

ISSUE

The issue is whether appellant met her burden of proof to establish a traumatic injury causally related to the accepted April 30, 2015 employment incident.

FACTUAL HISTORY

On May 14, 2015 appellant, then a 37-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on April 30, 2015 she sustained lower back pain when she helped a patient lift his legs back into bed after he had been sitting in a chair. She did not stop work.

In a May 11, 2016 report, Dr. Ronnie D. Shade, a treating Board-certified orthopedic surgeon, reported that appellant was first seen on May 11, 2016 for a work injury that occurred on April 30, 2015. Appellant had explained that she felt sharp spasms in her back and neck while lifting a patient's legs to help him return to bed. Dr. Shade provided examination findings and reviewed diagnostic tests. Physical findings included decreased cervical bilateral rotation, suprascapular tenderness, normal left motor examination, decreased right motor examination, negative Tinel's sign, normal cervical sensation, bilateral iliolumbar tenderness, bilateral spinolumbar spasms, normal lumbar motor examination, decreased right sensation deficits, negative straight leg raises, and normal left sensation. Dr. Shade diagnosed cervical and lumbar ligament sprains, right upper extremity cervical radiculopathy, and right lower extremity lumbar radiculitis.

Dr. Shade reported in a letter dated May 12, 2016, that appellant was first seen on May 11, 2016. He provided physical examination findings. Dr. Shade noted that appellant was performing her usual duties when she injured herself on April 30, 2015 when she "went under a sink after a patient pushed her." A physical examination revealed decreased cervical bilateral rotation, suprascapular tenderness, normal left motor examination, decreased right motor examination, negative Tinel's sign, normal cervical sensation, bilateral iliolumbar tenderness, bilateral spinolumbar spasms, normal lumbar motor examination, decreased right sensation deficits, negative straight leg raises, and normal left sensation. Dr. Shade found normal C2-6 cervical lordosis, right lumbar scoliosis, severe spondylitis, and normal lumbar lordosis on review of x-ray interpretations. He diagnosed cervical and lumbar ligament sprains, right upper extremity cervical radiculopathy, and right lower extremity lumbar radiculitis.

In an October 17, 2016 report, Dr. Shade diagnosed cervical, thoracic, and lumbar ligament sprains, right upper extremity cervical radiculopathy, right lower extremity lumbar radiculitis, L3-4, 4-5 lumbar herniated nucleus pulposus, and mild L4-5 lumbar stenosis. Review of magnetic resonance imaging (MRI) scans of the cervical and lumbar spines revealed C6-7 minimal spondylosis, mild L4-5 spinal stenosis, right L4 and L5 nerve roots encroachment on exiting, and L3-4, 4-5 disc extrusion. Dr. Shade related that there was no change in appellant's physical examination findings.

On October 17, 2016 appellant filed a claim for a recurrence of medical treatment only due to the April 30, 2015 employment incident. She noted the date of recurrence as April 29, 2016.

In a letter dated November 10, 2016, OWCP informed appellant that the merits of her original claim had not been adjudicated as her injury initially appeared to be minor and there was minimal or no lost time from work. It advised her that the claim was reopened for a review on the merits based on her filing of a recurrence claim. Next, OWCP advised appellant of the medical and factual evidence required to support her claim. Appellant was afforded 30 days to provide the requested evidence.

OWCP received several documents on December 12, 2016.

In an undated narrative statement, appellant explained that her original injury occurred on April 30, 2015 while she was assisting a patient with dressing and getting into bed. At that time she felt a sharp pain in her back and right hip. Appellant noted that she thereafter transferred from the employing establishment in Decatur, Georgia, to Dallas, Texas, where she still worked as a medical support assistant in the emergency department. She explained that on April 29, 2016 she was performing her normal duties, while sitting at her workstation, when she felt neck, back, right leg, and right arm pain. Appellant related that a week later she was still in pain, and that is when she first sought treatment with Dr. Shade. She also described problems with her right wrist which arose on July 4, 2016.

OWCP received a witness statement, dated December 4, 2016, from a coworker, S.W. A position description and a photograph of a printer were also received into the record.

Dr. Shade, in a December 5, 2016 report, noted details surrounding the April 30, 2015 incident. He explained that the repeated flexion and extension of appellant's neck due to her job duties caused her neck spasms and chronic pain. Dr. Shade then noted the principles of causation as defined by mechanistic or biomechanical studies, cohort study, crossover or interventional studies, and heuristic model for causation. He opined that appellant's cervical and lumbar conditions should be accepted by OWCP as the lumbar injury was post-traumatic while the cervical condition was occupational and had been aggravated by the traumatic injury.

By decision dated December 12, 2016, OWCP denied appellant's claim. It found that the evidence of record established that the April 30, 2015 incident occurred as alleged, but denied the claim as the medical evidence of record failed to establish that the diagnosed conditions were causally related to the accepted employment incident. The claims examiner noted that on November 10, 2016 appellant had been advised that further medical evidence was necessary to establish the claim, but the only evidence received was her personal statement.

LEGAL PRECEDENT

It is well established that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as OWCP considers necessary with respect to the claim.⁴ Since the Board's jurisdiction in a case is limited to reviewing that evidence which was before OWCP at the time of its final decision, it is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to the issuance of its final decision. As the

⁴ See *Arietta K. Cooper*, 5 ECAB 11 (1952); 20 C.F.R. § 10.126.

Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to that subject matter, which was properly submitted to OWCP prior to the issuance of the final decision, be addressed by OWCP.⁵

ANALYSIS

Appellant alleged that she injured her back and right hip as a result of an April 30, 2015 work incident. By decision dated December 12, 2016, OWCP accepted that the April 30, 2015 incident occurred as alleged, but denied her claim because the medical evidence of record was insufficient to establish a medical diagnosis causally related to the accepted incident.

The Board finds that the case is not in posture for decision.

Following OWCP's November 10, 2016 letter to appellant requesting additional evidence, she submitted responsive factual and medical evidence. This additional evidence was received by OWCP on December 12, 2016. In its December 12, 2016 decision, OWCP denied appellant's claim noting that following the November 10, 2016 development letter it had only received her personal response, but no medical evidence. It did not note receipt or consideration of Dr. Shade's December 5, 2016 report, or the other documents submitted on December 12, 2016.

The Board finds that OWCP, in its December 12, 2016 decision, did not review all of the evidence submitted on December 12, 2016, including the new report from Dr. Shade, prior to issuance of its final decision.⁶ For this reason, the case will be remanded to OWCP to consider all of the evidence submitted at the time of the December 12, 2016 decision. Following such further development as OWCP deems necessary, it shall issue an appropriate merit decision on the claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

⁵ *S.P.*, Docket No. 16-0253 (issued March 23, 2016); *William A. Couch*, 41 ECAB 548 (1990).

⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 12, 2016 is set aside and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 19, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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