

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability on or after May 23, 2016 causally related to her accepted employment conditions.

FACTUAL HISTORY

On September 27, 2002 appellant, then a 37-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging neck and left upper extremity injuries due to performing her repetitive work duties, including handling mail and engaging in lifting, pushing, and pulling. She asserted that she first became aware of her claimed condition on September 6, 2002 and first realized that it was related to her federal employment on September 20, 2002. Appellant stopped work on September 8, 2002 and returned to limited-duty work on September 13, 2002 without wage loss. OWCP assigned her claim OWCP File No. xxxxxx216 and it was accepted for cervical and left shoulder sprains.⁴

Appellant stopped work on May 8, 2008 and, on that date, she filed another occupational disease claim alleging new injuries to both her upper extremities due to performing her repetitive employment duties, including reaching, stretching, and lifting mail.⁵ OWCP assigned that claim OWCP File No. xxxxxx916 and initially accepted the condition of bilateral carpal tunnel syndrome. It paid appellant disability compensation on the daily rolls commencing May 8, 2008 and on the periodic rolls commencing July 5, 2008.

On September 25, 2008 appellant underwent OWCP-approved left shoulder surgery, including left subacromial decompression, distal clavicle resection, anterior capsular radiofrequency lysis of adhesions, and glenohumeral debridement. On June 18, 2009 she underwent OWCP-approved right shoulder surgery, including right subacromial decompression, distal clavicle resection, anterior capsular lysis of adhesions, and glenohumeral debridement.⁶

On September 15, 2009 appellant returned to limited-duty work for the employing establishment on a full-time basis.

By decision dated February 3, 2010, OWCP upgraded the conditions accepted under OWCP File No. xxxxxx916 to include disorder of bursae/tendons in appellant's right shoulder region.

On November 30, 2011 Dr. Albert Graziosa, an attending Board-certified orthopedic surgeon, performed OWCP-approved right carpal tunnel release surgery.

⁴ Appellant stopped work from September 25, 2002 to March 12, 2003 and returned to limited-duty work on March 12, 2003. OWCP paid her disability compensation on the daily rolls for this period of work stoppage.

⁵ Appellant asserted that she first became aware of this claimed condition on April 3, 2008 and first realized that it was related to her federal employment on May 8, 2008.

⁶ OWCP approved the September 25, 2008 and June 18, 2009 surgeries under OWCP File No. xxxxxx216.

On December 17, 2012 appellant returned to full-time work as a motor vehicle operator with work restrictions, including lifting no more than 10 pounds for up to two hours per day and reaching at shoulder level for up to seven hours per day.

In a February 22, 2016 report, Dr. Paul Brisson, an attending Board-certified orthopedic surgeon, maintained that appellant sustained injury to her cervical spine during an employment-related accident on September 6, 2002. He diagnosed cervical disc herniation at C5-6 and C6-7 and spondylosis of C6-7 with left upper extremity radiculopathy. Dr. Brisson noted that appellant had failed conservative treatment and requested authorization for her to undergo anterior cervical discectomy and fusion surgery at C5-6 and C6-7.

On March 26, 2016 OWCP referred appellant's case to Dr. Nizar Souayah, a Board-certified neurologist, for an opinion regarding whether the proposed cervical surgery should be authorized. Dr. Souayah determined, in his role as an OWCP district medical adviser (DMA), that her proposed cervical surgery was not necessitated by residuals of her employment-related condition.⁷

Appellant stopped work on May 23, 2016.

On June 3, 2016 appellant filed a notice of recurrence (Form CA-2a) claiming a recurrence of disability commencing May 23, 2016 due to her employment conditions accepted under OWCP File No. xxxxxx216. She indicated that on May 19, 2016 she experienced cervical symptoms, including sudden muscle spasms and a burning sensation, which were similar to those present in 2002. Appellant asserted that these symptoms contributed to her work stoppage on May 23, 2016. On June 3, 2016 she also filed a notice of recurrence claiming a recurrence of disability commencing May 23, 2016 due to her employment conditions accepted under OWCP File No. xxxxxx916. Appellant reported that on May 19, 2016 she experienced right shoulder spasms, as well as numbness and spasms in her entire left arm/hand, which were the same symptoms she had in 2008. She asserted that these symptoms also contributed to her work stoppage on May 23, 2016.⁸

Appellant subsequently submitted a May 25, 2016 report from Dr. Brisson, who advised that she reported that her cervical condition had worsened, especially since May 19, 2016.⁹ She complained of cervical pain which radiated down into her left hand. Dr. Brisson advised that he observed no abnormalities of appellant's cervical spine upon physical examination, but that she complained of pain upon palpation of her cervical spine and exhibited diminished sensation in her left upper extremity. He diagnosed cervical disc herniations at C5-6 and C6-7, spondylosis at

⁷ In his May 24 2016 report, Dr. Souayah noted that an August 17, 2015 magnetic resonance imaging (MRI) scan, which contained an impression of bilateral foraminal stenosis at C5-6 and disc herniation at C6-7, showed no acute pathology and revealed no significant changes compared to MRI scans performed in 2008 and 2014. He found that the evidence of record did not show that appellant had exhausted adequate trials of conservative treatment, including pain medication, physical therapy, and epidural injections. In a June 10, 2016 letter, OWCP advised appellant that it was unable to authorize the proposed cervical surgery.

⁸ In both recurrence of disability claims filed on June 3, 2016, appellant indicated that she sustained a "recurrence" on May 19, 2016, but she did not actually stop work until May 23, 2016.

⁹ Dr. Brisson indicated that appellant sustained injury to her cervical spine during an employment-related accident on September 6, 2016.

C6-7, and left upper extremity radiculopathy, and he again requested authorization for her to undergo anterior cervical discectomy and fusion surgery at C5-6 and C6-7. In a May 25, 2016 disability note, Dr. Brisson indicated that appellant was unable to work “at this time.” He included the notation, “[appellant] required surgery to her cervical spine.”

In a June 1, 2016 note, Dr. Teresella Gondolo, an attending Board-certified neurologist, indicated that appellant was totally disabled from work.

The findings of June 15, 2016 electromyogram and nerve conduction velocity (EMG/NCV) testing of appellant’s upper extremities contained an impression of bilateral carpal tunnel syndrome (more severe on the left) superimposed on left C5-6 radiculopathy.

In a June 23, 2016 development letter, under OWCP File No. xxxxxx216, and an October 19, 2016 development letter, under OWCP File No. xxxxxx916, OWCP requested that appellant submit additional evidence in support of her recurrence of disability claims. It afforded her 30 days to submit such evidence.

Appellant subsequently submitted a June 15, 2016 report from Dr. Gondolo who diagnosed bilateral carpal tunnel syndrome with pending surgery and posited that, due to this medical condition, appellant would not be able to return to work until further notice.

In a June 21, 2016 report, Dr. Felix Almentero, an attending Board-certified physical medicine and rehabilitation physician, indicated that appellant reported pain radiating from her cervical region into both upper extremities, left worse than right. He provided a diagnosis of chronic cervical radiculopathy and left shoulder rotator cuff syndrome. On July 19 and August 18, 2016 Dr. Almentero provided a similar assessments of appellant’s medical condition.

In a July 25, 2016 note, Dr. Gondolo indicated that appellant was unable to return to work until further notice. On August 8, 2016 Dr. Brisson again requested authorization for anterior cervical discectomy and fusion surgery at C5-6 and C6-7.

By decision dated September 7, 2016, issued under OWCP File No. xxxxxx216, OWCP denied appellant’s recurrence of disability claim because she had not submitted sufficient medical evidence in support thereof.¹⁰

In late August 2016 appellant, through Dr. Graziosa, requested authorization for left carpal tunnel release surgery and endoscopy of the left wrist. In an August 24, 2016 report, he diagnosed left carpal tunnel syndrome and indicated that she was waiting for authorization from OWCP for left wrist surgery.

In a September 19, 2016 document, OWCP approved appellant’s request for left carpal tunnel release surgery and endoscopy of the left wrist.

¹⁰ OWCP indicated that appellant had claimed a “recurrence” commencing May 19, 2016. However, appellant actually filed a claim for recurrence of disability commencing May 23, 2016 because she did not stop work until May 23, 2016.

On October 11, 2016 Dr. Graziosa performed left carpal tunnel release surgery and excision of a ganglion cyst at the base of the third metacarpophalangeal joint of the left hand.

In disability notes dated October 13 and 27, 2016, Dr. Graziosa diagnosed carpal tunnel syndrome/left carpal tunnel release and found that appellant was unable to work from October 13 to December 8, 2016.

By decision dated December 2, 2016, issued under OWCP File No. xxxxxx916, OWCP denied appellant's recurrence of disability claim finding that she had not submitted sufficient medical evidence to establish her claim.¹¹

On December 19, 2016 appellant, through counsel, requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review regarding the September 7 and December 2, 2016 decisions.

Prior to the hearing being held, appellant submitted disability notes, dated December 8, 2016 and February 13, 2017, in which Dr. Graziosa diagnosed carpal tunnel syndrome/cervical syndrome and found that she was unable to work from December 8, 2016 to April 10, 2017. In December 29, 2016 and January 10, February 23, and March 6, 2017 reports, Dr. Robert Marini, an attending Board-certified physical medicine and rehabilitation physician, diagnosed cervical radiculopathy. In two January 30, 2017 reports, Dr. Brisson indicated that appellant was unable to return to work.

During the telephonic hearing held on April 4, 2017, appellant asserted that the accepted employment-related conditions from both of her occupational disease claims worsened in May 2016 to the point that she could no longer work. She indicated that, after a coworker stopped helping her lift and carry mail in early 2016, she experienced increased upper extremity symptoms when she engaged in lifting/carrying duties at work.

After the April 4, 2017 hearing, OWCP referred appellant's case to Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as a DMA, and requested an opinion regarding whether the proposed cervical surgical procedures, *i.e.*, anterior cervical discectomy and fusion surgery at C5-6 and C6-7, were necessitated by residuals of her accepted employment-related conditions. On April 10, 2017 Dr. Hammel opined that the cervical surgery was medically necessary, but was not required to treat her employment-related condition. He concluded that the proposed surgery was not necessitated by the accepted cervical sprain, but rather was necessitated by progressive degenerative cervical disc disease which was not employment related. There is no indication in the case record that appellant underwent the proposed cervical surgery.

Appellant subsequently submitted a March 27, 2017 report from Dr. Marini, who indicated that she could return to work on April 10, 2017 with restrictions of lifting no more than five pounds and no engaging in reaching or overhead work. Dr. Marini also noted that she needed to take a 10-minute break every hour. In an April 12, 2017 letter, Dr. Gondolo advised that appellant was returning to work on April 12, 2017. She maintained that appellant needed to work in a sedentary position with restrictions of lifting no more than five pounds, and no repetitive lifting, pushing,

¹¹ OWCP indicated that appellant had claimed a "recurrence" commencing May 19, 2016, but the evidence of record shows that she did not stop work until May 23, 2016.

reaching, or working above shoulder level. In an undated report, Dr. Gondolo provided examination findings and a similar statement regarding appellant's work restrictions.¹²

In a worksheet for a Form CA-3 (report of termination of disability and/or payment), the employing establishment indicated that on April 12, 2017 appellant returned to limited-duty work on a full-time basis.

By decision dated May 16, 2017, OWCP's hearing representative affirmed OWCP's September 7 and December 2, 2016 decisions denying appellant's claims for an employment-related recurrence of disability commencing May 23, 2016. She found that the evidence of record did not establish that appellant's October 11, 2016 carpal tunnel release surgery had been approved by OWCP. In reaching her decision, the hearing representative reviewed evidence from both OWCP File Nos. xxxxxx216 and xxxxxx916.¹³

On June 9, 2017 appellant, through counsel, requested reconsideration of the May 16, 2017 decision.

Appellant submitted an undated statement in which she argued that her accepted employment injuries caused her to stop work in May 2016. In a May 2, 2017 statement, a coworker indicated that he had helped her to push mail carts and lift/carry mail before he retired on February 29, 2016.

Appellant also submitted an October 27, 2016 report from Dr. Graziosa, who diagnosed cervical spine bulging at C5-6, herniations at C6-7 with right-sided C5-6 nerve root irritation, status post left shoulder surgical decompression, and status post left carpal tunnel release with excision of left hand ganglion. Dr. Graziosa noted that she was doing well.¹⁴

By decision dated December 15, 2017, OWCP denied modification of OWCP's May 16, 2017 decision denying appellant's claims for an employment-related recurrence of disability commencing May 23, 2016.¹⁵

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 compensable injury or illness and without an intervening injury or new exposure in the work

¹² Dr. Gondolo noted that appellant could work up to 40 hours per week, but needed to take a 10-minute break every hour. The findings of February 8, 2017 EMG and NCV testing showed that appellant had left carpal tunnel syndrome.

¹³ Following the May 2017 decision the two case files, OWCP File No. xxxxxx216 and OWCP File No. xxxxxx916 were administratively combined by OWCP, and OWCP File No. xxxxxx216 was designated as the master file.

¹⁴ In a November 13, 2017 report, Dr. Brisson again requested authorization for appellant to undergo anterior cervical discectomy and fusion surgery at C5-6 and C6-7.

¹⁵ OWCP acknowledged that it had approved appellant's October 11, 2016 surgery and recommended that she file another claim for recurrence of disability beginning that date.

environment.¹⁶ This term also means an inability to work because a light-duty assignment, made specifically to accommodate an employee's physical limitations and necessary because 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.¹⁷

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.¹⁸

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.¹⁹ Where no such rationale is present, the medical evidence is of diminished probative value.²⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability due to her accepted employment conditions for the period May 23, 2016 through the time just prior to her October 11, 2016 left upper extremity surgery. The Board further finds that the case is not in posture for decision regarding whether she has met her burden of proof to establish an employment-related recurrence of disability commencing at the time of her October 11, 2016 left upper extremity surgery which had been authorized by OWCP.

Appellant submitted a May 25, 2016 report from Dr. Brisson, who indicated that she sustained injury to her cervical spine during an employment-related accident on September 6, 2016. Dr. Brisson diagnosed her with cervical disc herniations at C5-6 and C6-7, spondylosis at C6-7, and left upper extremity radiculopathy, and he requested authorization for her to undergo anterior cervical discectomy and fusion surgery at C5-6 and C6-7. In a May 25, 2016 note, he indicated that appellant was unable to work "at this time." In two January 30, 2017 reports, Dr. Brisson also noted that she was unable to return to work.

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

¹⁷ *Id.*

¹⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁹ *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *C.C.*, Docket No. 18-0719 (issued November 9, 2018).

²⁰ *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

The Board finds, however, that these reports of Dr. Brisson are insufficient to establish appellant's claim for employment-related disability on or after May 23, 2016. The reports are of limited probative value because he did not provide a rationalized medical opinion relating the claimed period of disability to an accepted employment condition. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.²¹ Dr. Brisson only made a conclusory statement about disability without indicating that the disability was caused by an employment-related condition. The Board further notes that the only cervical condition accepted by OWCP is a cervical sprain and that the cervical herniation/spondylosis and radiculopathy conditions mentioned by him have not otherwise been established as employment related by the evidence of record.²²

In a June 1, 2016 note, Dr. Gondolo advised that appellant was totally disabled from work. In a June 15, 2016 narrative report, she diagnosed bilateral carpal tunnel syndrome with pending surgery and posited that, due to this medical condition, appellant would not be able to return to work until further notice. In a July 25, 2016 note, Dr. Gondolo indicated that appellant was unable to return to work until further notice. The Board notes that these reports are of limited probative value in establishing employment-related disability on or after May 23, 2016 because Dr. Gondolo did not provide a rationalized medical opinion which adequately explained why appellant had employment-related disability during the claimed period of disability. Although Dr. Gondolo referenced an employment-related condition (bilateral carpal tunnel syndrome) in her June 15, 2016 report, she did not provide a discussion explaining why this condition disabled appellant in June 2016. For example, she did not discuss objective findings of this condition, whether from physical examination or diagnostic testing, and explain why they prevented appellant from working. In her reports, Dr. Gondolo provided mere conclusory opinions on disability without the necessary rationale, but the Board has held that such opinions are insufficient to meet a claimant's burden of proof to establish a claim.²³

For the reasons set forth above, appellant has not met her burden of proof to establish a recurrence of disability due to her accepted employment conditions for the period May 23, 2016 through the time just prior to her October 11, 2016 left upper extremity surgery.

However, with respect to the period commencing October 11, 2016, the Board notes that appellant underwent left carpal tunnel release surgery on that date which had been approved by OWCP. In several reports produced prior to October 11, 2016, Dr. Graziosa diagnosed bilateral

²¹ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017). As noted, Dr. Brisson advised that appellant sustained a traumatic injury on September 6, 2016. However, the Board notes that OWCP accepted that she sustained an occupational injury in the form of a cervical sprain, rather than a traumatic injury. A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment over a period longer than a single workday or shift. 20 C.F.R. §§ 10.5(q), (ee).

²² OWCP denied authorization for the proposed discectomy and fusion surgery at C5-6 and C6-7, and there is no indication in the case record that appellant underwent such cervical surgery. It should be noted that on May 24, 2016 Dr. Souayah, an OWCP medical adviser, provided an opinion that her proposed cervical surgery was not necessitated by residuals of her employment-related condition. On April 10, 2017 Dr. Hammel, another OWCP medical adviser, opined that the proposed cervical surgery was not required to treat her employment-related condition.

²³ *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

carpal tunnel syndrome, a condition which OWCP had previously accepted as employment related, and recommended that she undergo left carpal tunnel release surgery due to this condition. The record contains the October 11, 2016 report in which he described his performance of the left carpal tunnel release surgery. In notes dated between October 13, 2016 and February 13, 2017, Dr. Graziosa diagnosed carpal tunnel syndrome and left carpal tunnel release and opined that appellant was unable to work from October 13, 2016 to April 10, 2017 due to these conditions.²⁴

OWCP's procedures provide that authorization by OWCP for medical examination and/or treatment (Form CA-16) constitutes a contractual agreement to pay for the services if the services are rendered, regardless of whether a compensable injury or condition exists. Moreover, any medical condition resulting from authorized examination or treatment (such as residuals from surgery) may form the basis of a compensation claim for impairment or disability, regardless of the compensability of the original injury.²⁵

The Board finds that, although Dr. Graziosa's reports are insufficiently rationalized to meet appellant's burden of proof to establish her recurrence of disability claim, they are sufficient to require further development of the case by OWCP.²⁶ It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.²⁷

Therefore, the case must be remanded to OWCP for further development regarding appellant's claimed period of recurrence of disability. Upon remand, OWCP must further evaluate, in such manner as it deems necessary, whether she sustained disability due to the October 11, 2016 surgery which was approved to treat an accepted employment condition, *i.e.*, left carpal tunnel syndrome. After carrying out such development, it shall issue a *de novo* decision regarding this aspect of appellant's disability claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability due to her accepted employment conditions for the period May 23, 2016 through the time just prior to her October 11, 2016 left upper extremity surgery. The Board further finds that the case is not in posture for decision regarding whether she has met her burden of proof to establish an employment-related recurrence of disability commencing at the time of her October 11, 2016 OWCP-authorized left upper extremity surgery.

²⁴ The Board notes that, in mid-April 2017, appellant returned to full-time work for the employing establishment. She has not claimed disability compensation for the period commencing with her return to work.

²⁵ *Supra* note 18 at Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.2b (February 2012). *See also D.C.*, Docket No. 17-0185 (issued October 4, 2017).

²⁶ *See C.M.*, Docket No. 17-1977 (issued January 29, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

²⁷ *T.E.*, Docket No. 18-1595 (issued March 13, 2019).

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2017 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and the case is remanded to OWCP for further action consistent with this decision of the Board.

Issued: May 23, 2019
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