

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

V.P., Appellant)
and) Docket No. 15-1190
DEPARTMENT OF THE ARMY, CIVILIAN) Issued: December 29, 2015
PERSONNEL ADVISORY CENTER,)
Arlington, VA, Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 4, 2015 appellant filed a timely appeal of a November 4, 2014 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 to consider the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of a medical condition due to her August 31, 2001 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant timely requested an oral argument before the Board. After exercising its discretion, by order dated October 7, 2015, the Board denied her request for oral argument as the issue on appeal could be fully addressed on the record. *Order Denying Request for Oral Argument*, Docket No. 15-1190 (issued October 7, 2015).

FACTUAL HISTORY

On August 31, 2001 appellant, a 53-year-old paralegal specialist, injured her neck while moving boxes from underneath a desk. She filed a traumatic injury claim (Form CA-1) on September 4, 2001 which OWCP accepted for cervical sprain. Medical treatment and compensation benefits were authorized.

This case has previously been before the Board.³ In the prior appeal, appellant contested that OWCP improperly terminated her compensation benefits on August 11, 2003 based upon the opinion of Dr. Robert A. Smith, a Board-certified orthopedic surgeon acting as OWCP's second opinion physician. The Board reversed the termination of benefits finding that a conflict existed in the medical opinion evidence between Dr. Smith, and appellant's treating physician, Dr. Hampton J. Jackson, a Board-certified orthopedic surgeon, as to whether she had continuing residuals or disability causally related to her accepted August 31, 2001 employment injury. The facts of the case as set forth in the prior decision dated January 19, 2006 are incorporated herein by reference.

On remand from the Board's January 19, 2006 decision, on May 26, 2006 OWCP referred appellant to Dr. David Dorin, Board-certified in orthopedic surgery, for an impartial medical evaluation to resolve the conflict of opinion as to whether she had residuals or disability causally related to the accepted employment injury.

In a September 21, 2006 report, Dr. Dorin opined that appellant had no residuals from the August 31, 2001 work injury. He opined, after reviewing records related to her August 2001 work injury, that it was difficult to find a correlation between a 2002 cervical magnetic resonance imaging scan showing narrowing at multiple levels of the intervertebral spaces, arthropathy of the uncovertebral joints, the presence of two bulging discs, and a posterolateral herniation without any mention of compression of the nerve root, and her five-year history of ongoing symptoms. Dr. Dorin also found that appellant was magnifying her symptoms during his examination. He concluded that the strain of the cervical spine she sustained on August 31, 2001, five years prior, had long since healed and that she had no residual abnormalities of the neck stemming from her accepted cervical spine condition.

By decision dated February 9, 2007, OWCP terminated appellant's medical and wage-loss compensation, finding that Dr. Dorin's impartial medical opinion represented the weight of the medical evidence.

On July 28, 2012 appellant filed a notice of recurrence (Form CA-2a) requesting additional medical care for the accepted August 31, 2001 work injury. She asserted that she had requested reasonable accommodations on three separate occasions, however, but the employing establishment denied them resulting in her being removed from duty status. Appellant advised that her neck pain never went away and was aggravated while she was in a rehabilitation program. She noted that her rehabilitation/work hardening program ended on November 7, 2011 and that she had experienced problems with her upper extremities ever since.

³ Docket No. 05-483 (issued January 19, 2006).

By letter dated October 28, 2013, OWCP informed appellant that a recurrence for medical treatment only was defined as a documented need for additional medical treatment after a release from treatment of the work-related injury, or after not receiving care for a significant period of time including circumstances when there had been a significant gap in treatment for the work-related injury. It informed her to establish a recurrence she must provide evidence to support that her need for treatment was due to a worsening of the accepted work-related conditions without intervening cause. OWCP noted that, based on the medical records on file, appellant last received medical care for her work-related condition on January 5, 2010. It advised her that the medical evidence she had submitted was insufficient to establish her claim and requested that she provide additional factual and medical evidence, including medical evidence establishing that her accepted work-related conditions subsequently worsened without intervening cause.

In a November 19, 2013 report, Dr. Nathan Yokel, a specialist in physical medicine and rehabilitation, noted that appellant was experiencing persistent left-sided neck pain which began when she injured her neck on August 31, 2002. He reported that she had never achieved consistent relief despite the fact that she underwent chiropractic treatment and for several years and received trigger point injections for her neck. Appellant rated her pain as a 5 or 6 on a scale of 1 to 10, with constant tightness and soreness. Dr. Yokel noted that she had not had any therapy or trigger point injections for her neck in more than one year. He advised that his review of appellant's extensive medical records, including an electromyelogram she underwent in 2006, showed no radiculopathy. Dr. Yokel diagnosed neck sprain/strain, cervicalgia, unspecified myalgia, and myositis and opined that she would benefit from a course of physical therapy.

In a December 17, 2013 report, Jennifer Gordon, a licensed physical therapist, advised that she had treated appellant for neck pain as of November 2011. She reported that appellant had sustained an exacerbation of a preexisting neck condition which occurred while participating in a work hardening program. Ms. Gordon prescribed muscle relaxers to manage her neck condition, outlined restrictions, and recommended additional physical therapy.

By decision dated January 14, 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 a worsening of her accepted work-related neck conditions without intervening cause. OWCP determined that there was no rationalized medical evidence in support of appellant's contention that her condition/disability on and after November 7, 2011 was causally related to the August 31, 2001 work injury.

On January 29, 2014 appellant requested an oral hearing, which was held before an OWCP hearing representative on August 14, 2014. She did not submit any additional medical evidence.

By decision dated November 4, 2014, the hearing representative affirmed the January 14, 2014 decision.

LEGAL PRECEDENT

Appellant has the burden of proof to establish the recurrence of a medical condition 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 injury and supports that conclusion with sound medical rationale.⁴ Where no such rationale is present, the medical evidence is of diminished probative value.⁵

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.⁶

OWCP's procedures provide 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.⁷

ANALYSIS

OWCP accepted that appellant sustained a cervical strain as a result of the August 31, 2001 employment injury. It terminated both wage-loss and medical benefits on February 9, 2007. In her July 28, 2012 claim for recurrence of medical treatment, appellant did not attribute the increase in her neck pain to any event, but rather to a continuation of the August 31, 2001 work-related condition. She has the burden of providing sufficient evidence, including rationalized medical evidence, to establish causal relationship.⁸

In his November 19, 2013 report, Dr. Yokel related that appellant had never achieved consistent relief from her August 31, 2001 neck injury. He reported that she received chiropractic treatment and trigger point injections for her neck. Despite these ameliorative measures, appellant still had persistent left-sided neck pain stemming from her employment injury. Dr. Yokel diagnosed neck sprain/strain, cervicalgia, and unspecified myalgia and myositis, and advised that she would benefit from a course of physical therapy. He, however,

⁴ *Ronald A. Eldridge*, 53 ECAB 218, 220 (2001).

⁵ *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *Albert C. Brown*, 52 ECAB 152, 155 (2000).

⁶ 20 C.F.R. § 10.5(y).

⁷ 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 per as need), 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).

⁸ *Ricky S. Storms*, 52 ECAB 349 (2001).

has not provided any rationale as to why appellant's cervical strain would continue or why her neck condition worsened without any intervening factors. The weight of the medical evidence in the claim has established that her accepted cervical sprain ceased as of February 2007 and no longer required medical treatment. Dr. Yokel provided no explanation as to why appellant's current need for medical treatment is due to a worsening of her August 31, 2001 employment injury, in light of the status of her condition in 2007, and her limited medical treatment since that time. His report is insufficiently rationalized to establish that her need for medical treatment of her neck is due to a worsening of her August 31, 2001 employment injury without intervening factors. Thus, the Board finds that Dr. Yokel's report is of limited probative value and fails to establish appellant's claim.⁹

The Board notes that appellant submitted a December 17, 2013 report from a physical therapist. This report, however, does not constitute medical evidence under section 8101(2) of FECA.¹⁰ Healthcare providers such as nurses, acupuncturists, physician assistants, and physical therapists are not considered "physicians" under FECA, and their reports and opinions do not constitute competent medical evidence to establish a medical condition, disability, or causal relationship.¹¹

The Board finds that appellant has not submitted sufficient medical evidence to establish a recurrence of a medical condition related to her August 31, 2001 employment injury. Therefore, OWCP's November 4, 2014 decision denying the claimed recurrence is proper under the law and facts of the case.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of a medical condition due to the accepted August 31, 2001 employment injury.

⁹ See *supra* note 5.

¹⁰ Section 8101(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.

¹¹ 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 29, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board