United States Department of Labor
Employees' Compensation Appeals Board

C.W., Appellant	)	
and	)	**Docket No. 16-1320**
	)	**Issued: March 23, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Portland, OR, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 June 13, 2016 appellant, through counsel, filed a timely appeal from an April 20, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 claim.

ISSUE

The issue is whether appellant met her burden of proof to establish a recurrence of her medical condition causally related to factors of her federal employment injury.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 27, 2010 appellant, then a 51-year-old expeditor, filed an occupational disease claim (Form CA-2) alleging that her right shoulder condition resulted from repetitive pushing, pulling, bending, twisting, and stretching associated with handling and placing mail trays. She first became aware of her condition on January 14, 2010. Appellant stopped work on January 13, 2010 and returned on February 8, 2010. OWCP accepted the claim for right shoulder strain and paid wage-loss compensation and medical benefits. In a July 13, 2010 decision, it denied appellant's claim for compensation for the period March 27 through April 23, 2010 as no contemporaneous evidence addressed a period of disability resulting from her accepted condition to cause a change in her work status during the claimed period of disability. The record reflects that she was released from medical care for her right shoulder condition on May 3, 2010. Appellant continued to experience neck symptoms and intermittent shoulder symptoms. She underwent cervical spine surgery on August 30, 2010.[3]

Appellant, on October 6, 2011, filed a claim for compensation (Form CA-7) for disability during the period September 30 to October 7, 2011. She indicated that she returned to work on October 10, 2011.

By decision dated December 19, 2011, OWCP denied that appellant sustained a recurrence of disability and compensation for time loss from work for the period September 30, 2011 onward. It found that there was no evidence of a change in the nature and extent of the physical findings related to the work injury and the medical evidence did not explain how her condition worsened. OWCP noted that appellant's medical benefits were not affected by the decision.

On December 27, 2011 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held March 21, 2012. By decision dated May 11, 2012, an OWCP hearing representative affirmed the December 19, 2011 decision.

Appellant retired from the employing establishment on January 31, 2013.

On March 29, 2013 appellant filed a claim for a schedule award (Form CA-7). By decision dated September 20, 2013, OWCP denied the claim for schedule award as the evidence of record was insufficient to establish that she sustained permanent impairment due to her accepted January 14, 2010 work injury. On September 27, 2013 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held on February 24, 2014. By decision dated March 28, 2014, an OWCP hearing representative affirmed the denial of the claim for a schedule award.

[3] Under File No. xxxxx692, date of injury March 20, 2010, appellant claimed that her cervical stenosis and cervical spine surgery of August 30, 2010 resulted from her employment. In a July 28, 2010 decision, OWCP denied her claim for compensation as the medical evidence of record in that claim did not demonstrate that the cervical stenosis condition was causally related to work factors. By decision dated December 23, 2010, an OWCP hearing representative affirmed that the medical evidence was insufficient to meet appellant's burden of proof that she sustained a cervical spine injury that was causally related to her federal employment. By decision dated December 5, 2011, the Board affirmed the denial to amend the claim for cervical stenosis. *See* Docket No. 11-947 (issued December 5, 2011).

On March 5, 2014 appellant began treatment with Dr. Paul Puziss, an orthopedic surgeon. In a report of the same date, Dr. Puziss noted appellant's history of her right shoulder condition and herniated neck discs. He noted that appellant had improved at least 50 percent in the two years postcervical fusion at C4-C7, but the fusions did not help her shoulder. Dr. Puziss noted that over the past 3.5 years, appellant has had intermittent trouble elevating her shoulder above horizontal. He provided examination findings and noted x-ray findings. A diagnosis of chronic right subacromial impingement, right rotator cuff tendinitis/tendinopathy, and possible right rotator cuff tear with possible subscapularis tear was provided. Dr. Puziss noted that appellant was diagnosed three to four years ago with tendinopathy by magnetic resonance imaging (MRI) scan and that she had not had an additional MRI scan since she retired on January 3, 2013. He indicated that it was possible she has a rotator cuff tear and ordered a new MRI scan. In a March 26, 2014 report, Dr. Puziss noted appellant's March 19, 2014 MRI scan which showed an anterosuperior labral tear and tendinopathy. Diagnoses of chronic right subacromial impingement, right rotator cuff tendinitis/tendinopathy, anterosuperior labral tear, and partial-thickness articular distal supraspinatus tear, possibly symptomatic were provided.

In an April 25, 2014 report, Dr. Puziss indicated that the recent MRI scan of March 19, 2014, which demonstrated a partial articular-side distal supraspinatus tear and tendinopathy, was worse than the results of the February 2, 2010 MRI scan. He noted that appellant continued to have pain in the right trapezius area even after her cervical fusion. Before appellant retired in 2013, Dr. Puziss indicated that she was patching mail, requiring constant reaching with the right shoulder, which increased her shoulder pain. He noted that her shoulder appeared to be stationary in 2013 since an impairment rating was provided. However, it has been demonstrated that appellant had pains intrinsically in the right shoulder and provided examination findings. Dr. Puziss diagnosed chronic right subacromial impingement; partial thickness articular-side right distal supraspinatus tear, likely symptomatic due to work; right rotator cuff tendinopathy and tendinitis, likely due to work activities, occupational disease; anterosuperior labral tear, somewhat symptomatic, work related; and history of healed C4-C5, C5-C6, and C6-C7 fusions August 2010. Dr. Puziss indicated that, since appellant does not have evidence of radiculopathy, it did not appear that her pain was emanating from the cervical spine. He opined that the chronic trapezius pain was more likely, in retrospect, due to the abnormal right shoulder biomechanics, *i.e.*, impingement, causing trapezius substitution to a mild, but persistent degree. Dr. Puziss requested that appellant's right shoulder claim be reopened for physical therapy of the shoulder, as her shoulder pain was not coming from her neck. He indicated that appellant was retired and was chronically partially disabled with regard to her right shoulder. In a May 9, 2014 report, Dr. Puziss requested that OWCP authorize physical therapy. He indicated that appellant's original cervical fusions were due to myelopathy and spinal stenosis and that the surgery did not help her shoulder.

On June 10, 2014 appellant filed a recurrence of disability claim (Form CA-2a) for medical treatment commencing March 5, 2014 stemming from her accepted January 14, 2010 injury. She indicated that she had returned to work in February 2010 with restrictions which continued until she retired. The employing establishment noted that appellant had two claims for a cervical condition, File Nos. xxxxxx692 and xxxxxx311, which OWCP had denied.

In a June 27, 2014 letter, OWCP acknowledged appellant's request for continued medical treatment due to her accepted right shoulder strain. It advised that for her to be entitled to

additional medical treatment after being released from care, or not receiving care for a significant period of time, she needed to provide evidence that her need for treatment was due to a worsening of the accepted medical condition without an intervening cause. OWCP noted that appellant was released from medical care for her work-related condition on May 3, 2010, and that all of the medical reports in her file from May 2010 regarded a cervical condition. It requested that she provide additional factual evidence along with copies of all medical records for the work-related right shoulder condition and a comprehensive, narrative medical report from her treating physician, which contained an opinion supported by medical rationale as to the relationship between her current medical condition and the need for treatment and the original injury. Appellant was afforded 30 days to submit the requested evidence.

In medical treatment notes dated May 22, July 27 and 30, November 21, December 13, 2012, and February 19, 2013, Dr. Prasanna R. Chandran, a family practitioner, noted appellant's right shoulder/trapezius symptoms, only the July 30, 2012 note diagnoses trapezius strain. Dr. Chandran also opined that appellant's lifting and pushing at work had aggravated her chronic pain and took her off work for a week.

In response to its letter, OWCP received appellant's July 27, 2014 statement. Appellant indicated that medical records since the initial injury to date continue to show decreased motion to the right shoulder and tightness and tenderness over the trapezius. She stated that unfortunately it was considered radicular from the neck and was forgotten given her neck condition.

In a July 23, 2014 report, Dr. Puziss responded to OWCP's noted deficiencies of his prior medical reports. He indicated that in his March 5, 2014 report, he had reported the history of the original injury as an overuse of the shoulder, which was why appellant developed her problems in the first place. Dr. Puziss denied that there was a specific injury event. He noted that appellant did not have a rotator cuff tear. Dr. Puziss presented examination findings and diagnosed: chronic right subacromial impingement; partial-thickness articular side right distal supraspinatus tear, likely symptomatic due to work; right rotator cuff tendinopathy and tendinitis, likely due to work activities, occupational disease; anterosuperior labral tear, somewhat symptomatic, work related; and history of C4-C5, C5-C6, and C6-C7 fusions, August 2010, healed.

In a September 3, 2014 report, Dr. Puziss reiterated that appellant's shoulder conditions were due to overuse at work. He noted that now she is off work (retired), it is not surprising that her shoulder is 80 percent better. Dr. Puziss reiterated that appellant needed physical therapy for the right shoulder and continued to diagnosis chronic right subacromial impingement; partial-thickness articular side right distal supraspinatus tear, likely symptomatic due to work; right rotator cuff tendinopathy and tendinitis, likely due to work activities, occupational disease; anterosuperior labral tear, somewhat symptomatic, work related; and history of C4-C5, C5-C6, and C6-C7 fusions, August 2010, healed.

By decision dated December 18, 2014, OWCP denied the claimed recurrence of medical condition. It found that the evidence of record was insufficient to establish that appellant required additional medical treatment due to the accepted work injury. OWCP advised that her claim remained closed for medical care.

On December 23, 2014 appellant, through counsel, requested a telephonic hearing, which was held before an OWCP hearing representative on July 8, 2015. Appellant testified at the hearing. She expressed her concern that her claimed right shoulder problems may have gone unaddressed due to her neck problems. Appellant stated that her last 1.5 to 2 months of work duties prior to her January 31, 2013 retirement consisted of mail repair. She indicated that she wanted medical treatment benefits and to have her claim amended for additional right shoulder diagnoses. Appellant stated that Dr. Puziss told her the presence of additional work-related right shoulder problems were identified by a March 19, 2014 MRI arthrogram study. No additional evidence was received.

By decision dated September 15, 2015, an OWCP hearing representative affirmed OWCP's December 18, 2014 recurrence denial. He found the medical evidence of record insufficient to establish a recurrence or worsening of any accepted right shoulder condition and the medical evidence was insufficient to establish that the case should be amended or expanded for any additional right shoulder conditions.

On October 30, 2015 OWCP received counsel's October 27, 2015 request for reconsideration. Additional medical evidence was received.

A March 19, 2014 MRI arthrogram of the right shoulder contained an impression of tendinopathy and partial articular surface tearing of the rotator cuff; superior and anterior glenoid labral tear; and capacious inferior axillary recess with evidence for previous injury to the inferior glenohumeral ligamentous structures.

Additional medical reports from Dr. Puziss were also received. In a December 23, 2014 report, Dr. Puziss indicated that appellant was approaching five years since her original right shoulder injury. He noted that, while it was accepted for a "strain," she was mostly treated for her neck condition and cervical radiculopathy. Dr. Puziss indicated that appellant still has right shoulder pain and has been retired for more than one year. Appellant could raise her arm overhead, but not fully, and pains awakened her and were worsened by pushing, pulling, reaching, or any other activity. The last shoulder MRI scan was March 19, 2014. Dr. Puziss noted that overall appellant's shoulder was worsening. He noted that her forearm sometimes locked up in a spasm and sometimes she has tightness in the right lateral scapula muscles. Dr. Puziss provided examination findings and diagnosed chronic right subacromial impingement; partial-thickness articular-side right distal supraspinatus tear, likely symptomatic due to work; right rotator cuff tendinopathy and tendinitis, likely due to work activities, occupational disease; and anterosuperior labral tear, somewhat symptomatic, work related.

In a January 20, 2015 report, Dr. Puziss indicated that appellant has had no injuries to the right shoulder since the accepted employment injury. He noted that overhead range of motion was better and she was not awakened by pain. Dr. Puziss diagnosed: chronic right subacromial impingement, currently healed; partial-thickness articular-side right supraspinatus tear, currently asymptomatic since impingement is better; right rotator cuff tendinopathy and tendinitis, likely due to work activities, *i.e.*, occupational disease; and anterosuperior labral tear, currently asymptomatic, also likely work related. He opined that appellant's claim should be accepted for the above conditions. Dr. Puziss indicated that she used her shoulder repetitively since age 19 at

the employing establishment, and that she had been retired for two years and does not plan on returning to work.

In a July 29, 2015 report, Dr. Puziss diagnosed mildly recurrent right subacromial impingement; partial-thickness articular-side right supraspinatus rotator cuff tear, mildly symptomatic; right rotator cuff tendinopathy and tendinitis due to work activities over the years, occupational disease; and anterosuperior labral tear, work related due to overuse, currently somewhat symptomatic. He noted that appellant has had a combination of radicular and shoulder pain for years. The cervical spine surgery did not help her shoulder pain due to internal derangement of the right shoulder, which was evidently missed until his examinations. Dr. Puziss indicated that because she awakens at night strongly indicates an internal derangement of the shoulder and she has been awakening for years. He also noted that, even though she had full range of motion on prior examinations, this does not mean that she does not have an internal derangement. Rather, it means that she probably did not have a lot of impingement at the time, but she tests regarding her shoulder were limited to general strength tests. Dr. Puziss opined that appellant had undiagnosed internal derangement of the right shoulder, now specifically known as rotator cuff articular-side partial tear and anterosuperior labral tear. He noted the reason for her axillary pains was a labral tear causing nocturnal pain. Dr. Puziss noted that appellant's shoulder condition is separate from her cervical condition and that she has a cumulative trauma disorder which resulted from over 34 years of working at the employing establishment.

By decision dated April 20, 2016, OWCP denied modification of its prior decision. It found Dr. Puziss' reports to be of diminished probative value and thus insufficient for appellant to meet her burden of proof to establish the claimed recurrence of a medical condition.

LEGAL PRECEDENT

Recurrence of a medical condition means 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 condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment.[4]

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal relationship between the employee's current condition and the original injury in order to meet her burden.[5]

The employee has the burden of proof to establish that she sustained a recurrence of a medical condition that is causally related to her accepted employment injury. To meet this burden, the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related

[4] 20 C.F.R. § 10.5(y).

[5] Federal (FECA) Procedure Manual, Part 2 -- *Recurrences*, Chapter 2.1500.4(b) (June 2013); *see also J.M.*, Docket No. 09-2041 (issued May 6, 2010).

and supports her conclusion with sound medical rationale.[6] Where no such rationale is present, medical evidence is of diminished probative value.[7]

ANALYSIS

OWCP accepted appellant's occupational disease claim for right shoulder strain. On June 10, 2014 appellant filed a claim for a recurrence of a medical condition for medical treatment of the accepted right shoulder strain.

The record reflects that appellant was concurrently seeking care for a cervical condition and the last documented report concerning appellant's shoulder was on July 30, 2012, when Dr. Chandran diagnosed trapezius strain and opined that appellant's lifting and pushing at work had aggravated her chronic pain. Although the medical record from 2010 to 2014 contains references to shoulder symptoms, no diagnoses related to the shoulder were provided. Rather the records primarily dealt with appellant's cervical condition or was considered part of her cervical radiculopathy, both nonaccepted conditions. Although appellant was not formally discharged from treatment for her work-related shoulder condition, the sufficiently lengthy gap in treatment from May 3, 2010 to July 2012 and from July 2012 to March 2014 has the same effect as a formal discharge.[8] It is noted that while Dr. Chandran diagnosed trapezius strain in her July 30, 2012 report and that appellant's lifting and pushing at work had aggravated her chronic pain, she failed to provide a well-rationalized medical opinion regarding the relationship between the trapezius strain to the accepted work injury. Medical evidence that does not offer any rationalized opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[9]

Appellant's release from active treatment in 2010, followed by periods of relative inactivity from July 2012 until 2014 justify OWCP's request that she submit a reasoned medical opinion establishing that the additional medical treatment was causally related to an objective worsening of the accepted medical condition without an intervening cause.[10] In short, appellant bears the burden of proof to establish a recurrence of medical condition.

The Board finds that the evidence of record does not establish that appellant's current need for medical care is related to the accepted work injury. Dr. Puziss noted in several reports appellant's need for physical therapy and diagnosed conditions of recurrent right subacromial impingement; partial-thickness articular-side right supraspinatus rotator cuff tear; right rotator cuff tendinopathy and tendinitis due to work activities over the years, occupational disease; and anterosuperior labral tear, work related due to overuse. He provided varying reports on whether appellant's conditions were symptomatic at any given time. In a September 3, 2014 report,

[6] *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

[7] *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988); *see Ronald C. Hand*, 49 ECAB 113 (1957).

[8] *See Kent W. Rasmusen*, Docket No. 04-1137 (issued August 4, 2004).

[9] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[10] *See C.T.*, Docket No. 15-0634 (issued September 9, 2015).

Dr. Puziss reiterated that her shoulder conditions were due to overuse at work. He noted that now she was off work (retired), it was not surprising that her shoulder was 80 percent better. Dr. Puziss explained that her chronic trapezius pain was more likely, in retrospect, due to the abnormal right shoulder biomechanics, *i.e.*, impingement, causing trapezius substitution to a mild, but persistent degree.

In his December 23, 2014 report, Dr. Puziss noted that it was almost five years since her original right shoulder injury and, while it was accepted for a "strain," she was mostly treated for her neck and cervical radiculopathy. He indicated that appellant still had right shoulder pain and had been retired for more than one year. Appellant could raise her arm overhead, but not fully, and pains awakened her and were worsened by pushing, pulling, reaching, or any other activity. Dr. Puziss noted that overall appellant's shoulder was worsening and that her forearm sometimes locked up in a spasm and sometimes there was tightness in the right lateral scapula muscles. In a January 20, 2015 report, he indicated that appellant had used her shoulder repetitively since age 19 at the employing establishment, that she was retired, and his diagnosed conditions should be accepted. In a July 29, 2015 report, Dr. Puziss noted that appellant had a combination of radicular and shoulder pain for years. He indicated that the cervical spine surgery did not help her shoulder pain because she had an internal derangement of the right shoulder, which was evidently missed over time until he started seeing her. Dr. Puziss indicated that because she awakens at night, it strongly indicates an internal derangement of the shoulder and she had been awakening for years. He also noted that even though she had full range of motion on prior examinations, this did not mean that she does not have an internal derangement. Rather, it just means that she probably did not have a lot of impingement at the time. Dr. Puziss noted that she never had tests regarding her right shoulder besides general strength tests. He opined that appellant had undiagnosed internal derangement of the right shoulder, now specifically known as rotator cuff articular-side partial tear and anterosuperior labral tear. Dr. Puziss reasoned that appellant's axillary pains was due to a labral tear and, for the same reason, she had nocturnal pain. He concluded that she sustained a cumulative trauma disorder which resulted from over 34 years of working at the employing establishment.

The Board finds that the evidence of record lacks adequate rationale to establish a causal connection between the alleged recurrence of her medical condition and the accepted employment injury. Dr. Puziss fails to provide a well-rationalized opinion with respect to the worsening of the subacromial impingement or the partial thickness right distal supraspinatus tear. He also noted that appellant did not have specific tests regarding the shoulder. The absence of diagnostic studies along with Dr. Puziss' speculative point of view renders his reports and diagnoses of diminished probative value. Appellant had the burden to submit sufficient medical evidence to document the need for further medical treatment. She did not submit such evidence as required and thus failed to establish a need for continuing medical treatment.[11] To the extent appellant is alleging that her current condition is consequential to her accepted employment injury, she must submit medical evidence which establishes that her condition is a natural consequence of the accepted injury.[12]

[11] *See P.Q.*, Docket No. 14-1905 (issued May 26, 2015); *J.F.*, 58 ECAB 331 (2006); *see K.T.*, Docket No. 15-1758 (issued May 24, 2016); *see also P.Q., id.*; *J.F., id.*

[12] *Supra* note 6.

On appeal, counsel argues that the decision is contrary to fact and law. However, for the reasons set forth above, appellant has failed to establish that her current need for medical care is related to the work injury accepted for right shoulder strain.

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 a recurrence of her medical condition causally related to factors of her federal employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated April 20, 2016 is affirmed.

Issued: March 23, 2017
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