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

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| **L.F., Appellant** | ) | |
| **and** | ) | **Docket No. 14-1817** |
| | ) | **Issued: February 2, 2015** |
| **DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Milwaukee, WI, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

### *JURISDICTION*

On August 19, 2014 appellant, through counsel, filed a timely appeal from a June 23, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record also contains a June 20, 2013 decision denying appellant's claim for partial disability compensation on March 25 and 28, 2013. On June 24, 2013 counsel requested a hearing of the June 20, 2013 denial decision. By decision dated February 12, 2014, an OWCP hearing representative denied modification of the June 20, 2013 decision. On June 9, 2014 OWCP received appellant's request for reconsideration. Because the Board and OWCP cannot share jurisdiction over the same case over the same issue, the only decision being considered on appeal is the June 23, 2014 decision denying appellant's claim for disability compensation for the period April 1 to June 1, 2013. The decisions of OWCP, dated June 20, 2013 and February 12, 2014, will not be disturbed as they review different issues. *See* 20 C.F.R. § 501.2(c)(3); *Leon Hayes*, Docket No. 94-2292 (issued January 15, 1997).

## ***ISSUE***

The issue is whether appellant met her burden of proof to establish a recurrence of disability from April 1 to June 1, 2013 causally related to her accepted right shoulder and right trapezius sprain.

On appeal, counsel alleges that OWCP's decision was contrary to law and fact.

## ***FACTUAL HISTORY***

On May 26, 2011 appellant, then a 37-year-old file clerk, filed an occupational disease claim alleging that she strained her trapezius muscle as a result of filing and scanning patient information into the system. She first became aware of her condition and realized it resulted from her employment on May 19, 2011. OWCP accepted appellant's claim for sprain of the right shoulder, upper arm, and right trapezius muscle. Appellant stopped work on May 19, 2011 and was paid disability compensation.

On November 7, 2011 appellant returned to part-time limited duty and continued to receive wage-loss compensation for partial disability. On April 9, 2012 she returned to full duty with no restrictions.

On April 1, 2013 appellant stopped work. Beginning April 5, 2013 she submitted various claim forms requesting wage-loss compensation for the period April 1 to June 1, 2013.

In a March 18, 2013 report, Dr. Arvind Ahuja, a Board-certified neurological surgeon, noted that appellant had sustained a work-related injury on May 19, 2011. He diagnosed cervical disc disease at C5-6 and C6-7. Dr. Ahuja stated that he agreed that it was possible and probable that appellant's cervical degeneration could be related to repetitive bending and her accepted work injury. He noted that she had cervical disc extrusion at C5-6, which likely had progressed due to her persisting work conditions.

In April 3, 2013 occupational therapy and return to work notes, Dr. Malik S. Ali, a Board-certified internist, noted that he had examined appellant and related that she had not been able to work since April 1, 2013 because of work-related cervical spine and right trapezius muscle flare-up. He stated that she would remain off work for an indefinite period of time. Dr. Ali diagnosed cervicalgia with radiculopathy.

In an April 4, 2013 report, Dr. Ahuja stated that he had examined appellant for neck pain and symptoms of cervical radiculopathy following a March 19, 2011 work-related injury. Appellant related that two weeks ago her employing establishment reorganized her work space and returned the scanner to a shelf above her head. She explained that within two hours of working in her reconfigured work space she developed severe pain in her right arm, muscle spasms in her right trapezium and pectoralis/armpit area, and tingling and stiffness in her right arm and neck. Appellant stated that although the scanner was returned to its original location her symptoms did not subside and she was sent home. She related that her symptoms remained the same and increased with activity.

Upon examination, Dr. Ahuja observed that appellant was in obvious pain. He reported that her neck was tilted to the side and her right hand appeared swollen. Neurological motor examination revealed good strength and tone in all major muscle groups. Dr. Ahuja stated that appellant was able to heel, toe, and tandem walk without difficulty. Deep tendon reflexes were 2+ and symmetric. Dr. Ahuja reported pain with cervical range of motion and to palpation over the paraspinal area. Hoffmann and Clonus tests were negative. Dr. Ahuja reviewed a November 1, 2011 magnetic resonance imaging (MRI) scan report and opined that appellant suffered from neck pain with symptoms of cervical radiculopathy. He noted that she was doing well following the initial work injury until they rearranged her work area and she now experienced a substantial increase in symptoms, including swelling, spasm and tingling, which was indicative of cervical radiculitis.

In an April 5, 2013 work form, Dr. Ahuja indicated that appellant should remain off work until further notice. He noted that she had a flare-up of trapezius muscle pain.

By letters dated April 18, May 1, and 29, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish total disability beginning April 1, 2013. It requested additional medical evidence to establish that she was unable to work during those dates as a result of her accepted conditions of right shoulder and upper arm sprain. OWCP also requested a narrative medical report with an accurate history that demonstrated that appellant's cervical condition was related to her May 19, 2011 employment injury.

In an April 25, 2013 report, Dr. Ahuja related appellant's history of neck pain and symptoms of cervical radiculopathy following a March 19, 2011 employment injury. He noted that she was last examined in his office on April 4, 2013 after a sudden exacerbation of symptoms when her work space was rearranged. Upon examination, Dr. Ahuja observed swelling in her right hand. On motor examination, he reported good strength and tone in all major muscle groups at 5/5 bilaterally, with the exception of right hand grasp at 4/5. Deep tendon reflexes were 2+ and symmetric. Dr. Ahuja reported pain with cervical range of motion and to palpation over the paraspinal area and trapezius. He opined that appellant presented with neck pain and symptoms of cervical radiculopathy and radiculitis initially after her work injury. Dr. Ahuja related that she improved under a conservative course of treatment but had substantially increased symptoms, including swelling, spasm, and tingling, after her work area was rearranged. He recommended that appellant remain off work until her next office visit.

In a May 13, 2013 statement, appellant noted that her claim was accepted for a trapezius and upper shoulder condition. She related that after more health care she found out that she also had cervical spine issues due to her work and referred to Dr. Ahuja's March 1, 2013 report. Appellant stated that she had been off work since April 1, 2013 and had not yet received any disability compensation.

In a May 30, 2013 report, Dr. Ahuja reviewed appellant's history regarding her May 19, 2011 employment injury. He contended that he never suggested that her condition was merely a right trapezius muscle sprain. Dr. Ahuja reported that appellant had cervical spine disease and that often a muscular response and weakness in the arm was evidence of substantial cervical disc disease. He noted that Dr. Jack Alloy, a chiropractor, stated that it was possible that her cervical degeneration was related to repetitive bending and her work injury. Dr. Ahuja agreed that it was

more likely than not that appellant's repetitive job movements with over the head reaching caused her current pain. He explained that clinical examination findings demonstrated that she continued to have cervical disc disease with neck pain, cervical radiculopathy, and cervical radiculitis and noted that these conditions significantly worsened after the rearrangement of her office space. Dr. Ahuja concluded that the repetitive motion and obvious rearrangement of furniture showed unequivocally that this was the cause.

In a decision dated June 12, 2013, OWCP denied appellant's claim for disability compensation for the period April 1 to June 1, 2013. It found that the medical evidence submitted was insufficient to establish that appellant sustained a disabling cervical condition causally related to her accepted work conditions.

By letters received on June 18 and 24, 2013, counsel requested a telephone hearing.

In reports dated June 27 and September 16, 2013, Dr. Ahuja described appellant's neck and cervical radicular symptoms following a March 19, 2011 work-related injury and sudden exacerbation of these symptoms after her work space was rearranged. He noted her current complaints of pain in her right side, which started at her neck and radiated down to her right arm and into her right trapezium and pectoralis area. Upon examination, Dr. Ahuja observed that appellant was in obvious pain and that her right hand was swollen. Neurologic motor examination revealed good strength and tone in all major muscle groups at 5/5 with the exception of right hand grasp at 4/5. Appellant was able to heel, toe, and tandem walk without difficulty. Deep tendon reflexes were 2+ and symmetric. Dr. Ahuja also reported pain with cervical range of motion, more to the right than the left and pain to palpation over the paraspinal area and trapezius. In the September 16, 2013 report, he stated that appellant's neck pain and cervical radiculopathy symptoms initially began with a March 19, 2011 work injury. Dr. Ahuja explained that her condition was improving under a conservative course of treatment until her work area was rearranged from an ergonomically correct to an incorrect workstation. He noted that appellant now had notable swelling of the right and left trapezius.

On November 13, 2013 a telephone hearing was held.[3] Appellant related that in May 2011 she began to experience problems in her right shoulder. She was examined in the emergency room and diagnosed with strained trapezius and pectoral muscle of the right shoulder. Appellant explained that her conditions improved with physical therapy and time off from work. She described her duties as a file clerk. Appellant stated that her scanner was set up too high on her desk and that she conducted an upward and down repetitive motion eight hours a day. She noted that in July 2013 her department was moved to another floor and the set-up of her workstation was changed. Appellant explained that the scanner was placed on a cart above her head and her computer screen height was changed to a higher level. She soon thereafter experienced neck and back pain. Counsel noted that a November 1, 2011 MRI scan of her cervical spine demonstrated disc extrusion at C5-6 with severe bilateral foraminal stenosis, worse on the right side, with narrowing. He further noted that appellant's physician, Dr. Ahuja, provided an opinion that appellant's cervical disc disease with neck pain and cervical radiculopathy were related to her work activities. Counsel contended that there was sufficient

[3] On November 26, 2013 another telephone hearing was held regarding appellant's compensation claim for partial disability for the period March 25 to 28, 2013.

evidence to establish that the repetitive motion of appellant's work activities and the rearrangement of her furniture at work caused or contributed to her cervical conditions as well.

In a letter dated November 26, 2013, counsel requested that appellant's claim be expanded to include cervical disc degeneration and cervical disc extrusion at C5-6.

In a December 9, 2013 report, Dr. Ahuja related appellant's complaints of neck pain and cervical radicular symptoms to a March 19, 2011 work injury. He noted that her condition improved with conservative course of treatment but she developed substantially increased symptoms of cervical radiculitis after rearrangement of her work space. Upon examination, Dr. Ahuja observed good strength and tone in all major muscle groups in the upper and lower extremities. Cervical rotation was limited to 60 degrees to the right. Dr. Ahuja stated that diagnostic imaging revealed cervical disc disease at C5-6 and C6-7. He noted that the subjective and objective clinical findings found on examination correlated with nerve irritation at this level. Dr. Ahuja explained that a very common cause of a disc herniation was repetitive stress placed on the spine, especially over-exertion involving improper alignment or twisting of the back. A repetitive stress injury can also lead to nerve root irritation resultant in neuropathic pain symptoms and weakness. Dr. Ahuja opined that the diagnosed condition was "directly and approximately" the result of work factors. He stated that, due to appellant's disabling pain, ongoing radicular symptoms, and weakness, she should remain off work until proper treatment was obtained.

In a January 6, 2014 report, Dr. Ahuja noted that appellant was a current patient and that he had made several attempts to address her cervical radicular complaints. He stated that it would be appropriate for her to return to work once she underwent a current MRI scan of the cervical spine and four weeks of physical therapy.

In a January 7, 2014 report, Dr. Laura T. Brusky, a Board-certified family practitioner, stated that appellant was hospitalized on December 20, 2013 due to pneumonia, nausea, and vomiting. She reported that appellant developed ileus and gastroparesis, which was considered secondary to chronic narcotic use due to chronic neck pain secondary to the May 19, 2011 work injury. Dr. Brusky noted that appellant would need to be off work until February 17, 2014.

In a January 17, 2014 letter, the employing establishment alleged that Dr. Ahuja was not a credible examiner and requested that appellant's care be transferred to a reputable orthopedic physician as he was convicted of a federal felony in February 2013 and that his partner surrendered his medical license in December 2013. The employing establishment further pointed out that she had multiple nonwork-related hospitalizations and leaves from work due to nonwork-related conditions.

By decision dated January 30, 2014, an OWCP hearing representative denied modification of the June 12, 2013 denial decision. It found that the medical evidence was insufficient to establish that appellant sustained a work-related recurrence of disability beginning April 1, 2013.

In a letter received by OWCP on March 27, 2014, counsel requested reconsideration of the January 30, 2014 decision.

In reports dated February 17 and March 5, 2014, Dr. Ahuja stated that he had treated appellant for neck pain and cervical radicular symptoms related to a March 2011 work injury. He described the medical treatment she received and noted that she had returned to work full duty in 2012. Dr. Ahuja explained that appellant developed substantially increased symptoms of cervical radiculitis after rearrangement of her work space from an ergonomically correct to an incorrect setting that required overhead reaching. He stated that she remained off work because of her severe pain and disability and pointed out that her work-related disability had not been sufficiently addressed. Dr. Ahuja related appellant's current complaints and provided examination findings.

In a March 20, 2014 report, Dr. Brusky stated that appellant had been off work since April 25, 2013 due to severe trapezius muscle spasms. She described the medical treatment appellant would receive, including physical therapy. Dr. Brusky reported that appellant may return to work on May 19, 2014 if she responded well to treatment. Upon examination, she observed reduced range of motion of appellant's neck due to pain. Dr. Brusky diagnosed musclar neck spasms.

In a letter dated March 28, 2014, counsel noted that OWCP had recently authorized medical treatment for appellant's severe trapezius muscle spasms. He questioned how OWCP could authorize medical treatment but still deny her request for wage-loss compensation for her time off work. Counsel alleged that appellant's severe trapezius muscle spasms certainly kept her from working and appellant should receive total disability compensation.

In an April 25, 2014 return to work slip, Dr. Ahuja recommended that appellant remain off work until her next appointment for trapezius muscle spasm and right arm pain and weakness.

In a May 16, 2014 report, Dr. Brusky noted appellant's May 2011 employment injury. Upon examination, she observed antalgic and guarded gait and ambulation. Range of motion of the neck was reduced due to muscle spasms and upper thoracic back and neck pain. Dr. Brusky diagnosed cervicalgia and displacement of cervical intervertebral disc without myelopathy. She recommended that appellant remain off work until July 17, 2014.

By decision dated June 23, 2014, OWCP denied modification of the January 30, 2014 decision. It found that the medical evidence was insufficient to establish that appellant was disabled from April 1 to June 1, 2013 as a result of her accepted conditions.

## ***LEGAL PRECEDENT***

OWCP's 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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[4] This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such

[4] 20 C.F.R. § 10.5(x).

withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[5]

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform the limited-duty position. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty requirements.[6] This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the disabling condition is causally related to the employment injury. The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[7]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[9]

## ***ANALYSIS***

OWCP accepted that appellant sustained a right shoulder and right trapezius sprain as a result of her repetitive duties as a file clerk. Appellant stopped work on May 19, 2011 and returned to full duty on April 9, 2012. On April 1, 2013 she stopped work again. In various claim forms appellant requested disability compensation beginning April 1, 2013.

Appellant has not alleged a change in her light-duty job requirements. Instead, she attributed her recurrence of disability to a change in the nature and extent of her employment-related conditions. Appellant, therefore, must provide sufficient medical evidence to establish that she was disabled due to a worsening of her accepted work-related conditions. The Board finds that she has not met her burden of proof to establish her claim.

[5] *Id.*

[6] *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (January 2013).

[8] *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

Appellant submitted a number of reports and disability slips from Dr. Ahuja. The relevant reports are dated March 18, 2013 to April 25, 2014. In disability slips dated April 5, 2013 and April 25, 2014, Dr. Ahuja recommended that appellant remain off work until her next appointment due to trapezius muscle spasm and right arm pain and weakness. Although he excused appellant from work beginning April 1, 2013, he did not provide any explanation, based on objective medical findings and rationale, demonstrating how her current conditions were disabling and how any inability to work was a result of her accepted conditions. The Board has found that medical evidence that states a conclusion but does not offer any rationalized medical explanation is of limited probative value.[10]

In his March 18, 2013 report, Dr. Ahuja noted that appellant sustained a work-related injury on May 19, 2011. He conducted an examination and diagnosed cervical disc disease at C5-6 and C6-7. Dr. Ahuja opined that appellant's condition could be related to repetitive bending and her accepted work injury. In a May 30, 2013 report, he agreed with her chiropractor that her cervical degeneration was related to repetitive bending and her work injury. Dr. Ahuja stated that, it was "more likely than not" that appellant's repetitive job movements with reaching overhead caused her current pain. He explained that clinical examination findings demonstrated that she continued to have cervical disc disease with neck pain, cervical radiculopathy, and cervical radiculitis. Dr. Ahuja recommended that appellant remain off work until she received proper medical treatment.

The Board notes that Dr. Ahuja related appellant's history and provided findings on examination. He does not, however, attribute her inability to work to her accepted right shoulder and trapezius strain. Instead, Dr. Ahuja relates appellant's disability to a degenerative cervical condition, which is not a condition accepted by OWCP. As previously noted, a recurrence of disability means an inability to work after an employee has returned to work that is caused by a spontaneous change in a medical condition resulting from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[11] In this case, Dr. Ahuja attributes appellant's current symptoms to a cervical condition, which is a new injury. He does not discuss a worsening of her accepted right shoulder and trapezius condition or provide a well-rationalized medical opinion establishing a recurrence of total disability on April 1, 2013.[12]

Furthermore, Dr. Ahuja also appears to attribute appellant's current conditions to a rearrangement of her work space. In reports dated June 27, 2013 to March 5, 2014, he noted that she experienced a sudden exacerbation of her neck and cervical radicular symptoms after her work space was rearranged. Dr. Ahuja explained that appellant's initial neck pain and cervical radiculopathy symptoms improved with conservative treatment, but reported that she developed substantially increased symptoms of cervical radiculitis after rearrangement of her work space. He stated that due to her disabling pain, ongoing radicular symptoms, and weakness, she should remain off work until proper treatment was obtained. Although Dr. Ahuja mentions the May 19,

[10] *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[11] *Supra* note 4.

[12] *See D.B.*, Docket No. 13-717 (issued July 24, 2013).

2011 employment injury, he does not connect appellant's inability to work to the employment injury. On the contrary, he suggests that her current symptoms resulted from her work space being rearranged. Without a clear opinion relating appellant's inability to work to the accepted May 19, 2011 conditions, the Board finds that Dr. Ahuja's reports are insufficient to establish her recurrence of disability claim.

Appellant also submitted reports from Dr. Brusky. In the January 7, 2014 report, Dr. Brusky stated that appellant was examined in the hospital on December 20, 2013 due to pneumonia, nausea, and vomiting. In her March 20, 2014 report, she stated that appellant had been off work since April 25, 2013 due to severe trapezius muscle spasms. These reports are similarly insufficient to establish appellant's recurrence of disability claim as they do not provide any medical explanation regarding total disability beginning April 1, 2013 as a result of her accepted right shoulder and trapezius conditions. Likewise, Dr. Ali's April 3, 2013 disability note is also insufficient to establish her recurrence of disability claim as he provides no medical rationale explaining how she had not been able to work since April 1, 2013 because of her work-related conditions. These reports fail to provide a rationalized medical opinion explaining how appellant's right shoulder and trapezius sprain had worsened to the extent that she was unable to work beginning April 1, 2013.

Because appellant has not submitted sufficient medical evidence explaining how her disability beginning April 1, 2013 was causally related to her accepted employment injuries, as opposed to a new injury, the Board finds that she has not met her burden of proof to establish her recurrence claim. She failed to submit rationalized medical evidence establishing that her inability to work beginning April 1, 2013 was causally related to her accepted right shoulder and trapezius strain.[13]

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 did not meet her burden of proof to establish a recurrence of disability beginning April 1, 2013.

[13] Counsel requested that the accepted conditions be expanded to include cervical disc conditions due to the reconfiguration of OWCP. Insofar as he is alleging that new factors of employment caused appellant's cervical disc conditions, he may file a new claim for occupational disease.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the June 23, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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