United States Department of Labor
Employees' Compensation Appeals Board

D.P., Appellant	)	
and	)	**Docket No. 14-1256**
	)	**Issued: March 9, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Kearny, NJ, Employer	)	

Appearances:
James D. Muirhead, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 7, 2014 appellant filed a timely appeal from the February 27, 2014 Office of Workers' Compensation Programs' (OWCP) decision which denied modification of a prior decision denying her claim for a recurrence. 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.

ISSUE

The issue is whether appellant has established that she sustained a recurrence of disability on April 3, 2012 causally related to her August 1, 2008 injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 1, 2008 appellant, then a 52-year-old clerk, was injured when she fell onto a stack of mail trays on the floor, landing on her left shoulder and left leg in the performance of duty. She returned to light duty.

In an August 1, 2008 report, Dr. Damita L. Bryant, a Board-certified physiatrist, diagnosed bilateral knee/shin contusion and left shoulder strain.

On December 8, 2008 OWCP accepted the claim for left shoulder and upper arm sprain, bilateral knee contusion, and lower left leg contusion. On October 6, 2009 it accepted a September 21, 2009 recurrence. On August 21 and December 3, 2009 OWCP authorized a left knee arthroscopy. On April 21, 2011 it authorized right knee arthroscopy. OWCP also accepted a May 16, 2011 recurrence. Appellant returned to full-time full-duty work on October 4, 2011.

In a February 21, 2012 report, Dr. Thomas E. Helbig, a Board-certified orthopedic surgeon and appellant's treating physician,[2] noted that appellant had pain in both knees and reported that "when she had her original injury in 2008, she injured her left shoulder, and her left shoulder has been bothering her." He examined appellant and diagnosed post-traumatic arthritis in both knees; possible recurrent medial meniscal tear both knees; and left shoulder impingement syndrome and supraspinatus tendinitis. Dr. Helbig advised that he would consider repeat right knee arthroscopy but would not consider a repeat left knee arthroscopy due to significant joint space narrowing. In an April 3, 2012 treatment note, he noted that appellant was having a lot of left knee and left shoulder pain as well as right knee pain. Dr. Helbig examined appellant and diagnosed post-traumatic arthritis, both knees; possible recurrent medial meniscal tear, both knees; impingement syndrome and supraspinatus tendinitis, left shoulder. He recommended a left shoulder magnetic resonance imaging (MRI) scan. Dr. Helbig opined that "I do not feel she can work because of her injuries from her date of loss of August 1, 2008" and he noted taking her out of work until he next saw her. In an April 3, 2012 disability certificate, he advised that appellant was unable to work until further notice.

On April 6, 2012 appellant claimed a recurrence of disability beginning April 3, 2012. She indicated that she had severe pain in both knees and legs. Appellant noted that she saw her treating physician on April 3, 2012 and he indicated that she could not continue to work due to the same issue as the original injury of August 1, 2008.

By letters dated April 17 and May 24, 2012, OWCP advised appellant of the type of evidence needed to support her claim for a recurrence of disability.

In an April 24, 2012 treatment note, Dr. Helbig noted that appellant had left shoulder problems and some right shoulder pain. He noted that her knees were better since she was off work but still painful. The right shoulder had 165 degrees of forward flexion with mild pain, and the left shoulder was tender in the subacromial space with 135 degrees of forward flexion and abduction. Appellant had a positive impingement sign and negative drop sign. Dr. Helbig

[2] Dr. Helbig performed the left knee arthroscopy on September 21, 2009 and the right knee arthroscopy on May 16, 2011.

reviewed an April 12, 2012 MRI scan of the left shoulder and noted that it revealed rotator cuff tendinitis, full thickness tear of the supraspinatus tendon, bursitis, bursal cyst, and effusion. He diagnosed post-traumatic arthritis of both knees, possible recurrent medial meniscal tears of both knees and left shoulder impingement syndrome and rotator cuff tear. Dr. Helbig requested authorization for left shoulder arthroscopy and possible open rotator cuff repair. He advised that regarding her knees, appellant had improved but he was continuing to restrict her from work. Dr. Helbig opined that her prognosis for her long-term relief of symptoms if she continued working, even with surgery to the knees, was guarded or poor.

In a May 10, 2012 treatment note, Dr. Helbig explained that he saw appellant on April 9, 2009, with a history of knee surgery and including arthroscopic surgery to the left knee on July 21, 2009 and to the right knee on May 16, 2009. He noted that appellant was having pain and limited motion of the left shoulder. Dr. Helbig indicated that on appellant's last examination of April 24, 2012, he reviewed a left shoulder MRI scan that revealed rotator cuff tendinitis as well as full thickness supraspinatus tear. He recommended arthroscopic surgery with possible open repair. Dr. Helbig also recommended a home exercise program for the knees. He indicated that appellant was unable to work "due to the constellation of all these injuries from her work accident of 2008." Dr. Helbig noted that appellant had injuries to the left shoulder and both knees at work, which were accepted conditions. He opined that it "is obvious that the diagnoses for which I treated her for her left shoulder and both knees are related to the [August 1, 2008] incident." In a June 5, 2012 treatment note, Dr. Helbig noted appellant was having a lot of pain in both knees and the left shoulder. Appellant was tender diffusely about the left shoulder and both knees. She had good motion of the knees and limited left shoulder motion with pain on motion at any of these joints. Dr. Helbig prescribed Vicodin for pain relief and instructed appellant not to drive a vehicle. OWCP also received physical therapy notes from July 25 to October 3, 2011.

By decision dated July 3, 2012, OWCP denied appellant's claim for a recurrence of disability on April 3, 2012. It found that the medical evidence did not offer sufficient medical reasoning to support how her current condition, disability, or need for surgery was work related.

By letter dated July 9, 2012, appellant's representative requested a telephonic hearing, which was held on November 28, 2012.

Appellant and her attorney provided additional medical evidence. This included a July 17, 2012 report, in which Dr. Helbig noted that appellant had an injury to the left shoulder and had been under continuous treatment since the date of loss. He reiterated that an MRI scan revealed a torn left rotator cuff that required surgery and possible open rotator cuff repair. Dr. Helbig opined that these injuries were directly related to her August 1, 2008 injury and "treatment was medically indicated and causally related for surgery" that would be followed by at least 8 to 12 weeks of physical therapy. He requested that OWCP reconsider its decision. In a treatment note also dated July 17, 2012, Dr. Helbig stated that appellant was having "really severe symptoms" in the left shoulder and some pain in the right shoulder and both knees. The right shoulder was tender with 90 degrees of forward flexion and abduction; a positive impingement sign and a negative drop sign. Dr. Helbig diagnosed post-traumatic arthritis of both knees; possible recurring medial meniscus tears of both knees; and left shoulder impingement syndrome and rotator cuff tear. He opined that it was "really unclear to me how

this decision could be made in view of the fact that she has an accepted trauma to the left shoulder and an MRI scan showing a definite rotator cuff tear."

In a December 6, 2012 report, Dr. Helbig noted first seeing appellant on March 19, 2009, when she reported injuries to both knees and the left shoulder due to her August 1, 2008 injury. He explained that he had recommended arthroscopic surgery and possible open surgery for rotator cuff repair of the left shoulder and had been informed that the left shoulder injury was accepted as an injury from August 1, 2008, although the surgery had been denied. Dr. Helbig recommended arthroscopic surgery and possible open surgery for rotator cuff repair of the left shoulder. He noted that despite appellant's left shoulder injury being accepted as an injury from the date of loss of August 1, 2008, his request for surgery was denied. Dr. Helbig indicated that when appellant was first evaluated in 2009 and then over the several years, she had such problems with her knees, which required arthroscopic surgery, that the left shoulder "took a back seat" to the knee problems. He explained that her left shoulder was "persistently painful" and first noted when she was first seen in this office in early 2009. Dr. Helbig restated that an MRI scan showed a clear rotator cuff tear, which required surgery, and reiterated, "in my opinion, directly related to the date of loss of August 1, 2008." In a December 18, 2012 treatment note, he advised that appellant remained symptomatic and noted that she was awaiting a determination as to whether "her left shoulder problem which, in my opinion, is clearly related to her workers' comp[ensation] injury will be accepted by workers' comp[ensation]." Dr. Helbig noted examination findings and his treatment.

By decision dated February 5, 2013, OWCP hearing representative affirmed the July 3, 2012 OWCP decision.

By letter dated March 25, 2013, appellant's attorney requested reconsideration and submitted medical evidence. In a February 5, 2013 report, Dr. Helbig noted appellant's continuing knee and left shoulder symptoms, examination findings, and treatment options. He diagnosed torn left rotator cuff and injected appellant's left shoulder in the subacromial space. Dr. Helbig advised that he would see her as needed. On February 28, 2013 he noted that she had recurrent meniscal tears of both knees that required arthroscopic surgery as a direct result of the August 1, 2008 injury. Dr. Helbig also found significant arthritis which his September 21, 2009 left knee operative report listed as moderate to moderately severe osteoarthritis, that he opined "was aggravated directly by the incident of August 1, 2008 due to the need for meniscal surgery that was directly related to the injury of August 1, 2008." He continued submitting reports noting appellant's status.

OWCP also received a February 13, 2012 right knee MRI scan report from by Dr. James H. Brown, a diagnostic radiologist, which showed mild-to-moderate anterior cruciate ligament sprain; mild to moderate medical compartment arthrosis, small medial patellar facet cartilage fissure; a small to medium size full thickness tear of the medial meniscus body; and mild popliteus tendinitis. A left knee MRI scan report of the same date, from Dr. Brown, revealed moderate anterior cruciate ligament sprain; and a small partial thickness radial tear of the medial meniscus posterior horn.

In an October 2, 2013 decision, OWCP denied modification of its prior decision. It found that the evidence did not provide a reasoned medical explanation of how the current conditions, extended disability, or need for surgery were causally related to the August 1, 2008 injury.

On December 5, 2013 appellant's counsel requested reconsideration and submitted additional evidence. In a November 5, 2013 report, Dr. Helbig advised that appellant was "under his continuous care for her knees from the date of injury of 2008 and has persistent pain and disability which are directly causally related to her work injuries." He indicated that she had "arthroscopic surgery of the knees and had progressive pain consistent with both possible recurrent meniscal tears and post-traumatic arthritis which are directly causally related to the date of loss of 2008." Dr. Helbig explained that, when a meniscus was torn, it required arthroscopic surgery, and "this sets up for post-traumatic arthritis as a natural course of events from the injuries." He opined that the left shoulder also "requires treatment for a rotator cuff tear that I have detailed numerous times, directly, in my opinion based on her history, related to the 2008 accident." In treatment notes dated November 5, 2013, Dr. Helbig advised that appellant's left shoulder was giving her a lot of pain again and her claim was again denied. He explained that appellant was expecting to get disability retirement health benefits within the next one to two months. Dr. Helbig examined appellant, reported findings, and diagnosed torn left rotator cuff. He opined that she "could benefit from surgery to repair the rotator cuff." OWCP also received a November 24, 2009 request for physical therapy.

By decision dated February 27, 2014, OWCP denied modification of its prior decisions.

LEGAL PRECEDENT

Section 10.5(x) of OWCP's regulations provide that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[3]

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.[4] Where no such rationale is present, the medical evidence is of diminished probative value.[5]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of

[3] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

[4] *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

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

employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.[6]

ANALYSIS

OWCP accepted appellant's claim for left shoulder and upper arm sprain, bilateral knee contusions, and contusion of the lower left leg. On October 6, 2009 OWCP accepted a September 21, 2009 recurrence. On August 21 and December 3, 2009 it authorized a left knee arthroscopy. On April 21, 2011 it authorized right knee arthroscopy. OWCP also accepted a May 16, 2011 recurrence. Appellant returned to full-time full-duty regular work on October 4, 2011. She returned to regular duty on October 4, 2011. On April 6, 2012 appellant claimed a recurrence of total disability beginning April 3, 2012.

Appellant provided multiple reports from Dr. Helbig. On November 5, 2013 Dr. Helbig noted "his continuous care" for her knees since her 2008 work injury and her "persistent pain and disability which are directly causally related to her work injuries." Appellant had arthroscopic knee surgery and "progressive pain consistent with both possible recurrent meniscal tears and post-traumatic arthritis which are directly causally related to the date of loss of 2008." Dr. Helbig stated that, when a meniscus was torn, it required arthroscopic surgery, and "this sets up for post-traumatic arthritis as a natural course of events from the injuries." He opined that the left shoulder also required treatment for a rotator cuff tear that was "based on her history, related to the 2008 accident." On May 10, 2012 Dr. Helbig opined that appellant was unable to work "due to the constellation of all these injuries from her work accident of 2008." He noted that she had accepted injuries to the left arm and both knees. Dr. Helbig stated that it "is obvious that the diagnoses for which I treated her for her left shoulder and both knees are related to the August 1, 2008 incident." On July 17, 2012 he noted that appellant's torn left rotator cuff and need for surgery were directly related to her August 1, 2008 injury and he questioned OWCP's denial of the recurrence claim, finding it "really unclear … how this decision could be made in view of the fact that she has an accepted trauma to the left shoulder and an MRI scan showing a definite rotator cuff tear." However, Dr. Helbig did not explain how these conditions such as a torn rotator cuff, would be related to the original injury, which was only accepted for a left shoulder and upper arm sprain; bilateral knee contusion, and contusion of the lower left leg.[7] While OWCP authorized knee surgery in 2009 and 2011, the mere fact that OWCP authorized and paid for medical treatment does not establish that the condition for which the employee received treatment was employment related.[8] Dr. Helbig did not provide a well-reasoned medical opinion to explain how the August 1, 2008 work injury caused or aggravated these conditions such that appellant had a recurrence of disability on April 3, 2012. While he states that the causal

[6] *Walter D. Morehead*, 31 ECAB 188 (1986).

[7] The Board notes that Dr. Bryant's initial August 1, 2008 treatment note only supports knee contusions and a left shoulder strain. *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (for conditions not accepted by OWCP as being work related, it is appellant's burden to provide rationalized medical evidence sufficient to establish causal relationship).

[8] *See Gary L. Whitmore*, 43 ECAB 441 (1992); *James F. Aue*, 25 ECAB 151 (1974).

relationship is "obvious," he fails to explain how the recurrence of disability was causally related to her accepted conditions.[9]

Other reports from Dr. Helbig which support causal relationship are also insufficient to establish the claimed recurrence of disability. On December 6, 2012 he indicated that appellant's left shoulder condition had initially taken "a back seat" to her knee problems even though her left shoulder was "persistently painful" since he first saw her in early 2009. Dr. Helbig advised that her rotator cuff tear, which required surgery, was "directly related" to the August 1, 2008 injury. On December 18, 2012 he advised that appellant's knee and left shoulder symptoms were "clearly related to her workers comp[ensation] injury." On February 28, 2013 Dr. Helbig noted that appellant had recurrent meniscal tears of both knees that were a direct result of the August 1, 2008 injury, and that her left knee osteoarthritis resulted from her meniscal surgery that was related to the August 1, 2008 injury. In his April 3, 2012 report, he opined that appellant could not work because of her injuries from August 1, 2008. However, these reports are of limited probative value without further rationale to explain how appellant had a spontaneous change in her accepted conditions resulting in a recurrence of disability on April 3, 2012. The need for reasoning is particularly important as appellant returned to full duty on October 4, 2011. There is no reasoned explanation to support the physician's conclusion as to how any of the current diagnosed conditions are causally related to the accepted August 1, 2008 injury.

Additional reports from Dr. Helbig as well as reports of other physicians, are not sufficient to establish the claim as they did not specifically address whether appellant's condition or disability was attributable to her August 1, 2008 injury.[10] OWCP also received physical therapy records. However, records from a physical therapist do not constitute competent medical opinion with regard to causal relationship as a physical therapist is not a physician as defined under FECA.[11]

Accordingly, the Board finds that appellant has not met her burden of proof as she has not submitted sufficiently reasoned medical opinion explaining why her recurrence of disability beginning April 3, 2012 was caused or aggravated by the August 1, 2008 employment injury.

On appeal appellant's attorney argued that appellant had provided sufficient evidence to support referral to an OWCP medical adviser. He noted that the November 5, 2013 report of Dr. Helbig supported the recurrence and need for treatment. However, as noted above, the Board found that Dr. Helbig provided insufficient medical reasoning to explain his conclusion on causal relationship.

Appellant may submit evidence or argument with a written request for reconsideration 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.

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[9] *See T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[10] *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[11] *A.C.*, Docket No. 08-1453 (issued November 18, 2008); *see* 5 U.S.C. § 8101(2).

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability on April 3, 2012 causally related to her August 1, 2008 injury.

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 2015
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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