United States Department of Labor
Employees' Compensation Appeals Board

C.L., Appellant	)	
and	)	**Docket No. 16-0004**
	)	**Issued: June 14, 2016**
DEPARTMENT OF AGRICULTURE, FOOD, SAFETY & INSPECTION SERVICE, Long Beach, CA, Employer	)	

Appearances:
John S. Evangelisti, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 14, 2015 appellant, through counsel, filed a timely appeal from an April 24, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish a recurrence of disability on August 24, 2010, causally related to a March 7, 1983 employment injury.

[1] Appellant, through counsel, also timely requested oral argument before the Board, pursuant to 20 C.F.R. § 501.5(b). However, by letter dated December 14, 2015, appellant withdrew her request.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. In a May 3, 2007 decision, the Board affirmed OWCP's decision dated August 29, 2005.[3] The Board found that OWCP met its burden of proof to terminate wage-loss compensation and medical benefits, effective November 29, 2004. The Board also found that appellant did not establish that she had any continuing disability after November 29, 2004. The facts and history of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are set forth below.

On March 18, 1983 appellant, a 32-year-old food inspector filed a traumatic injury claim (Form CA-1) alleging that on March 7, 1983 she sustained an injury to her sternum when was examining a steer head. OWCP accepted the claim for strain and separation at costa sternal junction and paid appropriate compensation. Appellant stopped work on March 8, 1983.

Appellant continued to pursue her claim and, in a decision dated August 24, 2010, OWCP expanded appellant's claim to include sprain of the chondrosternal joint, left sternoclavicular joint strain, and left fifth, sixth and seventh rib fracture.[4]

Appellant was followed by Dr. Gary Okamura, a Board-certified orthopedist. On April 11, 2011 Dr. Okamura treated appellant for a left sternoclavicular joint anterior dislocation. He noted a March 15, 2011 MRI scan arthrogram showed tendinosis and evidence of a superior labral tear. Dr. Okamura diagnosed left shoulder **s**uperior labrum anterior posterior (SLAP) tear and partial versus full thickness rotator cuff tendon tear. He noted since appellant had a rib fracture in the sternoclavicular joint it was possible that she sustained shoulder injuries and he believed this was a workers' compensation injury. Dr. Okamura recommended surgery.

Appellant was also treated for neck, chest, and left shoulder pain by Dr. D. Scott McCaffrey, Board-certified in occupational medicine. In reports dated December 3, 2010 to March 1, 2011, she reported being a meat inspector and indicated that she was injured in four different workers' compensation accidents dating since 1983 that involved her left shoulder, left rib separation, and back. Appellant presented with neck and bilateral knee pain, aching left shoulder, pain radiating down the left arm, pain in the chest, and pain in the left rib region. Dr. McCaffrey noted findings of decreased cervical spine range of motion, significant right

[3] Docket No. 06-0810 (issued May 3, 2007), *petition for recon. denied* (issued November 26, 2007). This was developed under File No. xxxxxx472. Under File No. xxxxxx056 appellant injured her left shoulder at work on October 22, 1980. OWCP accepted for left shoulder girdle strain and left pectoralis major muscle strain. Appellant also filed a claim for an injury sustained in a fall at work on October 14, 1982, which OWCP accepted for multiple contusions of the ribs, File No. xxxxxx772. These claims were consolidated into the current claim before the Board File No. xxxxxx472.

[4] OWCP determined that there was a conflict of opinion between appellant's treating physician, Dr. Christopher Ryan, a treating Board-certified physiatrist, and Dr. Jeffrey J. Sabin, an OWCP referral physician examiner and Board-certified orthopedic surgeon, on this issue as to whether appellant had objective findings of chondrosternal sprain, chronic sprain of the acromioclavicular and sternoclavicular joints, and cervical sprain with cervical disc displacement and if so, whether these conditions were work related. To resolve the conflict OWCP referred appellant to Dr. Gabriel Ma, a Board-certified orthopedist, who issued a report dated May 24, 2010. Dr. Ma opined that the following conditions were causally related to appellant's employment injury: sprain of the chondrosternal joint, left sternoclavicular joint strain, and left 5th, 6th, and 7th rib fracture.

shoulder range of motion loss, left shoulder hypertrophy, and tenderness over the acromioclavicular (AC) joint. He diagnosed left shoulder sprain with persistent residuals, rule out internal derangement, acute and chronic costochondritis left greater than right, and left sternoclavicular joint sprain. Dr. McCaffrey noted that appellant's job status was unchanged, she continued to be significantly impaired, and activities of daily living were affected. He noted that appellant was off duty.

On January 25, 2011 Dr. McCaffrey released appellant to modified duty.

In a March 1, 2011 report, Dr. McCaffrey noted that appellant's activities were very restricted. On March 29 and April 26, 2011 he indicated that a left shoulder MRI scan revealed a labrum tear, rotator cuff tendinosis and mild degenerative changes. Dr. McCaffrey diagnosed left shoulder superior labrum tear, rotator cuff tendinosis, left sternoclavicular joint sprain, costochondritis and multiple broken ribs, a single rib nonunion, and chronic pain syndrome. He recommended acupuncture for chronic pain and left shoulder physical therapy. Dr. McCaffrey indicated that appellant's job status was unchanged. On July 14, 2011 he noted appellant's complaints of chronic shoulder, back, knee, foot, and chest pain. Appellant reported working light duty and noted her activities of daily living were affected. Dr. McCaffrey noted that appellant was scheduled for right shoulder surgery on July 20, 2011.[5] He noted that she was off duty.

On July 10, 2011 appellant submitted a Form CA-7 claim for compensation, for total disability for the period August 24, 2010 to July 10, 2011.

In a letter dated August 19, 2011, OWCP requested that appellant submit additional information to support her claim for compensation. It requested that she submit medical evidence establishing that total disability was due to the accepted conditions for the period claimed.

Appellant submitted reports from Dr. McCaffrey dated August 4 and 18, 2011, noting appellant's treatment for left shoulder, neck, back, and chest pain. Diagnoses included: left shoulder superior labrum tear and rotator cuff tendinosis, left sternoclavicular joint sprain, costochondritis, multiple broken ribs with a single rib nonunion, chronic pain syndrome, and history of breast cancer. Dr. McCaffrey noted that appellant recently had right shoulder surgery and was off duty.

Appellant submitted a September 16, 2011 report from Dr. Ryan who noted a history of appellant's injury and medical treatment. Dr. Ryan noted that he last saw appellant in 2005. He noted degenerative abnormality of the sternoclavicular joints, nonunion fracture of the sixth rib, abnormality in the AC joint, and arthritic sternoclavicular joint changes. Dr. Ryan indicated that appellant continued to have residual effects of her injury that occurred years ago which resulted in the sternoclavicular arthritic changes and the nonunion of the sixth rib fracture. He opined that to a reasonable degree of medical certainty, she remained disabled from the job of meat inspector. Dr. Ryan noted that appellant continued to have objective evidence of arthritis. He noted that as long as she stayed within her restrictions, which disabled her from the meat

[5] No report of this surgery is in the record. OWCP did not authorize the procedure.

inspector position, she would remain relatively asymptomatic. If appellant returned to her job, he opined that she would become more disabled.

On August 22, 2012 Dr. Okamura performed an authorized left shoulder arthroscopic SLAP repair, including decompression and extensive debridement of partial articular side of the rotator cuff tendon tear.

On October 12, 2012 appellant, through counsel, requested a status update on her Form CA-7, claim for compensation, for the period commencing on August 24, 2010.

On February 8, 2013 appellant was treated by Dr. Xuong K. Tang, an osteopath, for a left shoulder injury that occurred on March 7, 1983 which caused neck, midback, chest, left shoulder, clavicle, and bilateral knee pain. Dr. Tang noted that appellant's symptoms improved until she underwent bilateral mastectomies in July 2008 when she experienced pain in the lateral area of her left rib cage in the area of her former fractures. Appellant reported sternal pain since the surgery around the incisions of surgery. Dr. Tang noted findings of antalgic gait, restricted range of motion of the bilateral shoulders, lumbar spine and left hip, and tenderness over the fifth, sixth, and seventh rib. He diagnosed right rotator cuff repair, SLAP lesions, closed fracture of two ribs and left nonunion, cervical spondylosis without myelopathy and osteoarthrosis.

In a decision dated July 1, 2013, OWCP denied appellant's claim for compensation for temporary total disability and left shoulder surgery beginning August 22, 2012. It also advised that the authorization for the left shoulder SLAP was rescinded as the medical evidence of record did not demonstrate that the surgery and associated disability was causally related to the March 7, 1983 work injury.

In a letter dated July 2, 2013, OWCP informed appellant that no further action would be taken on the Form CA-7, claim for compensation, beginning August 24, 2010, based on the newly accepted conditions.

In a letter dated July 26, 2013, appellant requested that OWCP develop her claim and issue a decision on whether the newly accepted additional conditions resulted in disability. On September 11, 2013 she requested reconsideration of the July 1, 2013 OWCP decision. Appellant asserted that the surgery was improperly rescinded after it was performed.

On October 11, 2013 appellant requested that her claim be expanded to include Tietze's syndrome. She submitted a report from Dr. McCaffrey dated October 11, 2013 who noted that Tietze's syndrome was a chronic condition of recurrent inflammation of the costochondral joints associated with local swelling and it is the result of the initial dislocation and strain. In an October 14, 2011 report, Dr. McCaffrey opined that appellant's left shoulder structural multiple muscle, tendon, labral injuries were directly related to her work environment and the injury and injuries which occurred on March 7, 1983.

On December 5, 2013 OWCP vacated the decision dated July 1, 2013. It indicated that the expenses and the disability related to the August 22, 2012 surgery would be paid.[6]

[6] Appellant subsequently received wage-loss compensation beginning August 22, 2012.

OWCP, on January 10, 2014, requested that appellant submit additional information to support her claim, including medical evidence showing that the claimed disability was due to the accepted condition from August 24, 2010 to July 10, 2011.

Appellant submitted a January 14, 2014 report from Dr. McCaffrey who treated her for chronic left shoulder, neck, and chest/rib pain, causally related to the March 7, 1983 work injury. He noted appellant was status post arthroscopic repair on August 22, 2012. He repeated previous diagnoses and noted appellant was off duty. In February 11 and March 11, 2014 reports, Dr. McCaffrey noted that appellant reported being a meat inspector and that she was injured in four different work accidents involving her left shoulder, left rib separation, and back. He noted findings of decreased range of motion of the lumbar spine and significant range of motion loss in the left shoulder. Dr. McCaffrey diagnosed left rotator cuff, status post repair, left SLAP lesion, cervical spondylosis without myelopathy, primary localized osteoarthrosis of the lower leg and enthesopathy of the hip region, sleep disturbance, Tietze's disease and strain of the sternoclavicular joint, status post separation. He referred appellant to anesthesiology for nerve blocks and noted appellant was off duty.

Appellant submitted a form report dated February 19, 2014, prepared by Dr. Rosalyn Cheng, a Board-certified radiologist, who noted that appellant was injured on March 7, 1983 and sustained a partial tear of the rotator cuff and articular cartilage disorder of the left shoulder. Dr. Cheng noted that the accident did not result in disability from work. A February 6, 2014 MRI scan arthrogram of the left shoulder revealed evidence of prior labral repair, full thickness cartilage loss over the superior glenoid and humeral head, minimal articular sided fraying of the distal supraspinatus tendon, mild tendinosis of the long head bicipital tendon, and mild clavicular joint degenerative change.

On April 8, 2014 OWCP notified appellant that evidence of record indicated a possibility of a recurrence in her case beginning August 24, 2010. It noted that the August 29, 2005 termination of benefits and the August 24, 2010 acceptance of additional conditions, specifically, sprain of the chondrosternal joint, left sternoclavicular joint strain, and left fifth, sixth, and seventh rib fracture. OWCP noted that appellant's case remained open for medical treatment for these conditions. It requested that she respond to a questionnaire and submit additional medical evidence including treatment from August 10, 2005 to December 2, 2010.

On May 28, 2014 appellant asserted that she was unable to obtain medical treatment from August 5 to December 2, 2010 because her claim was in denied status. She submitted a copy of Dr. Ma's May 24, 2010 referee medical report. Dr. Ma opined that a chondrosternal sprain was suggested by appellant's subjective complaints of pain and tenderness to palpation over the left chondrosternal junction areas. She indicated that this condition would have essentially resolved in six to eight weeks. Dr. Ma did not find any current objective clinical findings that would relate chronic AC joint sprain to appellant's work injury. She noted that appellant had subjective complaints of pain and tenderness in the left sternoclavicular joint. Dr. Ma indicated that objective findings of a strain of the left sternoclavicular joint could be found on the CT scan which revealed slight arthritic changes consistent with previous injury. She opined that imaging studies of the chest were consistent with previous fracture of the left fifth, sixth, and seventh ribs with solid healing of the fifth and seventh ribs and residual nonunion of the sixth rib.

In a decision dated August 5, 2014, OWCP denied appellant's claim for a recurrence, finding that the evidence was insufficient to establish that she was disabled due to a material change or worsening of appellant's accepted work-related conditions.

On September 2, 2014 appellant's counsel requested an oral hearing which was held before an OWCP hearing representative on March 9, 2015. Appellant submitted a July 25, 2014 report from Dr. Okamura who noted that appellant was status post left shoulder SLAP repair. Dr. Okarmura advised that a February 6, 2014 MRI scan revealed some sonic postoperative surgical changes involving the superior labrum but no obvious retear. He noted restricted range of motion of the left shoulder, slightly positive impingement signs, and good rotator cuff strength. Dr. Okarmura diagnosed status-post left shoulder SLAP repair and debridement partial rotator cuff tear with a mild frozen shoulder. He provided a steroid injection.

In September 8, 2014 and January 22, 2015 reports, Dr. McCaffrey treated appellant for increasing left shoulder pain. He diagnosed left rotator cuff, status post repair, superior glenoid labrum lesions (SLAP), left, cervical spondylosis without myelopathy, and primary localized osteoarthrosis of the lower leg. Dr. McCaffrey noted that appellant was off duty. On September 15 and December 5, 2014 he prescribed physical therapy.

Appellant submitted reports from Dr. Xuong Tang, dated August 11 and October 27, 2014, who noted a history of appellant's work injury and treated her for increasing left shoulder pain. Dr. Tang diagnosed left rotator cuff, status post repair, superior glenoid labrum lesions (SLAP), left, cervical spondylosis without myelopathy, and primary localized osteoarthrosis of the lower leg. He noted appellant was off duty.

Appellant was treated by Dr. Margaret Irish, an osteopath, on November 25, 2014 and Dr. Carl Hodel, an osteopath, on December 23, 2014, for shoulder and chest pain. The physicians noted diagnoses and indicated appellant was off duty.

On February 19 and March 19, 2015 appellant was treated by Dr. Fred J. Brenner, Board-certified in emergency medicine, for chronic left shoulder, neck and chest/rib pain. Dr. Brenner noted that appellant had left shoulder pain and decreased range of motion due to a rotator cuff injury and repair. He diagnosed rotator cuff, left shoulder status post repair, superior glenoid labrum lesions, left, cervical spondylosis without myelopathy, primary localized osteoarthrosis, lower leg, enthesopathy of hip region, sleep disturbance, Tietze's disease, sprain and strain of sternoclavicular (joint). Dr. Brenner noted appellant was off duty.

Appellant also provided reports from Dr. Ryan dated January 27, 1998 to March 27, 2015. In a report dated July 27, 1998, Dr. Ryan noted that appellant sustained an injury originally to her ribs and the articulation of the ribs with the sternum. Appellant had functional limitations and could not work as a meat inspector. Dr. Ryan opined that appellant would have difficulty being employed in any capacity. On January 11, 2002 he noted that she had an injury to the ribs articulation with the sternum and had significant functional limitation of the left shoulder girdle. Dr. Ryan diagnosed strain of the chondrosternal region, cervical sprain and chronic sprain of the acromioclavicular joint. He opined that appellant could not be gainfully employed and was totally disabled. In work capacity evaluations dated January 11, 2002 and November 5, 2003, Dr. Ryan diagnosed strain and separation of the costa sternal junction. He reiterated that appellant was disabled and noted restrictions on reaching, twisting, pushing, pulling, lifting, squatting, kneeling, and climbing. On November 5, 2003 Dr. Ryan

noted diagnoses and opined that the mechanism of injuries supported the diagnosed costochondritis as well as the sprain of the acromioclavicular and sternoclavicular joints. He repeated that appellant was disabled from employment. Similarly, in a report dated March 27, 2015, Dr. Ryan opined that appellant's ongoing pain and disability was the result of permanent injury resulting in permanent limitation of the use of her upper limb. He noted that increased activity did not promote increased functionality but more pain. Dr. Ryan noted that appellant continued to be disabled from her job as a meat inspector.

In a decision dated April 24, 2015, OWCP affirmed the decision dated August 5, 2014.

LEGAL PRECEDENT

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 resulted from a previous injury or illness without an intervening injury or a new exposure to the work environment.[7]

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative, and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury.[8] This burden includes the necessity of 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 supports that conclusion with sound medical reasoning.[9] An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on an appellant's unsupported belief of causal relation.[10]

ANALYSIS

OWCP originally accepted appellant's claim for strain and separation at costa sternal junction, left shoulder girdle strain, left pectoralis major muscle strain, and multiple contusion of the ribs. In a decision dated August 29, 2005, OWCP terminated appellant's benefits effective November 29, 2004. On May 3, 2007 the Board affirmed OWCP's termination of benefits. Subsequently, on August 24, 2010, OWCP expanded the claim to include sprain of the chondrosternal joint, left sternoclavicular joint strain, and left fifth, sixth, and seventh rib fracture. Thereafter, appellant submitted a Form CA-7, claim for compensation, for total disability for the period August 24, 2010 to July 10, 2011. OWCP developed appellant's claim as recurrence of disability claim. The Board finds that the medical record lacks a well-reasoned narrative from appellant's treating physicians relating appellant's claimed recurrent disability beginning August 24, 2010 to her employment injury that is currently accepted for

[7] 20 C.F.R. § 10.5(x).

[8] *Alfredo Rodriguez*, 47 ECAB 437 (1996); *see Dominic M. DeScala*, 37 ECAB 369 (1986).

[9] *See Nicolea Bruso*, 33 ECAB 1138 (1982).

[10] *Ausberto Guzman*, 25 ECAB 362 (1974).

chondrosternal joint sprain, left sternoclavicular joint strain, and left fifth, sixth, and seventh rib fracture.[11]

Appellant submitted a September 16, 2011 report from Dr. Ryan who noted that when he last saw appellant in 2005 she was disabled from her meat inspector job. Dr. Ryan noted appellant's diagnoses and advised that she still had residuals of the injury that resulted in the sternoclavicular arthritic changes and the nonunion of a sixth rib fracture. He opined that appellant remained disabled as a meat inspector job. Dr. Ryan noted that as long as appellant stays within her restrictions, which disabled her from being a meat inspector, she would remain relatively asymptomatic. However, if she returned to her job she would become more disabled. His restrictions on appellant's return to work are prophylactic in nature. Fear of future injury is not compensable under FECA.[12] In a March 27, 2015 report, Dr. Ryan opined that appellant's ongoing pain and disability was the result of permanent injury causing permanent limitation of the use of her upper limb. He noted that appellant remained disabled from her job as a meat inspector. However, Dr. Ryan did not specifically explain whether appellant sustained a recurrence of disability causally related to the accepted employment condition or otherwise provide medical reasoning explaining why any current condition or disability beginning August 24, 2010 is due to an accepted injury. Other reports from Dr. Ryan are of limited probative value as they predate the claimed period of disability.

Appellant submitted numerous reports from Dr. McCaffrey. In reports dated December 3, 2010 to March 1, 2011, she reported being a meat inspector who was injured in four different work accidents since 1983 that involved her left shoulder, a left rib separation, and her back. Dr. McCaffrey diagnosed left shoulder sprain with persistent residuals, possible internal derangement, acute and chronic costochondritis, and left sternoclavicular joint sprain. He noted that appellant was off duty. In reports dated March 29 to August 18, 2011, Dr. McCaffrey diagnosed left shoulder superior labrum tear, rotator cuff tendinosis, left sternoclavicular joint sprain, costochondritis and multiple broken ribs, a single rib nonunion and chronic pain syndrome. In a October 14, 2011 report, Dr. McCaffrey opined that appellant's left shoulder structural multiple muscle, tendon, labral injuries were directly related to her work environment and the injury and injuries which occurred on March 7, 1983. He indicated that appellant's job status was unchanged and she continued to be significantly impaired. However, Dr. McCaffrey did not specifically explain whether appellant's disability beginning August 24, 2010 was causally related to the accepted employment condition or otherwise provide medical reasoning explaining why any current condition or disability was due to the employment injury. Other reports from Dr. McCaffrey do not explain how appellant's disability beginning August 24, 2010 was causally related to the accepted conditions.[13]

Likewise, reports from other physicians of record do not specifically support that appellant sustained a recurrence of disability beginning August 24, 2010 causally related to the

[11] As noted, *supra* note 5, OWCP paid appellant wage-loss compensation beginning August 22, 2012. Thus, wage loss on and after that date are not at issue before the Board.

[12] *See Mary Geary*, 43 ECAB 300, 309 (1991); *Pat Lazzara*, 31 ECAB 1169, 1174 (1980) (finding that appellant's fear of a recurrence of disability upon return to work is not a basis for compensation).

[13] *See William A. Archer*, 55 ECAB 674 (2004) (the Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of claimed disability).

accepted conditions. These reports do not address how appellant had a spontaneous change in her accepted conditions beginning August 24, 2010 which caused disability.

On appeal appellant asserts that her work-related condition was chronic and continued to cause her disability. However, as found above, the medical evidence submitted does not contain a rationalized medical opinion explaining why her claimed recurrent condition or disability on August 24, 2010 was due to the March 7, 1983 work injury.

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 met her burden of proof to establish that she sustained a recurrence of disability causally related to her accepted condition.

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2015 Office of Workers' Compensation Programs' decision is affirmed.

Issued: June 14, 2016
Washington, DC

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

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

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