

2012 the employing establishment indicated that when it questioned appellant why she did not immediately report the incident, she related that the pain occurred gradually.

In decisions dated March 30 and October 19, 2012, OWCP denied appellant's claim as the medical evidence was insufficient to establish that she sustained a diagnosed condition causally related to the identified work factors. Appellant requested reconsideration. On March 15, 2013 OWCP vacated its October 19, 2012 decision and accepted appellant's occupational disease claim. It determined that the medical evidence from Dr. Ranga C. Krishna, an attending Board-certified neurologist, established that appellant sustained right C5-6 radiculopathy and bilateral carpal tunnel syndrome due to the October 21, 2011 work injury.

In a report dated June 21, 2012, Dr. Krishna diagnosed a right radiculopathy from a cervical disc protrusion and bilateral carpal tunnel syndrome. He also noted that appellant had experienced pain in her lower back beginning in 2008. Dr. Krishna advised that she was totally disabled from her usual employment. He attributed appellant's condition to her work injury. The record contains similar progress reports from Dr. Krishna dated October 3, 2012 through August 27, 2013 diagnosing right cervical radiculopathy and bilateral carpal tunnel syndrome due to repetitive work duties and finding that she was disabled from work.

On August 20, 2013 appellant filed claims for compensation (CA-7 forms) beginning April 21 to May 4, 2012.

In a report of telephone call dated August 27, 2013, OWCP noted that appellant received compensation for four hours per day under another file number.

On September 9, 2013 appellant submitted chiropractic reports from Dr. Theodore Xenos dated 2012 and 2013.

Appellant underwent a functional capacity evaluation dated November 14, 2013 that showed that she was unable to perform sedentary employment.

In a progress report dated January 14, 2014, Dr. Krishna discussed appellant's history of neck pain on October 21, 2011 while processing mail. Her pain increased over time. Dr. Krishna stated, "[Appellant] stopped working on April 19, 2012 secondary to worsening symptoms resulting from repetitive movements such as overhead reaching and lifting which were her general duties as a letter carrier. She is unable to go back to work until further notice." He related, "There was no prior or new diagnostic testing to compare from testing mentioned above to confirm worsening symptoms. [Appellant's] subjective complaints and neurological examination correlate with symptomatology with worsening symptoms compared from initial examination and follow-up consultation that concluded for [her] to stop working as of April 19, 2012." Dr. Krishna submitted a similar progress report on February 18, 2014.

In a statement dated February 20, 2014, appellant indicated that her symptoms spontaneously increased. She worked limited duty until she sustained a recurrence of disability.

On February 20, 2014 appellant's counsel maintained that the employing establishment failed to submit her August 1, 2012 notice of recurrence of disability (Form CA-2a).² He submitted the first page of an August 1, 2012 notice of recurrence of disability alleging that she was unable to work beginning April 23, 2012 due to her accepted employment injury.³

In a progress reports dated June 24 and September 9, 2014, Dr. Krishna diagnosed right cervical radiculopathy and bilateral carpal tunnel syndrome.⁴ He related that appellant stopped work on April 19, 2012 due to increased symptoms as a result of repetitive motion at work. Dr. Krishan opined that she was totally disabled.⁵

On January 29, 2015 OWCP advised appellant that the evidence of record was currently insufficient to show that she sustained a recurrence of disability as the majority of the evidence was from a chiropractor and a chiropractic condition had not been accepted as employment related. It informed her of the limitations on chiropractors under FECA and requested a detailed report from a physician explaining the relationship between her disability and the accepted work injury.

Appellant submitted reports from Dr. Xenos dated December 29, 2014 and January 7 and 21 and February 4, 2015. Based on paraspinal studies he diagnosed, among other things, multiple vertebral subluxation complex cervical, lumbar and thoracic spines, and cervical ligament instability. Dr. Xenos concluded that appellant was totally disabled for work.

By decision dated March 3, 2015, OWCP found that appellant had not established that she sustained an employment-related recurrence of disability beginning April 23, 2012. It noted that she worked limited duty after her injury. OWCP determined that appellant had not established an increase in disability "because the medical evidence is from a chiropractor and we did not accept any chiropractic conditions arising out of the October 21, 2011 injury." It further found that she did not submit a factual response to its January 29, 2015 development letter.

On appeal counsel argues that OWCP did not consider her factual statements or the January 14, 2014 report from Dr. Krishna. He asserts that after three years OWCP has still not properly adjudicated the claim.

² By letter dated March 20, 2014, counsel again noted that the employing establishment had not submitted her notice of a recurrence of disability.

³ The Board notes that appellant's Form CA-7 claims for compensation and her Form CA-7 claim for a recurrence note different periods of disability.

⁴ On June 25, 2014 counsel again requested that OWCP adjudicate her claimed recurrence of disability on April 19, 2012.

⁵ An April 19, 2014 magnetic resonance imaging scan study revealed a central disc herniation at C5-6 and a disc bulge at C6-7 without stenosis. A September 22, 2014 nerve conduction study showed bilateral carpal tunnel syndrome and right C5-6 radiculopathy.

LEGAL PRECEDENT

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-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 such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁶

In determining whether a claimant has discharged his or her burden of proof and is entitled to compensation benefits, OWCP is required by its statute and regulation to make findings of fact. 5 U.S.C. § 8124(a) provides: “[OWCP] shall determine and make a finding of facts and make an award for or against payment of compensation.” OWCP regulations provide that its decision “shall contain findings of fact and a statement of reasons.”⁷ The decision should contain a discussion of the issues, requirements for entitlement, a background framework so that the reader can understand the issues at hand, a discussion of the relevant evidence, a basis for the decision, and a conclusion.⁸ OWCP procedures further specify that a final decision must provide clear reasoning which allows the claimant to “understand the precise defect of the claim and the kind of evidence which would overcome it.”⁹ Thus, a final decision must include findings of fact and a description of the basis for the findings so that the parties of interest will have a clear understanding of the reasoning behind the decision.¹⁰

ANALYSIS

The Board finds that the case is not in posture for decision. OWCP accepted that appellant sustained right radiculopathy at C5-6 and bilateral carpal tunnel syndrome due to factors of her federal employment. It is unclear, however, whether OWCP accepted a traumatic injury or an occupational disease.¹¹ Appellant filed an occupational disease claim, but attributed her condition to events occurring on October 21, 2011. In its March 15, 2013 acceptance, OWCP specified that the medical evidence showed that she sustained a diagnosed condition as a result of the October 21, 2011 work incident. It also indicated, however, that it was accepting an

⁶ *Richard A. Neidert*, 57 ECAB 474 (2006); *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁷ 20 C.F.R. § 10.126.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5(c) (February 2013).

⁹ *Id.*

¹⁰ *Paul M. Colosi*, 56 ECAB 294 (2005).

¹¹ A traumatic injury is defined as a “condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift.” 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.” 20 C.F.R. § 10.5(q).

occupational disease claim. On remand, OWCP should specify whether it accepted an occupational disease or traumatic injury.

Appellant worked limited duty until April 23, 2012, when she stopped work and did not return. She filed claims for compensation and a notice of recurrence of disability beginning April 2012 causally related to her accepted employment injury.

In its March 3, 2015 decision, OWCP found that the medical evidence was insufficient to show that appellant sustained an employment-related recurrence of disability. It determined that she had submitted evidence from a chiropractor in support of her alleged recurrence of disability.¹² Appellant, however, submitted numerous reports from Dr. Krishna dated June 2012 through September 2014 diagnosing employment-related radiculitis and bilateral carpal tunnel syndrome and finding that she was disabled from work. OWCP did not consider any of the medical reports from Dr. Krishna in reaching its March 3, 2015 decision.

It is a well-established principal that OWCP must make findings of fact and offer a statement of reasons in its final decisions.¹³ Section 8124(a) of FECA provides: OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.¹⁴ Section 10.126 of Title 20 of the Code of Federal Regulations provide: The decision shall contain findings of fact and a statement of reasons.¹⁵ The reasoning behind OWCP's evaluation of the evidence should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.¹⁶

Because OWCP failed to discuss or weigh the medical evidence from Dr. Krishna, it did not discharge its responsibility to provide appellant with a statement explaining the basis of the decision, and identify the evidence necessary to overcome the denial of her claim. The case, therefore, is returned to OWCP for a decision with findings of fact and an analysis of the existing medical evidence. OWCP should demonstrate from the record whether an employment-related recurrence of disability beginning April 23, 2012 was established.¹⁷ Following this and such other development as OWCP deems necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹² The Board notes that Dr. Xenos is not considered a physician under FECA as he did not diagnose spinal subluxations as demonstrated by x-rays to exist. *See* 5 U.S.C. § 8101(2) which defines physicians.

¹³ 20 C.F.R. § 10.126; *see also* *Z.B.*, Docket No. 12-1164 (issued December 14, 2012).

¹⁴ 5 U.S.C. § 8124(a).

¹⁵ 20 C.F.R. § 10.126; *see M.M.*, Docket No. 14-1166 (issued December 1, 2014); *Beverly Dukes*, 46 ECAB 1014 (1995).

¹⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5(c) (February 2013); *see also G.S.*, Docket No. 14-1933 (issued November 7, 2014).

¹⁷ *See L.C.*, Docket No. 15-437 (issued April 23, 2015); *B.G.*, Docket No. 14-439 (issued August 7, 2014).

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: July 20, 2015
Washington, DC

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

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

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