

FACTUAL HISTORY

On January 29, 2012 appellant, then a 42-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that as a result of repeated movement and heavy lifting at work, she suffered upper back, shoulder, and neck pain. OWCP accepted her claim for cervical strain; temporary aggravation displacement of cervical intervertebral disc without myelopathy; and temporary aggravation degeneration of cervical intervertebral disc. Appellant stopped work on January 21, 2012, returned to modified work on February 20, 2012, and then stopped work again intermittently. OWCP paid wage-loss benefits.

Appellant received continued treatment from Dr. William C. Kim, a Board-certified orthopedic surgeon, who provided treatment for employment-related disc bulges of the cervical spine and cervical spine strain.

OWCP referred appellant to Dr. Richard Rogachefsky, a Board-certified orthopedic surgeon, for a second opinion regarding the extent of her work injury. In a July 9, 2012 report, Dr. Rogachefsky diagnosed cervical strain and noted objective findings of tenderness to palpitation to the cervical region and bulging disc at C5-6 and C6-7. He noted that appellant's work duties temporarily aggravated the preexisting conditions of bulging disc of the cervical spine and cervical strain. Dr. Rogachefsky opined that the aggravation should cease within six to nine months.

In a report dated January 25, 2013, Dr. Moshe H. Wilker, a Board-certified orthopedic surgeon, related that when he evaluated appellant on December 14, 2012 he had recommended C5 through C7 anterior cervical decompression and fusion because he had believed that she had failed conservative treatment with epidural injections. However, he had now learned that she had received trigger point injections, not epidurals. Dr. Wilker therefore recommended that appellant undergo epidural injection from C5 through C7.

OWCP declared a conflict in medical opinion between Dr. Kim and Dr. Rogachefsky who referred appellant for an impartial medical examination with Dr. Robert Fenton, a Board-certified orthopedic surgeon. Dr. Fenton was to address all diagnoses, preexisting disability, whether her aggravation was temporary or permanent, whether she continued to suffer residuals, and her physical limitations. He examined appellant on April 15, 2013 and, in a report of the same date, reported degenerative disc disease at C4-5, C5-6, and C6-7, and to a lesser degree C7-T1, and small protrusions slightly to the right of the midline at C5-6 and C6-7, resulting in no significant severe stenosis. Dr. Fenton believed that her employment temporarily aggravated her cervical condition, but that it would be reasonable that she should have returned to work no later than September 2012. He noted that appellant had been employed for approximately six years and developed some moderate degenerative disc disease, but that this degenerative disc disease was not felt to be a byproduct of her employment. Rather, the discomforts were a byproduct of the natural aging process that were aggravated by her employment and would continue to be aggravated by her employment. Dr. Fenton did not believe that surgical intervention was warranted. He opined that appellant should return to active and gainful employment and be treated with a mild analgesic medication and anti-inflammatory and if she should develop true radicular complaints, reconsideration for surgical intervention would be reasonable. Dr. Fenton concluded that given an underlying degenerative disc disease of the cervical spine, repetitive

upward and downward gaze, and rotation of her head side to side would continue to result in aggravation of the neck discomforts, but in this particular case, it was treated conservatively, she should be capable of active and gainful employment without formal work restrictions given a reasonable level of motivation.

Appellant continued to receive medical treatment from Dr. Kim, and also received injections from Dr. Fabian A. Proano, a Board-certified anesthesiologist. Dr. Kim first noted pain in her lumbar spine in his January 7, 2014 progress report. In a January 9, 2014 report, Dr. Proano also noted thoracolumbar back pain in addition to appellant's cervical diagnoses. On that date, he ordered physical therapy for her back, two times a week for four weeks.

Appellant submitted physical therapy notes indicating that she received treatment on February 4, 13, and 27, 2014 as well as March 6, 13, and 18, 2014. The diagnosis on the physical therapy summary was listed as lumbar/thoracic back pain.

On March 11, 2014 Dr. Proano treated appellant for C6-7 disc protrusion, cervicalgia and right cervical radiculitis, and persistent lower back pain with intermittent bilateral radicular pain. Appellant had a magnetic resonance imaging (MRI) scan of the lumbar spine on March 19, 2014. On March 27, 2014 Dr. Proano assessed her with L4-5 disc protrusion with spinal stenosis and facet arthropathy and lower back pain with bilateral lumbar radiculitis, and noted that he will proceed with an epidural injection. Appellant saw Dr. Kim on April 2, 2014 for treatment with regard to her neck and back pain. Dr. Kim indicated that she suffered from the same neck pain. On April 30, 2014 appellant had an authorized lumbar epidurography and lumbar epidural steroid injection, L4-5 by Dr. Proano.

On May 9, 2014 appellant submitted a claim for compensation for intermittent periods for medical appointments during the period February 4 through May 9, 2014. In an accompanying time analysis form, she listed time of eight hours each day on February 4 and 27 and March 6, 13, and 18, 2014 for physical therapy; eight hours for each day on February 13, March 11 and 27 and April 2, 2014 for doctor's visits; eight hours on March 19, 2014 for her MRI scan; and eight hours on April 30, 2014 for a surgical procedure. Appellant also listed eight hours for May 1 and 2, 2014 for "medical leave." The total hours requested were 104 hours. The employing establishment controverted the claim, as it noted that appellant worked from 17:00 hours until 01:75 hours, and that there is no evidence that appellant's doctor's appointments occurred during her working hours.

In a May 13, 2014 progress note, Dr. Proano noted that appellant had continuing pain across the lumbar region especially with prolonged standing. He recommended repeat facet injections of the bilateral L4-5 levels. Dr. Kim also continued to treat appellant for follow up on neck and back pain.

By letter dated May 21, 2014, OWCP requested that appellant provide further information with regard to her medical appointments. It noted that her workday did not commence until 5:00 pm, and therefore it was unclear why she needed time for appointments.

On June 23, 2014 appellant filed a claim for a recurrence of disability (Form CA-2a) as of May 27, 2014. She alleged that after returning to work on April 19, 2013 she was given

modified duty until limitations changed due to a surgical procedure. Appellant alleged that she had a surgical procedure for the original injury on April 30, 2014.

By letter dated July 11, 2014, OWCP requested that appellant submit further information with regard to her claim for a recurrence. New evidence submitted in response included a June 25, 2014 attending physician's report wherein Dr. Kim indicated that appellant had a cervical strain and that it was caused by her employment activity. Appellant submitted treatment notes from Dr. Kim for June 25 and July 14 and 23, 2014 noting treatment for low back pain and neck pain. Dr. Kim noted that appellant indicated that her low back pain had worsened. In the July 23, 2014 report, he diagnosed her with thoracic pain either primary or secondary to a lumbar spine condition and recommended a new MRI scan of the thoracic spine to see if there was any significant pathology at that level.

By decision dated August 12, 2014, OWCP denied appellant's claim for a recurrence of disability effective May 27, 2014. In a separate decision, also issued on August 12, 2014, OWCP denied her claim for intermittent periods of compensation between February 4 and May 2, 2014 for medical appointments.

LEGAL PRECEDENT -- ISSUE 1

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree of the period of disability or aid in lessening the amount of monthly compensation.²

An injured employee may be entitled to compensation for lost wages incurred while obtaining authorized medical services.³ This includes the actual time spent obtaining the medical services and a reasonable time spent traveling to and from the medical provider's location.⁴ As a matter of practice, OWCP generally limits the amount of compensation to four hours with respect to routine medical appointments.⁵ However, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.⁶

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for cervical strain and temporary aggravation of a cervical disc condition.

² 5 U.S.C. § 8103.

³ *See id.* at § 8103(a); *Gayle L. Jackson*, 57 ECAB 546-48 (2006).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation of Claims*, Chapter 2.901.19a(1) (February 2013).

⁵ *Id.* at Chapter 2.901c.

⁶ *Id.*

Appellant requested compensation for medical appointments on intermittent dates between February 4 and May 2, 2014. She requested compensation for full eight-hour days for physical therapy appointments on February 4 and 27, 2014 and March 6, 13, and 18, 2014.⁷ However, the physical therapy was ordered for appellant's lower back pain and the physical therapy summary notes indicate that the medical diagnosis was lumbar/thoracic back pain an unaccepted condition. Accordingly, appellant is not entitled to compensation for her physical therapy appointments.

Appellant's MRI scan on March 19, 2014 was of her lumbar spine. The doctor's appointment on March 27, 2014 with Dr. Proano was also limited to treatment of her lumbar spine. Accordingly, these appointments are not to treat an accepted employment condition. Furthermore, appellant's request for eight hours of compensation on February 13, 2014 for a doctor's appointment and her request for compensation May 1 and 2, 2014 for the vague reason "medical leave" are unsupported by any medical record supporting the necessity of this leave or linking these days to treatment or recovery from any of her accepted medical conditions in her cervical spine.

The Board will not require OWCP to pay compensation in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.⁸ To do so, would essentially allow an employee to self-certify her disability and entitlement to compensation.⁹ OWCP's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof which includes the necessity of submitting supporting rationalized medical evidence.¹⁰ As she failed to prove that she received medical treatment for her accepted cervical conditions on the above dates, OWCP properly denied compensation.

Appellant also received treatment from Dr. Proano on March 11, 2014 for both cervical and lower back pain. She also received treatment from Dr. Kim for increased pain in her neck and back on April 2, 2014. However, appellant has not indicated what time of day these appointments occurred. She started her workday at 5:00 p.m. Even if appellant sought medical treatment on these days, she is not entitled to compensation for a medical appointment she attended during her off-duty time.¹¹ Accordingly, OWCP also properly denied compensation for these medical appointments.

⁷ The Board notes that OWCP generally limits time for medical examinations or treatment to four hours. *See D.A.*, Docket No. 13-634 (issued September 25, 2013).

⁸ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁹ *See William A. Archer*, 55 ECAB 674 (2004).

¹⁰ *J.B.*, Docket No. 14-993 (issued January 27, 2015).

¹¹ *T.M.*, Docket No. 13-2116 (issued May 2, 2014); *see supra* note 4 at Chapter 2.901.19a(2) (February 2013). Wage loss is payable only if the examination, testing, or treatment is provided on a day which is a scheduled workday, and during a scheduled tour of duty.

LEGAL PRECEDENT -- ISSUE 2

OWCP's definition of 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. The term also means the inability to work that takes place 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.¹²

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 establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish a recurrence of total disability and that she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹³ To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a rationalized medical opinion, based on a complete and accurate factual and medical history and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.¹⁴

ANALYSIS -- ISSUE 2

Appellant's claim was accepted for cervical conditions. She returned to limited-duty work for the employing establishment. On April 30, 2014 appellant had a lumbar epidurography and lumbar epidural steroid injection at L4-5.

Appellant contends that she sustained a recurrence of disability on May 27, 2014 due to the change in her medical condition brought about the April 30, 2014 L4-5 procedure. However, there is no indication in the record that her lower back condition was causally related to her accepted employment injury. Drs. Kim and Proano initially provided treatment for appellant's cervical condition, not a lumbar condition. OWCP referred her to Dr. Rogachefsky for a second opinion, and in a July 9, 2012 report, he did not note any problems with her lumbar or thoracic back. It referred appellant to Dr. Fenton to resolve a conflict with regard to the status of her accepted cervical conditions. Dr. Fenton, in an April 15, 2013 report, discussed her degenerative disc disease at C4-5, C5-6, C6-7, and C7-T1. However, he did not note any problems with appellant's lumbar or thoracic spine. Dr. Kim first noted pain in her lumbar spine in his January 7, 2014 report.

Dr. Proano first noted thoracolumbar back pain in addition to appellant's cervical diagnosis in his January 9, 2014 report. There is no indication in either of these reports that her

¹² See *John I. Echols*, 53 ECAB 481 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹³ *P.A.*, Docket No. 10-1225 (issued April 20, 2011); *Maurissa Mack*, 50 ECAB 498 (1999).

¹⁴ *Vanessa Young*, 55 ECAB 575 (2004).

lower back injuries were a result of her accepted conditions of sprain of the neck, temporary aggravation displacement of cervical intervertebral disc without myelopathy, or temporary aggravation of degeneration of cervical intervertebral disc.

Appellant must submit a rationalized medical opinion addressing the causal relationship between her lower back condition that necessitated the April 30, 2014 lumbar epidurography and lumbar epidural steroid injection at L4-5. While OWCP authorized payment for this condition, this does not itself establish that the condition is employment related.¹⁵ The Board has held that OWCP's gratuitous payment of a medical bill, without more, does not constitute formal acceptance of a claim for injury.¹⁶

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there was a causal relationship between her condition and her employment.¹⁷ As appellant has not submitted a rationalized medical opinion addressing such causal relationship, the Board finds that OWCP properly denied her claim for a recurrence.

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 failed to establish that she was entitled to disability compensation for intermittent hours from February 4 through May 2, 2014 while she attended medical and physical therapy appointments. The Board further finds that she failed to establish a recurrence of disability on May 27, 2014 causally related to her accepted injury.

¹⁵ See *Glen E. Shriner*, 53 ECAB 165, 169 (2001); *R.C.*, Docket No. 15-315 (issued May 4, 2015).

¹⁶ See *M.C.*, Docket No. 12-64 (issued May 10, 2012); *Gary L. Whitmore*, 43 ECAB 441 (1993) (where the Board found that payment of compensation by OWCP does not in and of itself, constitute acceptance of a particular condition or disability in absence of evidence from OWCP indicating that a particular condition or disability has been accepted as work related).

¹⁷ *Patricia J. Glenn*, 53 ECAB 159, 160 (2001).

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 4, 2015
Washington, DC

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

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

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