United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 15-1852**
	)	**Issued: January 15, 2016**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Roseburg, OR, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 9, 2015 appellant filed a timely appeal from an April 10, 2015 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.

ISSUE

The issue is whether appellant met her burden of proof to establish disability from January 9 to May 30, 2012 due to her accepted work condition.

FACTUAL HISTORY

On March 28, 2011 appellant, then a 49-year-old voluntary services assistant, filed an occupational disease claim (Form CA-2) alleging that as of November 15, 2010 she developed a work-related cervical disc condition at C3-4 due to the repetitive motions of answering the

[1] 5 U.S.C. § 8101 *et seq.*

telephone and holding it between her head and shoulder while typing on a computer keyboard. She stopped work on February 18, 2011.

OWCP accepted appellant's claim for displacement of cervical intervertebral disc at C3-4 without myelopathy.

On March 4, 2011 appellant underwent OWCP-authorized anterior cervical discectomy and fusion at C3-4.[2] She stopped work around the time of the surgery and returned to work on May 9, 2011 for four hours per day.[3]

The findings of a December 29, 2011 magnetic resonance imaging (MRI) scan of appellant's cervical spine contained an impression of expected postoperative changes at C3-4 and no disc bulge or stenosis at any level.

In a report dated January 6, 2012, Dr. Layne S. Jorgensen, an attending osteopath and Board-certified family practitioner, noted that appellant had significant postoperative complications, including complaints of headache and cervical radiculopathy. He indicated that examination revealed a well-healed neck scar, cervical spasm, limited cervical range of motion, and some sensory deficit.

Appellant stopped work on January 9, 2012 and filed a claim for compensation (Form CA-7) alleging total disability from January 9 to February 6, 2012. She later submitted another Form CA-7 alleging total disability through May 30, 2012.

In a report dated January 10, 2012, Dr. Jorgensen placed appellant off work pending diagnostic evaluation.

A report of electromyogram (EMG) and nerve conduction velocity (NCV) tests conducted on January 10, 2012 contained an impression of no abnormality per the NCV test and mild denervation per the EMG test.[4] A January 16, 2012 computerized tomography (CT) scan of appellant's cervical spine provided an impression of good fusion and intact hardware.

In a report dated January 19, 2012, Dr. Carmina F. Angeles, an attending Board-certified neurosurgeon, indicated that appellant had healed well following her March 4, 2011 surgery.

[2] OWCP denied authorization for cervical surgery in early 2011 and, by decision dated September 25, 2012, rescinded its acceptance of appellant's claim for displacement of cervical intervertebral disc at C3-4 without myelopathy. In a November 25, 2013 decision, the Board reversed OWCP's rescission action. *M.W.*, Docket No. 13-1447 (issued November 25, 2013). On January 5, 2014 OWCP reaccepted the claim for cervical intervertebral disc (herniated nucleus pulposus at C3-4) without myelopathy and retroactively authorized the March 4, 2011 cervical surgery.

[3] Appellant received disability compensation from April 22 to July 14, 2011 on the daily rolls.

[4] Dr. Jorgensen conducting the testing indicated that testing on the left side covering myotomes C3-T1 was rather unrevealing with the exception of mild denervation noted in the upper cervical paraspinal muscles. He indicated that this could be a sign of mild acute or ongoing upper cervical nerve root compromise or could be a postoperative phenomenon secondary to muscular disruption as part of the patient's surgical decompression. Dr. Jorgensen noted that there were no real readily accessible C3-4 muscles to examine outside of the cervical paraspinal region to clarify these findings.

She noted that the January 2012 EMG/NCV results were normal and that the MRI scan did not show significant stenosis.

In notes dated January 27 and February 3, 2012, Dr. Jorgensen continued appellant in an off-work status. In a note dated February 13, 2012, Dr. Angeles indicated that appellant was status post cervical fusion with recurrent neck pain and headaches. She advised that appellant "needs long-term nonsurgical management of neck pain [and] therefore is unable to work."

In a February 17, 2012 report, Dr. Jorgensen diagnosed cervical disc herniation, neuralgia, depression, and chronic pain syndrome. He noted that on examination appellant exhibited cervical spasm and limited range of motion. In a separate note dated February 17, 2012, Dr. Jorgensen reported that appellant required a prescription for Amrix because of her osteoarthritis, fibromyalgia, cervical disc herniation, chronic pain syndrome, rotator cuff tear, and neuropathy. He indicated that Amrix was required because Flexeril was not effective. In a report dated March 16, 2012, Dr. Jorgensen reported that appellant had an anxiety reaction to the prescribed medication of Buspar.

On March 28, 2012 Dr. Jorgensen noted that appellant could not return to work due to exacerbation of symptoms of lateral epicondylitis, radicular pain, and cervical degenerative disc disease related to her repetitive work duties at the employing establishment. He recommended that appellant seek disability retirement. In a report dated April 25, 2012, Dr. Jorgensen noted treatment for hypotension and tachycardia.

Effective September 8, 2012, appellant retired from the employing establishment on disability retirement.

In a letter dated June 24, 2014, OWCP requested that appellant submit additional medical evidence in support of her claim for total disability from January 9 to May 30, 2012.

Appellant submitted a report of a cervical spine MRI scan dated July 3, 2014 which contained an impression of multilevel degenerative disc disease and facet arthrosis compared with a December 29, 2011 study. In a report dated July 30, 2014, Dr. Jorgensen reported findings of decreased cervical range of motion, pain on palpation, and right shoulder spasm. He noted that stenosis and degenerative changes were seen on an MRI scan. Dr. Jorgensen diagnosed cervical spondylosis, radiculopathy, and pain syndrome and opined that, due to such conditions, appellant was unable to work.

In an August 15, 2014 decision, OWCP denied appellant's claim because she had failed to submit sufficient medical evidence to establish total disability from January 9 to May 30, 2012 due to her accepted work condition. It determined that appellant's attending physicians had not provided medical rationale to support their opinions on causal relationship.

Appellant requested a telephone hearing with an OWCP hearing representative. Prior to the hearing, appellant submitted additional medical records. In a report dated January 30, 2015, Dr. Gregory M. Phillips, an attending Board-certified physical medicine and rehabilitation physician, noted administering an epidural steroid injection to appellant. Appellant also submitted treatment notes of attending physician assistants, including a February 13, 2015 report in which cervical radiculopathy was diagnosed.

During the hearing held on March 2, 2015, appellant asserted that the diagnostic test results from January 2012 and the reports of Dr. Jorgensen and Dr. Angeles established that she had postoperative medical problems that disabled her from January 9 to May 30, 2012. She testified that she was still being treated by Dr. Jorgensen.

Appellant submitted a March 19, 2015 report in which Dr. Jorgensen noted that, between January and May 2012, she reported pain consistent with postoperative cervical radiculopathy. Dr. Jorgensen indicated that postsurgical MRI scan and CT tests showed good postoperative findings, while a NCV test showed mild abnormalities of the upper paraspinal muscles. He concluded that postoperative pain disabled appellant from work from January 9 to May 30, 2012.

In an April 10, 2015 decision, OWCP's hearing representative affirmed OWCP's August 15, 2014 decision denying appellant's claim for total disability from January 9 to May 30, 2012, finding that the evidence of record did not contain a rationalized medical opinion supporting such a work-related period of disability.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.[5] Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.[6] The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.[7] To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.[8]

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.[9]

ANALYSIS

OWCP accepted appellant's claim for cervical intervertebral disc (herniated nucleus pulposus at C3-4) without myelopathy. On March 4, 2011 appellant underwent OWCP-authorized anterior cervical discectomy and fusion at C3-4. She stopped work on January 9,

[5] *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

[6] *Id.*

[7] *See Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[8] *C.S.*, Docket No. 08-2218 (issued August 7, 2009).

[9] *Sandra D. Pruitt*, 57 ECAB 126 (2005).

2012 and alleged total disability from January 9 to May 30, 2012 due to her accepted work condition.

The Board finds that appellant failed to submit sufficient medical evidence to establish total disability from January 9 to May 30, 2012 due to her accepted work condition.

Appellant submitted reports of Dr. Jorgensen, an attending osteopath and Board-certified family practitioner, finding disability during the claimed period January 9 to May 30, 2012. In a report dated January 10, 2012, Dr. Jorgensen placed appellant off work pending diagnostic evaluation and, in notes dated January 27 and February 3, 2012, he continued appellant in an off-work status. However, these reports are of limited probative value as they do not contain an opinion that appellant's disability during that period was due to her accepted work condition, cervical intervertebral disc (herniated nucleus pulposus at C3-4) without myelopathy. The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[10]

In a report dated January 6, 2012, Dr. Jorgensen noted that appellant had significant postoperative complications, including complaints of headache and cervical radiculopathy. He indicated that examination revealed a well-healed neck scar, cervical spasm, limited cervical range of motion, and some sensory deficit. Although Dr. Jorgensen suggested that appellant had residuals related to the authorized March 4, 2011 neck surgery, he did not provide a clear opinion to this effect and the cause of the reported symptoms remained unclear. The Board notes that diagnostic testing after the surgery revealed essentially benign results. A January 16, 2012 CT scan of appellant's cervical spine provided an impression of good fusion and intact hardware. A report of EMG and NCV tests conducted on January 10, 2012 contained an impression of no abnormality per the NCV test and mild denervation per the EMG test. Dr. Jorgensen who conducted the test noted that the mild denervation finding was ambiguous in nature and that there were no real readily accessible C3-4 muscles to examine outside of the cervical paraspinal region to clarify this finding.

On March 28, 2012 Dr. Jorgensen noted that appellant could not return to work due to exacerbation of symptoms of lateral epicondylitis, radicular pain, and cervical degenerative disc disease related to her repetitive work duties at the employing establishment. This report is of limited probative value regarding appellant's claim for disability due to the accepted work injury, a C3-4 disc herniation, because none of the above-noted conditions have been accepted by OWCP and Dr. Jorgensen has not otherwise established that they were work related.[11]

In a March 19, 2015 report, Dr. Jorgensen noted that, between January and May 2012, appellant reported pain consistent with postoperative cervical radiculopathy. He indicated that postsurgical MRI scan and CT tests showed good postoperative findings, while an NCV test showed mild abnormalities of the upper paraspinal muscles. Dr. Jorgensen concluded that postoperative pain disabled appellant from work from January 9 to May 30, 2012. The Board has

[10] *See Charles H. Tomaszewski*, 39 ECAB 461 (1988).

[11] Dr. Jorgensen suggests that appellant sustained new injuries due to exposure to new employment factors, but his opinion is vague in this regard. It is unclear whether appellant has filed a claim for a new occupational disease. Dr. Jorgensen did not provide any notable discussion of appellant's work duties and his opinion lacks medical rationale in support of causal relationship between the observed conditions and work factors.

held that pain is a symptom and not a diagnosis.[12] Further, a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[13] Dr. Jorgensen did not explain how the limited objective findings he reported in January 2012 totally disabled appellant from regular telephone or computer work tasks.[14] Moreover, in other medical reports Dr. Jorgensen referenced additional medical conditions, including osteoarthritis, fibromyalgia, chronic pain syndrome, lateral epicondylitis, and rotator cuff tear that have not been accepted as related to work factors. He did not explain whether appellant's continuing medical problems were due to nonwork-related conditions or work-related conditions. Dr. Jorgensen's opinion on appellant's disability appears to be primarily based on appellant's own reported symptoms rather than objective findings related to the accepted work injury.[15]

In a report dated January 19, 2012, Dr. Angeles, an attending Board-certified neurosurgeon, indicated that appellant had healed well following her March 4, 2011 surgery. She noted that the January 2012 EMG/NCV results were normal and that the MRI scan did not show significant stenosis. In this report, Dr. Angeles did not provide an opinion that appellant sustained any disability from January 9 to May 30, 2012. In a note dated February 13, 2012, Dr. Angeles indicated that appellant was status post cervical fusion with recurrent neck pain and headaches and noted, "She needs long-term nonsurgical management of neck pain [and] therefore is unable to work." Dr. Angeles' report is of limited probative value on the relevant issue of this case because, although she reported that appellant had recurrent neck pain and headaches and was unable to work, she did not provide a clear opinion that these symptoms were work related.[16] Dr. Angeles did not provide a rationalized medical opinion that appellant had disability from January 9 to May 30, 2012 due to objective residuals of the accepted work injury.

Appellant also submitted treatment notes of attending physician assistants. However, under FECA, the report of a nonphysician, including a physician assistant, does not constitute probative medical evidence.[17]

On appeal appellant submitted copies of previously submitted medical reports and asserts that they establish work-related disability from January 9 to May 30, 2012. However, the Board has explained why these reports have failed to meet her burden of proof.

[12] *V.S.*, Docket No. 14-2028 (issued June 3, 2015).

[13] *C.M.*, Docket No. 14-88 (issued April 18, 2014).

[14] The Board notes that Dr. Jorgensen characterized the January 2012 NCV test findings as abnormal, but he did not acknowledge that the physician who conducted the test found the mild denervation result to be ambiguous in nature.

[15] In a report dated July 30, 2014, Dr. Jorgensen reported findings of decreased cervical range of motion, pain on palpation, and right shoulder spasm. He noted that stenosis and degenerative changes were seen on an MRI scan. Dr. Jorgensen diagnosed cervical spondylosis, radiculopathy, and pain syndrome and opined that, due to such conditions, appellant was unable to work. This report is of limited probative value on the relevant issue of this case because it does not relate to the claimed period of total disability, January 9 to May 30, 2012, and does not contain an opinion that appellant had disability due to her accepted work condition.

[16] *See supra* note 10.

[17] *L.L.*, Docket No. 13-829 (issued August 20, 2013).

For these reasons, the medical evidence of record does not establish appellant's claim for total disability from January 9 to May 30, 2012.

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 disability from January 9 to May 30, 2012 due to her accepted work condition.

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 15, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board