



On appeal, appellant contends that she is entitled to wage-loss compensation for time off work due to her work-related injuries. She further contends that OWCP had engaged in fraud and forgery in developing the evidence in her case and did not address all the relevant evidence.

### **FACTUAL HISTORY**

On December 3, 2012 appellant, then a 43-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she sustained left shoulder, chest, and collar bone injuries as a result of a motor vehicle accident while performing her work duties.<sup>3</sup> She stopped work on December 4, 2012. December 3, 2012 emergency room records diagnosed chest wall contusion and neck strain or sprain. By letter dated January 9, 2013, OWCP accepted the claim for contusion of the chest wall and cervical strain.

On January 25, 2013 appellant filed a claim for compensation (Form CA-7) for wage loss from January 18 to 25, 2013. The accompanying time analysis form (Form CA-7a) noted that appellant took five hours of leave without pay (LWOP) on January 25, 2013.

In a February 1, 2013 letter, OWCP advised appellant of the deficiencies in her claim and requested a rationalized medical opinion from a physician addressing how her total disability during the claimed period was due to the accepted employment-related conditions.

Appellant filed several Form CA-7 claims for compensation for LWOP from January 26 to March 8, 2013.

In a March 19, 2013 decision, OWCP denied appellant's claim for compensation for the period January 18 to March 8, 2013. It found that the medical evidence of record failed to establish that she was disabled during the claimed period as a result of her accepted December 3, 2012 employment-related injuries.

Appellant filed additional Form CA-7 claims for compensation for LWOP from March 9 to April 19, 2013.

By letter dated March 26, 2013, appellant, through counsel, requested a telephone hearing with an OWCP hearing representative.

In a May 13, 2013 decision, OWCP denied appellant's claim for compensation for the period March 9 to April 19, 2013. It found that the medical evidence of record failed to establish that she was disabled during the claimed period as a result of her accepted December 3, 2012 work injuries.

On May 20, 2013 counsel requested a telephone hearing, which was held with an OWCP hearing representative on July 19, 2013.

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<sup>3</sup> The employing establishment indicated that appellant had filed a prior claim for a February 16, 2012 left shoulder injury under File No. xxxxxx945. It noted that OWCP denied the claim on April 13, 2012 and April 12, 2013. Appellant returned to full-duty work on August 16, 2012.

By decision dated October 21, 2013, an OWCP hearing representative affirmed the March 19 and May 13, 2013 decisions. She found that appellant had not submitted rationalized medical opinion evidence sufficient to establish disability from January 18 to April 19, 2013 due to her accepted December 3, 2012 employment-related injuries.

In a March 14, 2016 medical report, Dr. Elemer Raffai, an orthopedic surgeon, noted a history of the accepted December 3, 2012 employment injuries and appellant's medical and family background. He provided examination findings and assessed left shoulder impingement syndrome, left shoulder adhesive capsulitis, and sprain of the sternoclavicular (joint) (ligament), sequela. Dr. Raffai advised that appellant could not work for three weeks.

A March 17, 2016 report signed by Brian Lecuyer, a nurse practitioner, revealed that appellant had subluxation of the left acromioclavicular (AC) joint, sequela and spondylosis without myelopathy or radiculopathy, cervical region. He found that she was totally disabled due to pain and difficulty using her left arm and shoulder.

By letter dated April 7, 2016, OWCP accepted appellant's claim for subluxation of the left AC joint, sequela and spondylosis without myelopathy or radiculopathy of the cervical region.

A March 14, 2016 disability certificate contained an unknown signature and noted diagnoses of cervical sprain and chest contusion. Appellant was unable to work through April 15, 2016.

In a March 17, 2016 disability certificate, Dr. Jason Arora, a physiatrist, diagnosed left shoulder pain and cervical radiculopathy. He recommended that appellant be off work through April 17, 2016. In an April 12, 2016 disability certificate, Dr. Arora reiterated his diagnoses and recommended that appellant be off work through May 12, 2016.

On March 29, 2016 Dr. Kejian Tang, a neurologist, noted appellant's history of injury and medical background. He provided examination findings and assessed a cervical sprain. Dr. Tang found no evidence of cervical radiculopathy.

In an April 4, 2016 operative report, Dr. Thierry Bonnabesse, Board-certified in pain medicine and physiatry, diagnosed left posterior shoulder/trapezius pain. He noted that a left suprascapular nerve block was given. On April 12, 2016 Dr. Bonnabesse examined appellant and assessed radiculopathy, cervical region and left shoulder pain. He advised that she was 100 percent temporarily disabled as a result of difficulty with pain and ability to use her left arm shoulder.

In an April 14, 2016 left shoulder magnetic resonance imaging (MRI) scan report, Dr. Mordechai Rehany, a Board-certified radiologist, provided an impression of tendinopathy of supraspinatus and infraspinatus tendons with an intrasubstance longitudinal tear of the supraspinatus. There was no sign of a full-thickness tear. Dr. Rehany also found an intact biceps, no evidence of a labral tear, and hypertrophic changes at the AC joint without significant indentation on the muscle belly of the supraspinatus.

In an April 12, 2016 appeal request form, appellant requested both a telephone hearing and a review of the written record by an OWCP hearing representative with regard to OWCP's May 13, 2013 decision. She questioned why both of her claims for compensation had been combined by OWCP.

On April 20, 2016 Dr. Raffai examined appellant and reviewed Dr. Rehany's April 14, 2016 left shoulder MRI scan findings. He provided an impression of left shoulder impingement syndrome and recommended arthroscopy. On April 28, 2016 Dr. Arora diagnosed cervical discogenic pain and restated his prior diagnosis of cervical radiculopathy. He noted that a cervical epidural steroid injection was given at C7-T1.

By letter dated May 11, 2016, OWCP accepted appellant's claim for left shoulder impingement syndrome and authorized left shoulder arthroscopic surgery.<sup>4</sup>

A disability certificate dated May 18, 2016 contained the same unknown signature as the March 14, 2016 and indicated that appellant was unable to work from May 21 to June 21, 2016.

Appellant filed a recurrence claim (Form CA-2a) dated May 17, 2016, and received on May 31, 2016, alleging that on March 19, 2016 she sustained a recurrence of disability of the December 3, 2012 employment injuries. She noted that she was currently working part time. Appellant claimed that no light-duty work was available. She reported that following the original injury she first returned to full-time regular-duty work on May 11, 2013. On the claim form, the employing establishment indicated that, after the original injury, it had not made any accommodations or adjustments in appellant's regular duties due to injury-related limitations.

Appellant submitted a May 18, 2016 laboratory report from Alice Hyde Medical Center. In a May 18, 2016 chest x-ray report, Dr. Rehany found no abnormality.

On June 2, 2016 OWCP informed appellant of the evidence needed to establish her recurrence claim. This included a narrative medical report from her physician describing the objective medical findings that formed the basis of her renewed disability for work.

In a May 9, 2016 report, Dr. Bonnabesse noted findings on physical examination and reiterated his prior assessment of left shoulder pain and cervical radiculopathy. He also reiterated his prior opinion that appellant was totally disabled due to pain.

In a May 18, 2016 report, Dr. Raffai noted findings on examination and provided an impression of chronic shoulder pain. He reiterated his prior impression of left shoulder impingement and placed appellant off work as no light-duty work was available.

In an undated attending physician's report (Form CA-20), Dr. Tang noted a history of the December 3, 2012 work injuries. He reiterated his prior diagnosis of cervical strain and indicated that the diagnosed condition was not caused or aggravated by an employment activity. Dr. Tang advised that appellant could resume light work as of March 29, 2016. In a duty status

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<sup>4</sup> The record does not indicate that appellant underwent the authorized left shoulder surgery.

report (Form CA-17) dated March 29, 2016, he restated his cervical strain diagnosis and indicated that appellant could perform her regular full-time work duties.

By letter dated June 9, 2016, appellant contended that she was first taken off work on March 14, 2016. She noted her left shoulder and neck flare-ups and medical treatment. Appellant also noted that she performed light-duty work on her own. In a June 10, 2016 letter, she maintained that she was advised not to file her Form CA-2a and CA-7 forms for the period March 5 to April 1, 2016 until March 19, 2016 because she did not know to file the claims. She used sick leave and vacation time when her physician placed her off work on March 14, 2016.

In a June 14, 2016 letter, the employing establishment challenged appellant's recurrence claim, contending that it could not offer her light-duty work without any restrictions from her physician. It questioned the date of the alleged recurrence of disability as appellant claimed that it occurred on March 19, 2016, but her first medical documentation indicated that she was disabled from March 17 to April 17, 2016. The employing establishment asserted that she did not submit sufficient medical evidence.

In disability certificates dated March 17 and May 12, 2016, Mr. Lecuyer reiterated his prior diagnoses. He recommended that appellant should be released from work from March 17 to April 17, 2016 and May 12 to June 12, 2016, respectively.

An undated Form CA-20 contained an unknown signature and noted a history of the accepted December 3, 2012 employment injuries. The report provided the diagnoses of subluxation of the left AC joint, sequela and left shoulder pain. A box was marked "yes" indicating that the diagnosed conditions were caused or aggravated by an employment activity. Appellant was advised that she could return to light work with restrictions.

In a June 23, 2016 report, Dr. Dragos Macelaru, an orthopedic surgeon, noted a history of the December 3, 2012 work injuries and provided examination findings. He assessed left shoulder pain and left shoulder adhesive capsulitis, and recommended surgery.

By decision dated June 28, 2016, OWCP denied appellant's request for a hearing. It determined that she was not entitled to an oral hearing or a review of the written record as a matter of right as she had previously requested a hearing on the same issue, for which a decision was issued on October 21, 2013. OWCP exercised its discretion and denied appellant's request for a hearing as it found that the issue in the case could be addressed equally well on reconsideration by submitting new evidence which established that she was entitled to wage-loss compensation for the period January 18 to April 19, 2013.<sup>5</sup>

In a July 6, 2016 decision, OWCP denied appellant's claim for a recurrence of disability. It found that the medical evidence of record did not contain a rationalized opinion from a physician to establish that she was disabled commencing March 19, 2016 due to a material change/worsening of her accepted work-related conditions.

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<sup>5</sup> OWCP inadvertently stated that the claimed period of total disability was from March 9 to April 19, 2013 rather than January 18 to April 19, 2013 as the October 21, 2013 decision affirmed the denial of wage-loss compensation for the latter period.

### LEGAL PRECEDENT -- ISSUE 1

Any claimant dissatisfied with an OWCP decision shall be afforded an opportunity for either an oral hearing or a review of the written record.<sup>6</sup> A request for a hearing or review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought.<sup>7</sup> If the request is not made within 30 days, a claimant is not entitled to a hearing or a review of the written record as a matter of right. OWCP regulations further provide that the claimant must have not previously submitted a reconsideration request (whether or not it was granted) on the same decision.<sup>8</sup> Although a claimant who has previously sought reconsideration is not, as a matter of right, entitled to a hearing or review of the written record, the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing following reconsideration.<sup>9</sup> Similarly, the Branch of Hearings and Review may exercise its discretion to conduct a hearing or review the written record where a claimant requests a second hearing or review on the written record on the same issue.<sup>10</sup>

### ANALYSIS -- ISSUE 1

The Board lacks jurisdiction to review the merits of the underlying issue of whether appellant has established entitlement to wage-loss compensation for the period January 18 to April 19, 2013. The Board's jurisdiction is limited to determining whether OWCP properly denied her request for a hearing.

By decisions dated March 19 and May 13, 2013, OWCP denied appellant's claims for compensation for LWOP for the period January 18 to April 19, 2013. In an October 21, 2013 decision, an OWCP hearing representative affirmed the denial of her claims.

On April 12, 2016 appellant requested both a telephone hearing and a review of the written from OWCP's May 13, 2013 decision. By decision dated June 28, 2016, OWCP determined that appellant was not entitled to a hearing as a matter of right as she had previously requested and received a hearing by a representative of OWCP's Branch of Hearings and Review. The Board concludes that appellant was not entitled to a hearing as a matter of right as she had previously requested and received a hearing by an OWCP hearing representative.<sup>11</sup>

The Board further finds that OWCP properly exercised its discretion in denying appellant's request for another hearing by determining that the issue in the case could be addressed equally well by requesting reconsideration and submitting new evidence relevant to

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<sup>6</sup> 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.615.

<sup>7</sup> *Id.* at 10.616(a).

<sup>8</sup> *Id.*

<sup>9</sup> *D.E.*, 59 ECAB 438 (2008); *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

<sup>10</sup> *Supra* note 7.

<sup>11</sup> 20 C.F.R. § 10.616(a). *See also D.E.*, *supra* note 9.

the issue at hand.<sup>12</sup> The Board has held that the only limitation on OWCP's discretionary authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to logic and probable deduction from established facts.<sup>13</sup> There is no evidence that OWCP abused its discretion in denying appellant's request for a hearing under these circumstances.<sup>14</sup> Accordingly, the Board finds that OWCP properly denied appellant's April 12, 2016 request for a hearing.

### **LEGAL PRECEDENT -- ISSUE 2**

A recurrence of disability means "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."<sup>15</sup> An individual person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish 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.<sup>16</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>17</sup>

### **ANALYSIS -- ISSUE 2**

OWCP accepted that appellant sustained contusion of the chest wall, cervical strain, subluxation of the left AC joint, sequela, spondylosis without myelopathy or radiculopathy, cervical region, and left shoulder impingement on December 3, 2012 in the performance of duty. She stopped work on December 4, 2012 and returned to full-time regular-duty work on May 11, 2013. Subsequently, appellant claimed a recurrence of total disability beginning March 19, 2016.

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability. There is no rationalized medical opinion of record which sufficiently relates her current disability and medical conditions to the December 3, 2012 accepted conditions.

OWCP received several reports from Dr. Raffai. On March 14, 2016 Dr. Raffai found that appellant could not work for three weeks. He noted a history of the work injuries, provided findings, and diagnosed left shoulder impingement syndrome, left shoulder adhesive capsulitis,

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<sup>12</sup> *Hubert Jones, Jr., supra* note 9; *Sandra F. Powell*, 45 ECAB 877 (1994).

<sup>13</sup> *See M.C.*, Docket No. 09-2314 (issued August 20, 2010); *Claudia Vazquez*, 52 ECAB 496 (2001).

<sup>14</sup> *See L.O.*, Docket No. 15-1346 (issued November 17, 2015).

<sup>15</sup> 20 C.F.R. § 10.5(x); *R.S.*, 58 ECAB 362 (2007).

<sup>16</sup> *S.S.*, 59 ECAB 315 (2008).

<sup>17</sup> *See Ronald C. Hand*, 49 ECAB 113 (1997).

and sequela of sternoclavicular sprain. On May 18, 2016 Dr. Raffai examined appellant and diagnosed left shoulder impingement and chronic shoulder pain. He placed her off work because no light-duty work was available. While Dr. Raffai found that appellant was totally disabled from work, he did not specifically address the cause of the disability or explain how the disability was work related. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.<sup>18</sup> Further, OWCP has not accepted the currently diagnosed conditions of left shoulder adhesive capsulitis and sternoclavicular sprain as causally related to the December 3, 2012 work injuries. For conditions not accepted by OWCP as being employment related, it is the employee's burden of proof to provide rationalized medical evidence sufficient to establish causal relationship.<sup>19</sup> None of the reports from Dr. Raffai contain medical rationale explaining how the additional diagnosed conditions had been caused or aggravated by the accepted December 3, 2012 employment injuries. Dr. Raffai's remaining report dated April 20, 2016 did not address whether appellant had any employment-related disability commencing March 19, 2016.

Similarly, the reports of Drs. Arora and Bonnabesse are of diminished probative value. In disability certificates dated March 17 and April 12, 2016, Dr. Arora found that appellant could not work from March 17 to May 12, 2016. He diagnosed left shoulder pain and cervical radiculopathy. In reports dated April 12 and May 9, 2016, Dr. Bonnabesse found that appellant was temporarily totally disabled due to difficulty with pain and inability to use her left arm shoulder. He diagnosed cervical radiculopathy and left shoulder pain. Neither physician offered a medical opinion addressing whether appellant's disability was due to the accepted December 3, 2012 work injuries as cervical radiculopathy has not been accepted as employment related by OWCP.<sup>20</sup> Moreover, neither Dr. Arora nor Dr. Bonnabesse provided a medical opinion that the additional diagnosed cervical condition was causally related to the accepted employment injuries. The remaining reports from these physicians are similarly insufficient to establish appellant's recurrence claim. These reports provided diagnoses and addressed her medical treatment, but neither physician provided an opinion stating that the diagnosed conditions and medical treatment were caused by the accepted work injuries.

The remaining reports and diagnostic test results are insufficient to establish appellant's recurrence claim. These reports are of limited probative value as none of the physicians provided an opinion addressing whether appellant's diagnosed conditions and disability were caused by the accepted employment injuries.<sup>21</sup>

Appellant also submitted evidence from a nurse practitioner. The Board has held that documents signed by a nurse practitioner are not considered probative medical evidence as a

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<sup>18</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

<sup>19</sup> *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>20</sup> *See id.*

<sup>21</sup> *See supra* note 18.

nurse practitioner is not considered a physician as defined under FECA.<sup>22</sup> Similarly, appellant submitted disability certificates and a Form CA-20 report with unknown signatures which are not considered probative medical evidence. The Board has held that unsigned reports or ones that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.<sup>23</sup>

The Board finds that appellant failed to establish a recurrence of disability commencing March 19, 2016. Consequently, appellant failed to meet her burden of proof.

On appeal, appellant argues the merits of her claim, contending that she is entitled to wage-loss compensation for time off from work due to her work-related injuries. She further contends that OWCP had engaged in fraud and forgery in developing the evidence in her case and did not address all the relevant evidence. However, as explained above appellant failed to meet her burden of proof.

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 OWCP properly denied appellant's request for a hearing before a representative of OWCP's Branch of Hearings and Review. The Board further finds that appellant failed to meet her burden of proof to establish a recurrence of disability commencing March 19, 2016 causally related to her December 3, 2012 employment injuries.

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<sup>22</sup> *L.D.*, 59 ECAB 648 (2008); *Paul Foster*, 56 ECAB 208 (2004); see *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

<sup>23</sup> See *J.P.*, Docket No. 16-0501 (issued July 11, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 6 and June 28, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 8, 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