

**United States Department of Labor
Employees' Compensation Appeals Board**

L.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Glasgow, KY, Employer**

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**Docket No. 19-0263
Issued: June 19, 2019**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
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
JANICE B. ASKIN, Judge

JURISDICTION

On November 19, 2018 appellant, through counsel, filed a timely appeal from a September 14, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a recurrence of disability, commencing October 24, 2017, causally related to her accepted April 27, 2013

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.*

employment injury; and (2) whether she has met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional conditions of cervical radiculopathy and cervical degenerative disc disease.

FACTUAL HISTORY

On April 27, 2013 appellant, then a 50-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a mild laceration of the right forearm, a head bump, and neck pain when she was in a motor vehicle accident (MVA) while in the performance of duty. OWCP accepted the claim for a sprain of the ligaments of the cervical and lumbar spine. Appellant stopped work on April 27, 2013, returned to work with restrictions on July 22, 2013, and resumed her usual employment on October 14, 2013.

A magnetic resonance imaging (MRI) scan of the cervical spine obtained on July 12, 2013 revealed mild degenerative changes at multiple levels without stenosis and mild neuroforaminal encroachment without nerve impingement.

In a report dated September 3, 2013, Dr. Barret Lessenberry, a Board-certified orthopedic surgeon, discussed appellant's history of an April 27, 2013 MVA. He related that her symptoms were "suggestive of some cervical radiculopathy affecting the C6 nerve root on the right side" and possible carpal tunnel syndrome. On December 26, 2013 Dr. Lessenberry determined that an electromyogram (EMG) showed no cervical radiculopathy, but that a cervical spine MRI scan showed C5-6 disc bulging. He indicated that appellant had improved with conservative treatment and found that she could resume her usual activities.

In a report dated April 18, 2017, Dr. Lessenberry evaluated appellant for cervical pain with pain and numbness radiating into the right upper extremity. He related that her symptoms had begun in 2013 and that she had not sustained a new injury. Dr. Lessenberry recommended diagnostic testing. In a May 18, 2017 progress report, he opined that appellant's symptoms suggested right cervical radiculopathy and recommended physical therapy.

On June 15, 2017 Dr. Lessenberry discussed appellant's symptoms of intermittent right cervical radiculopathy over the past four years. He diagnosed cervical radiculopathy and recommended further objective testing. Dr. Lessenberry noted that appellant had worked at the employing establishment at the time she was initially injured and remained working there at the present time.

A cervical spine MRI scan obtained on September 13, 2017 revealed facet arthroplasty particularly at C4-5 and C5-6 on the left side with borderline left neuroforaminal stenosis at C4-5.

In a progress report dated September 6, 2017, Dr. Kimberly Eakle, a Board-certified internist, obtained a history of appellant experiencing neck pain radiating into the right shoulder beginning four years ago after a MVA. On examination she found spasm and tenderness of the paravertebral muscles with reduced grip strength. Dr. Eakle diagnosed cervical radiculopathy and an unspecified injury to the muscles, fascia, and tendons of the neck.

On October 5, 2017 appellant filed a notice of recurrence (Form CA-2a) of disability and the need for further medical treatment causally related to her April 27, 2013 employment injury.

She asserted that her pain had worsened such that she could not perform her work duties and that she had developed arthritis. The employing establishment indicated that appellant had stopped work on September 20, 2017.

In a development letter dated October 17, 2017, OWCP advised appellant of the definition of a recurrence of disability and the type of evidence necessary to establish that she had sustained a recurrence of employment-related disability. It afforded her 30 days to submit additional evidence.

In a progress report dated October 24, 2017, Dr. Eakle diagnosed cervical radiculopathy and indicated that appellant was off work pending an examination by a chiropractor as delivering mail was causing spasms.

On October 30, 2017 appellant advised that she had experienced continuous and worsening problems with her neck, arm, and head after her MVA.

In a duty status report (Form CA-17) dated November 21, 2017, Dr. Eakle diagnosed cervical radiculopathy and found that appellant was unable to work. She indicated by checking a box marked "Yes" that the history of injury provided by appellant corresponded to the injury(ies) described on the claim form.

By decision dated December 27, 2017, OWCP denied appellant's claim for a recurrence of disability. It found that the medical evidence she submitted failed to establish that her accepted April 27, 2013 employment injury had worsened to the extent that she was disabled from her work duties.

In a progress report dated January 2, 2018, Dr. Todd Shanks, a Board-certified neurosurgeon, related that appellant had sustained a MVA five years earlier when she was "struck from behind from a car which ejected her from the vehicle." He noted that at the time of the accident she had her arm extended reaching for a mailbox. Dr. Shanks indicated that appellant subsequently had experienced neck pain that had worsened with intermittent radiation into the right arm. He related that her neck pain was likely due to facet mediated arthritis disease. In a January 2, 2018 note, Dr. Shanks opined that appellant should be off work from that date until a follow-up appointment.

On January 23, 2018 Dr. Eakle diagnosed cervical radiculopathy due to an April 2013 MVA at work. She indicated that she had referred appellant to Dr. Shanks given the extent of her symptoms. In a duty status report (Form CA-17) dated January 23, 2018, Dr. Eakle provided work restrictions.

Appellant, on January 24, 2018, requested an oral hearing before an OWCP hearing representative.

In a report dated January 29, 2018, Dr. Daniel Reynolds, a Board-certified anesthesiologist, noted that appellant experienced neck pain radiating into the right shoulder and sometimes into her right hand and fingers. He provided a steroid injection. In a note of even date, Dr. Reynolds advised that appellant's primary physician would determine her work status.

On February 15, 2018 Dr. Reynolds diagnosed cervical spondylosis without myelopathy or radiculopathy and provided pain management.

On March 27, 2018 counsel requested a telephonic hearing before an OWCP hearing representative.

On April 19, 2018 Dr. Shanks found that appellant should remain off work pending surgery.

In a report dated April 23, 2018, Dr. Eakle diagnosed increasing chronic neck pain with radiculopathy and noted that appellant had a positive right Spurling sign. She related, “[appellant] did not have these issues prior to her injury in April of 2013. Her MRI [scan] may have shown degenerative changes that may have already been present; however, she was asymptomatic at that time. The injuries appellant sustained in April of 2013 only exacerbated the condition.” Dr. Eakle recommended a C4 to C6 anterior cervical discectomy and fusion.

At the telephonic hearing, held on July 10, 2018, appellant described her symptoms following her employment injury. She noted that she had to stop work because she kept dropping mail. Appellant advised that in 2015 she was involved in another MVA at work, but did not file a claim as she only cut her nose. She related that she had obtained treatment from a chiropractor. Appellant indicated that she had stopped work after she filed her notice of recurrence of disability on October 24, 2017 rather than September 22, 2017. She related that she was not ejected from her vehicle at the time of the April 2013 MVA.

In a report dated July 19, 2018, Dr. Lessenberry discussed appellant’s continued complaints of neck pain radiating into the right upper extremity which he indicated “was a work[-]related problem that occurred back in April 2013.” He noted that her arm had been extended out of the window of the vehicle when her vehicle was rear ended. Dr. Lessenberry advised that a cervical spine MRI scan showed “multi-level degenerative disc change with disc desiccation and bulging at multiple levels.” Dr. Lessenberry related, “I do think [appellant] had preexistent cervical degenerative disc change aggravated by the auto accident that occurred while at work for the [employing establishment] on April 27, 2013.” He recommended epidurals before a surgical procedure. In a July 19, 2018 duty status report (Form CA-17), Dr. Lessenberry found that appellant was disabled from employment.

By decision dated September 14, 2018, OWCP’s hearing representative affirmed the December 27, 2017 decision.

LEGAL PRECEDENT -- ISSUE 1

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 compensable injury or illness and without an intervening injury or new exposure in the work environment.³ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee’s physical limitations, and which is necessary because

³ 20 C.F.R. § 10.5(x); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.⁴

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁵

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish 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 a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁶ Where no such rationale is present, the medical evidence is of diminished probative value.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability, commencing October 24, 2017, causally related to her accepted April 27, 2013 employment injury.

On October 24, 2017 Dr. Eakle diagnosed cervical radiculopathy and found that appellant should remain off work until examined by a chiropractor. She noted that delivering mail caused spasms. However, Dr. Eakle failed to address the cause of the diagnosed condition of cervical radiculopathy. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.⁸

In a duty status report dated November 21, 2017, Dr. Eakle diagnosed cervical radiculopathy and found that appellant was unable to work. She checked a box "Yes" indicating that the history of injury provided by appellant corresponded to the injury(ies) described on the claim form. The duty status report is merely a form report and does not contain an opinion on

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

⁶ *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

⁷ *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

⁸ *M.C.*, Docket No. 18-0919 (issued October 18, 2018).

whether the accepted employment injury caused disability from employment; consequently, it is of no probative value on the issue of causal relationship.⁹

In a progress report dated January 2, 2018, Dr. Todd Shanks, a Board-certified neurosurgeon, obtained a history of appellant being ejected from her vehicle in an MVA five years earlier. He discussed her symptoms of progressively worsening neck pain with occasional radiation into her right arm. Dr. Shanks attributed appellant's neck pain likely to facet mediated arthritis disease. He found that she was disabled from employment pending a follow-up appointment. As Dr. Shanks failed to relate her disability to the accepted conditions of sprains of the ligaments of the cervical and lumbar spine, his report is insufficient to meet her burden of proof to establish an employment-related recurrence of disability.¹⁰ Additionally, he provided an inaccurate history of injury, that of appellant being ejected from her vehicle at the time of the April 2013 MVA. Medical opinions based on an incomplete or inaccurate history are of diminished probative value.¹¹

On January 23, 2018 Dr. Eakle diagnosed cervical radiculopathy due to an April 2013 MVA at work. In a duty status report (Form CA-17) of even date, she provided work restrictions. As Dr. Eakle has not attributed appellant's disability to either her lumbar or cervical sprains, the conditions accepted by OWCP as employment related, her opinion is not probative to the question of whether she has established a recurrence of disability due to her April 27, 2013 employment injury.¹²

Dr. Reynolds provided pain management for appellant on January 28 and February 15, 2018, but did not address appellant's work status or any periods of disability. Without a specific opinion regarding how work factors caused a claimed period of disability, his reports are insufficient to meet her burden of proof.¹³

On April 19, 2018 Dr. Shanks found that appellant should remain off work pending surgery. As she did not address causation, her report is of no probative value.¹⁴

Appellant failed to submit medical reports from a physician who has explained with medical rationale that she sustained a spontaneous worsening of her accepted conditions on or after October 24, 2017 as a result of the accepted April 27, 2013 employment injury sufficient to cause disability from employment.¹⁵ Thus, the Board finds that she has not established by the weight of

⁹ *T.S.*, Docket No. 18-0150 (issued April 12, 2019).

¹⁰ *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

¹¹ *C.B.*, Docket No. 18-0633 (issued November 16, 2018).

¹² *See supra* note 10.

¹³ *See M.B.*, Docket No. 18-1455 (issued March 11, 2019).

¹⁴ *See supra* note 9.

¹⁵ *Id.*

the reliable, probative, and substantial evidence, a change in the nature and extent of the injury-related condition resulting in her inability to perform her employment duties.¹⁶

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation period of FECA,¹⁷ that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.¹⁸ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹⁹

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.²⁰ To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.²¹ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.²² The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.²³

¹⁶ *Id.*

¹⁷ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

¹⁸ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

¹⁹ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

²⁰ *See T.F.*, Docket No. 17-0645 (issued August 15, 2018).

²¹ *See S.A.*, Docket No. 18-0399 (issued October 16, 2018).

²² *See P.M.*, Docket No. 18-0287 (issued October 11, 2018).

²³ *See F.H.*, Docket No. 18-1238 (issued January 18, 2019).

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional conditions of cervical radiculopathy and cervical degenerative disc disease.

Dr. Lessenberry, in a report dated September 3, 2013, reviewed appellant's history of a MVA at work on April 27, 2013. He found symptoms of radiculopathy at C6 on the right and possible carpal tunnel syndrome. On December 26, 2013 Dr. Lessenberry advised that an EMG had failed to reveal radiculopathy, but that a cervical spine MRI scan showed bulging of the discs at C5-6. He did not, however, directly attribute the cervical radiculopathy to the April 27, 2013 employment injury, and thus his reports are of diminished probative value.²⁴

Dr. Lessenberry again evaluated appellant on April 18, 2017. He advised that her symptoms had begun in 2013. On May 18, 2017 Dr. Lessenberry found cervical radiculopathy on the right side and, on June 15, 2017. He noted that appellant's symptoms had occurred intermittently for the past four years. Dr. Lessenberry indicated that she had worked for the employing establishment at the time of her original injury. He did not, however, specifically attribute the cervical radiculopathy to the April 2013 MVA, and thus his opinion is insufficient to meet appellant's burden of proof.²⁵

Dr. Eakle also diagnosed cervical radiculopathy in reports dated September 16, 2017 to January 23, 2018; however, she did not directly address the cause of the radiculopathy and its relationship to the April 2013 MVA and thus her reports are of diminished probative value.²⁶

In a report dated April 23, 2018, Dr. Eakle advised that appellant had not experienced chronic neck pain with radiculopathy prior to her April 2013 injury. She opined that the April 2013 injury had aggravated previously asymptomatic preexisting degenerative changes and recommended a cervical discectomy and fusion at C4 to C6. Dr. Eakle, however, failed to explain the mechanics of how appellant's April 2013 MVA caused an aggravation of preexisting cervical changes as opposed to changes resulting from the normal progression of the preexisting conditions.²⁷

On July 19, 2018 Dr. Lessenberry attributed appellant's neck pain radiating into the right upper extremity to an April 2013 MVA. He noted that her MRI scan revealed disc desiccation and bulging at multiple levels with degenerative changes. Dr. Lessenberry found that appellant's April 27, 2013 MVA had aggravated her preexisting cervical disc degeneration. However, he did not provide any rationale for his opinion. Medical conclusions unsupported by rationale are of

²⁴ See *supra* note 8.

²⁵ *M.S.*, Docket No. 17-0105 (issued December 7, 2017).

²⁶ *M.B.*, Docket No. 17-1773 (issued May 24, 2018).

²⁷ *T.M.*, Docket No. 18-1418 (issued February 7, 2019).

little probative value.²⁸ Such rationale is particularly warranted when, as here, there is a history of a preexisting condition.²⁹

On appeal counsel contends that OWCP failed to apply the appropriate causation standard or give proper deference to appellant's attending physician. He asserts that the medical reports contained rationale. As discussed, however, appellant has not submitted sufficient rationalized medical evidence supporting that acceptance of her claim should be expanded to include additional cervical conditions causally related to her April 27, 2013 employment injury or that she sustained an employment-related recurrence of disability.³⁰

Appellant may submit new evidence 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 disability, commencing October 24, 2017, causally related to her accepted April 27, 2013 employment injury. The Board further finds that she has not met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional conditions of cervical radiculopathy and cervical degenerative disc disease.

²⁸ See *supra* note 20.

²⁹ See *C.B.*, Docket No. 18-0633 (issued November 16, 2018).

³⁰ See *M.S.*, Docket No. 17-0105 (issued December 7, 2017).

ORDER

IT IS HEREBY ORDERED THAT the September 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 19, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board