

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

J.N., Appellant

and

**INDEPENDENT AGENCIES, LIBRARY OF
CONGRESS, Washington, DC, Employer**

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**Docket No. 15-0348
Issued: June 23, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 24, 2014, appellant filed a timely appeal from a July 30, 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 over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish a recurrence of a medical condition causally related to her June 12, 1989 injury.

FACTUAL HISTORY

OWCP accepted that appellant sustained several injuries in the performance of duty on June 12, 1989 after falling from a chair. It accepted the claim for contusion of face, scalp, and

¹ 5 U.S.C. § 8101 *et seq.*

neck except the eyes, neck sprain, lumbar sprain, lumbar disc displacement without neuropathy, and thoracic or lumbosacral neuritis or radiculitis.²

On May 7, 2014 appellant filed a claim for a recurrence for medical treatment. She did not list a date of recurrence, but indicated that she stopped work in April 2002. Appellant noted that, after the original injury, she had restrictions of limited sitting and standing and could not stand the cold. She noted that she received medication. In response to how and when the recurrence happened, appellant stated, “it was not a recurrence it was continuous.” Melissa Greene-Thomas, a workers’ compensation program specialist with the employing establishment, stated that appellant retired in April 2002. She explained that she was not the specialist who had originally managed the claim and she did not have any information to support the claim since appellant’s separation from the employing establishment in 2002. Ms. Greene-Thomas advised that appellant argued that her claim was not for a recurrence. As appellant had last received medical care over a year earlier, she was informed by OWCP that her case had been closed and she needed to complete a new CA-2a. When appellant was asked about the gap in her medical care, she explained that there were some billing issues regarding treatments and medications with OWCP and that she started receiving treatment from her sister. She did not specify the type of treatment received.

Appellant had received treatment from Dr. Curtis L. Whitehair, a Board-certified psychiatrist, who treated her for complaints of low back pain and bilateral knee pain. She also had received physical therapy.

In a December 1, 2010 report, Dr. Whitehair had noted that appellant was last seen on September 29, 2010 and presented for follow up of low back pain which she had for several years. He indicated that appellant had not yet begun prescribed physical therapy, but was taking Ultram which was helping “significantly with her pain.” Dr. Whitehair advised that she only took it when her pain was severe. He advised that appellant’s symptoms of pain in the lumbar spine and bilateral sacroiliac joint area, and upper back region continued. Dr. Whitehair noted that she was currently not working.

The record was dormant until 2013. In a telephone call memorandum dated September 25, 2013, OWCP noted that appellant was seeking additional medical care. Appellant was advised that she must provide current medical evidence to relate the current condition to her original injury of June 12, 1989.

By letter dated May 22, 2014, OWCP advised appellant that it had received her claim for a recurrence for additional medical care of her accepted work-related conditions. It explained that according to the medical records on file, she last received medical care for her work-related condition on December 15, 2010. OWCP noted that it had not received any supporting documentation with her claim form. It requested copies of all medical records for her work-related condition from her date of discharge and the date of last medical care through the present, including all visit notes, treatment notes, diagnostic test results, *etc.*, to bring her claim up to date. OWCP also explained that a physician’s opinion was crucial to her claim and allotted

² OWCP denied appellant’s claim for total disability in a July 21, 2000 decision.

appellant 30 days within which to submit the requested information. It also provided her with a questionnaire to complete.

In a May 27, 2014 memorandum of telephone call, appellant requested clarification with regard to her claim for a recurrence.

On May 29, 2014 OWCP received a May 27, 2014 questionnaire from appellant. In the area when she was asked to describe how the recurrence happened, appellant filled in “N/A.” She explained that she did “not need additional care due to her original injury. It is the same injury.” Regarding the accepted work-related conditions, appellant explained that they were “present continuously. Living made the worse.” Appellant denied having any other injuries. She also explained that she did not know how to bridge the gap of time and outline the medical care she received for all periods of disability from work as she did not have copies of her records. Appellant also denied having any hobbies or activities.

By decision dated July 30, 2014, OWCP denied appellant’s claim for a recurrence. It noted that appellant last received medical care for her work-related condition on December 15, 2010 and that appellant had not submitted a current reasoned medical opinion evidence to establish that she required additional medical treatment due to a worsening of her accepted work-related June 12, 1989 employment injury.

LEGAL PRECEDENT

A recurrence of medical condition refers to a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original treatment or injury is not considered a “need for further medical treatment after release from treatment,” nor is an examination without treatment.³

An employee who claims a recurrence of medical condition has the burden of proof to establish causal relationship by the weight of substantial, reliable, and probative evidence. This burden requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the employee’s need for additional medical care is causally related to the accepted injury and supports that conclusion with sound medical reasoning.⁴

ANALYSIS

OWCP accepted, in 1989, contusions to the face, scalp, and neck, neck sprain, lumbar sprain, lumbar disc displacement without neuropathy, and thoracic or lumbosacral neuritis or radiculitis when she fell off her chair at work. On May 7, 2014 appellant filed a claim for a recurrence and claimed a need for additional medical care for her accepted work-related

³ 20 C.F.R. § 10.5(y).

⁴ *E.O.*, Docket No. 11-1099 (issued February 24, 2012); *J.B.*, Docket No. 11-1410 (issued January 5, 2012).

symptoms.⁵ By letter dated May 22, 2014, OWCP requested that appellant provide medical evidence to support her claim.

Appellant responded with a May 27, 2014 questionnaire indicating that her accepted conditions had been present continuously since her original injury. However, she failed to submit any medical opinion evidence to support her claim. The record contains medical evidence from Dr. Whitehair from late 2010 but no current medical evidence which addresses her need for medical treatment for her accepted condition. As noted, part of appellant's burden of proof requires that she furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the employee's need for additional medical care is causally related to the accepted injury and supports that conclusion with sound medical reasoning. Without any medical evidence supporting a need for continuing treatment of her accepted condition, OWCP has no medical basis on which to accept her claim for a recurrence of her medical condition.

Accordingly, the Board finds that appellant has not met her burden of proof to establish a recurrence of her June 12, 1989 employment injury requiring further medical treatment.

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 has not established a recurrence of disability causally related to her June 12, 1989 injury.

⁵ Appellant did not claim disability compensation. As noted, *infra*, she retired in April 2002.

ORDER

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

Issued: June 23, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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