x-rays.

In a July 9, 2009 report, Dr. Juan E. Bahamon, an attending Board-certified neurologist, found diminished pinprick sensation in a stocking-glove distribution in all extremities, confirmed by nerve conduction velocity testing of the lower extremities. He diagnosed systemic peripheral neuropathy of unknown etiology. Dr. Bahamon noted in an August 3, 2009 report that laboratory testing revealed a mild decrease in hemoglobin but no other abnormalities. In an August 25, 2009 report, he diagnosed bilateral carpal tunnel syndrome demonstrated by August 3, 2009 electrodiagnostic studies. An August 4, 2009 magnetic resonance imaging scan revealed mild discogenic disease at C6-7 with a left-sided disc bulge and left-sided

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<sup>3</sup> *Beth P. Chaput*, 37 ECAB 158 (1985).

<sup>4</sup> Docket No. 13-09 (issued May 13, 2013).

neuroforaminal narrowing. Dr. Bahamon opined that appellant's upper extremity paresthesias were caused by a combination of C6-7 disc disease and carpal tunnel syndrome.

On March 5, 2010 OWCP noted that it would develop appellant's claim for a recurrence of disability as a new occupational disease claim. It assigned the new claim File No. xxxxxx098. In a March 29, 2010 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including a factual statement regarding the circumstances of the recurrence and medical evidence addressing the causal relationship between the accepted May 5, 2008 injury and his condition on and after October 10, 2008. Appellant was afforded 30 days in which to submit such evidence.

In response, appellant submitted an April 21, 2010 statement asserting that the May 5, 2008 motor vehicle collision aggravated a preexisting cervical spine condition, causing radiculopathy into the left arm beginning in October 2009.

By decision dated April 29, 2010, OWCP denied appellant's claim for a bilateral upper extremity condition on the grounds that causal relationship was not established.<sup>5</sup>

In a June 20, 2012 letter and brief, counsel requested reconsideration. He asserted that new medical reports from Dr. Macias were sufficient to establish appellant's claim of a new occupational injury.

In a July 30, 2010 report, Dr. Macias opined that appellant's peripheral neuropathy in all extremities, as well as the damage repaired by surgery on May 27, 2008, was consistent with damage caused by the May 5, 2008 motor vehicle accident. In an August 7, 2011 letter, she noted performing an anterior cervical decompression and fusion on May 27, 2010, which resolved his neck and upper extremity pain. Regarding causal relationship, Dr. Macias opined that, while "an underlying condition may have been present, [appellant] clearly states that he developed pain and progression of the above symptoms six months after involvement in the motor vehicle collision." Although she could not state with certainty that the motor vehicle collision caused his cervical pathology in its entirety, the trauma may have aggravated an underlying degenerative condition leading to an exacerbation of neck pain and discomfort for which he sought treatment.

By decision dated June 25, 2012, OWCP found that Dr. Macias' opinion was insufficient to meet appellant's burden of proof to establish a new occupational condition.

Counsel filed an appeal with the Board, resulting in the issuance of the May 13, 2013 order remanding the case to double File No. xxxxxx098 with File No. xxxxxx613 and issuance of a *de novo* decision regarding the claimed recurrence of disability.

In an October 1, 2013 letter, OWCP advised appellant of the evidence needed to establish his claim for recurrence of disability, including a factual statement regarding the circumstances of the recurrence and medical evidence addressing the causal relationship between the accepted

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<sup>5</sup> On May 26, 2010 counsel requested an oral hearing. He withdrew the request on August 16, 2010 to pursue reconsideration.

right elbow and shoulder injuries and his condition on or after October 10, 2008. Appellant was afforded 30 days in which to submit such evidence.

In an October 30, 2013 letter, counsel contended that, based on the Board's May 13, 2013 order, appellant "should not have to provide any new factual or medical evidence."

By decision dated December 4, 2013, OWCP denied appellant's claim for a recurrence of disability finding that causal relationship was not established as Dr. Macias did not provide adequate medical reasoning supporting that the accepted right elbow and shoulder conditions disabled appellant for work commencing October 10, 2008. It further found that Dr. Macias did not explain how appellant's cervical spine condition or upper extremity paresthesias were related to the accepted right elbow contusion or right shoulder tendinitis due to the May 5, 2008 motor vehicle accident.

### **LEGAL PRECEDENT**

OWCP implementing regulations define a recurrence of disability as "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."<sup>6</sup> When an appellant claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified 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. Moreover, sound medical reasoning must support the physician's conclusion.<sup>7</sup> An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.<sup>8</sup>

### **ANALYSIS**

OWCP accepted that appellant sustained a right elbow contusion and calcific tendinitis of the right shoulder in a May 5, 2008 motor vehicle collision. Dr. Racette, an attending Board-certified family practitioner, released appellant to full duty as of the date of the accident. He opined that appellant had reached maximum medical improvement as of June 4, 2008. On January 26, 2010 appellant claimed a recurrence of disability commencing October 10, 2008, asserting that the May 5, 2008 accident had aggravated his preexisting cervical spine condition and upper extremity paresthesias. OWCP developed his recurrence claim as a new occupational disease claim. It denied the occupational disease claim on April 29, 2010, affirmed on June 25, 2012. Pursuant to the prior appeal, the Board remanded the claim to OWCP to

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<sup>6</sup> 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

<sup>7</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>8</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

adjudicate the recurrence issue. The December 4, 2013 OWCP's decision denied appellant's claim for recurrence of disability.

Appellant has the burden of providing sufficient evidence, including rationalized medical evidence, to establish the causal relationship asserted between the accepted right elbow contusion and right shoulder tendinitis and her condition on and after October 10, 2008.<sup>9</sup> She submitted reports from several attending physicians. The opinions of Dr. Racette and Dr. Woody, a Board-certified orthopedic surgeon, and Dr. Bahamon, a Board-certified neurologist, do not sufficiently address appellant's disability on or after October 10, 2008 and are of diminished probative value.

Appellant also submitted reports from Dr. Macias, an attending neurosurgeon, who performed an anterior cervical discectomy and fusion on May 27, 2010. Dr. Macias opined on July 30, 2010 that the May 5, 2008 motor vehicle accident could have caused peripheral neuropathy and unspecified pathologies of the cervical spine. On August 7, 2011 she noted that the May 5, 2008 accident "may have aggravated an underlying degenerative condition leading to an exacerbation of neck pain and discomfort for which [appellant] sought treatment." Dr. Macias speculated that the May 5, 2008 accident may have caused other injuries. She did not opine, however, that the accepted right elbow contusion and calcific tendinitis worsened as of October 10, 2008. Dr. Macias did not address the accepted conditions. Her opinion is therefore insufficient to meet appellant's burden of proof.

OWCP advised appellant in an October 1, 2013 letter of evidence needed to establish his claim for a recurrence of disability, including medical evidence addressing how and why the accepted right shoulder condition and right elbow injuries had worsened as of October 10, 2008. As appellant did not submit such evidence, it properly issued its December 4, 2013 decision denying his recurrence claim.

On appeal, counsel notes that, according to Board precedent, clinical judgment combines both art and science<sup>10</sup> that medical conclusions need only be sound and rational<sup>11</sup> and that appellant was not required to demonstrate that work factors were the sole or primary cause of the claimed recurrence of disability.<sup>12</sup> He contends that, under these principles, Dr. Macias' opinion is sufficient to meet appellant's burden of proof in establishing his recurrence claim. However, as stated above, Dr. Macias did not opine that the accepted right elbow contusion and right shoulder tendinitis worsened on or after October 10, 2008. Instead, she attributed appellant's condition to cervical disc disease. Dr. Macias' opinion therefore does not establish that he sustained a recurrence of disability.

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<sup>9</sup> *Supra* note 7.

<sup>10</sup> *T.T.*, Docket No. 08-30 (issued April 8, 2008).

<sup>11</sup> *Robert P. Bourgeois*, 45 ECAB 745 (1994).

<sup>12</sup> *Beth P. Chaput*, 37 ECAB 158 (1985).

**CONCLUSION**

The Board finds that appellant has not established a recurrence of disability on or after October 10, 2008 causally related to an accepted right elbow contusion and calcific tendinitis of the right shoulder.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 4, 2013 is affirmed.

Issued: November 13, 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