

February 28, 2014 employment injury; and (2) whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include additional medical conditions causally related to her accepted February 28, 2014 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 6, 2014 appellant, then a 53-year-old management analyst, filed a traumatic injury claim (Form CA-1) alleging that on February 28, 2014 she sustained injury to her right arm when lifting binders at work while in the performance of duty.⁴ OWCP accepted her claim for a sprain of her right shoulder and upper arm.⁵ Appellant began performing limited-duty work on a full-time basis on March 16, 2014, but she periodically stopped work for intermittent periods of disability thereafter. OWCP paid her wage-loss compensation benefits for intermittent periods of disability on the daily rolls beginning April 6, 2014.

Appellant stopped work on September 11, 2014. On October 6, 2014 she filed a notice of recurrence (Form CA-2a) claiming a recurrence of total disability commencing September 11, 2014 due to her accepted February 28, 2014 employment injury.

By decisions dated December 11, 2014 and June 12, September 14, and December 24, 2015, OWCP denied appellant's recurrence claim because she did not submit sufficient medical evidence to establish a recurrence of total disability on or after September 11, 2014 causally related to her February 28, 2014 employment injury.

Appellant submitted several reports, dated between September 18, 2014 and April 2, 2015, from Dr. David L. Taragin, a Board-certified neurologist, who determined that she was totally disabled due to her February 28, 2014 employment injury. Dr. Taragin indicated that she had disability due to employment-related right upper extremity conditions of complex regional pain syndrome (CRPS) and brachial plexopathy. In reports dated between December 17, 2014 and May 6, 2015, Dr. Dexter W. Love, a Board-certified orthopedic surgeon, also determined that appellant was totally disabled due to her February 28, 2014 employment injury. He diagnosed such conditions as employment-related degenerative disc disease of the cervical spine, cervical radiculopathy, and anterior/inferior labrum tear of the right shoulder.

³ Docket No. 16-1279 (issued November 7, 2017).

⁴ OWCP assigned the claim OWCP File No. xxxxxx748. In reports dated beginning in March 2014, appellant clarified the nature of the February 28, 2014 employment incident to her attending physicians by reporting that, on that date, a group of binders fell on her right arm when she attempted to catch them.

⁵ Appellant previously filed a separate claim, OWCP File No. xxxxxx834, in which she alleged that on August 31, 2011 she sustained a traumatic injury when she stepped into a hole of a loading dock floor with her left leg and fell to the floor. OWCP administratively handled the claim and paid a limited amount of medical benefits without formally considering the merits of the claim. Appellant also had a history of a nonindustrial cervical radiculopathy from 2008.

In October 2014, OWCP had referred appellant to Dr. Robert A. Smith, a Board-certified orthopedic surgeon, for a second opinion examination. In a November 19, 2014 report, Dr. Smith determined that she ceased to have residuals of her February 28, 2014 employment injury. He also noted that appellant did not have clinical findings of brachial plexopathy or CRPS and that she did not sustain a condition other than right shoulder/upper arm sprain due to her February 28, 2014 employment injury. By decision dated February 5, 2015, OWCP terminated her wage-loss compensation and medical benefits, effective February 2, 2015, based on Dr. Smith's November 19, 2014 report.⁶

Appellant appealed the December 24, 2015 OWCP decision to the Board and, by decision dated November 7, 2017,⁷ the Board set aside the December 24, 2015 decision and remanded the case to OWCP for further development. It found that the medical reports submitted by her were sufficient to require further development with respect to the question of whether she sustained a recurrence of disability on or after September 11, 2014 causally related to her accepted February 28, 2014 employment injury. The Board specified that such development should include consideration of whether appellant sustained a condition, other than a right shoulder/upper arm sprain, causally related to the February 28, 2014 employment injury.

On remand, OWCP requested that Dr. Smith provide a supplemental report addressing the questions of whether appellant had disability on or after September 11, 2014 causally related to her February 28, 2014 employment injury, and whether her claim should be expanded to include brachial plexopathy, CRPS, or any other medical condition causally related to her February 28, 2014 employment injury.

In a March 21, 2018 report, Dr. Smith advised that he had reviewed the medical evidence of record and indicated that, when he examined appellant in November 2014, she had no clinical findings of brachial plexopathy or CRPS. Moreover, the findings of her electromyogram and nerve conduction velocity testing, considered in conjunction with her normal examination findings, ruled out the existence of brachial plexopathy. Dr. Smith also noted that there were no magnetic resonance imaging (MRI) scans, technetium bone scans, or x-rays to support the existence of CRPS. He advised that he had no reason to revise the conclusions of his November 19, 2014 report with respect to appellant's claims for disability and expansion of the accepted conditions.⁸

On April 30, 2018 OWCP found a conflict in the medical opinion evidence between Dr. Smith and Dr. Taragin regarding whether appellant had disability on or after September 11, 2014 causally related to her February 28, 2014 employment injury, and whether the acceptance of her claim should be expanded to include additional conditions causally related to her February 28, 2014 employment injury. It referred appellant to Dr. Steven L. Friedman, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on these matters.

⁶ This termination action is not currently before the Board.

⁷ *Supra* note 3.

⁸ In a March 21, 2018 work capacity evaluation form (OWCP-5c), Dr. Smith indicated that appellant could return to her regular work without restrictions.

In a June 4, 2018 report, Dr. Friedman discussed appellant's factual and medical history and reported the findings of his physical examination. He noted that examination of her right shoulder revealed no visible atrophy, deformity, warmth, or erythema. Appellant had diffuse tenderness involving the anterior, posterior, superior, and lateral aspects of the right shoulder, but tenderness was not well localized to any particular anatomic region.⁹ Dr. Friedman advised that she suffered a relatively minor trauma on February 28, 2014 when she was holding some binders in her right arm with her elbow flexed in a fixed position and some additional binders fell from a shelf onto her right arm. He also indicated that, as early as 2011, there was x-ray evidence of degenerative changes in appellant's right shoulder. Dr. Friedman noted that her February 28, 2014 employment injury in the form of a right shoulder/upper arm sprain did render her disabled from work at that time, but opined that she would have been totally disabled for approximately three weeks. Dr. Friedman advised that appellant then would have been able to return to work at least in a position that limited overhead reaching, pushing, pulling, and lifting for an additional three weeks. He further advised that, during his examination, appellant did not exhibit objective evidence of CRPS. Dr. Friedman noted that there was no cutaneous allodynia or abnormal pseudo-motor activity. Skin temperature, texture, nail growth, hair distribution, and sweat patterns were bilaterally symmetric.¹⁰

Dr. Friedman opined that when he conducted his physical examination there was no objective evidence of brachial plexopathy when electrodiagnostic testing was performed. Dr. Friedman also advised that the diagnosis of degenerative disc disease of the cervical spine was not related to the February 28, 2014 employment injury. He maintained that there was no trauma to the cervical spine on February 28, 2014 and advised that there was convincing diagnostic evidence that degenerative disease of the cervical spine existed prior to February 28, 2014. Dr. Friedman opined that the tear of the anterior/inferior glenoid labrum of appellant's right shoulder was not caused by the February 28, 2014 employment injury. He explained that an MRI scan taken in March 2014 showed a degenerative labral tear, and that the mechanism of the February 28, 2014 incident as described by her would not be consistent with a diagnosis of traumatic anterior/inferior glenoid labial tear. Dr. Friedman maintained that anterior/inferior glenoid labral tears occur when the arm is in a flexed, abducted, and externally rotated position, or when a violent force pushes the humerus anteriorly and inferiorly with respect to the glenoid labrum. Therefore, Dr. Friedman concluded that she would have been able to return to work without specific restrictions six weeks after February 28, 2014.

By decision dated July 12, 2018, OWCP found that appellant did not meet her burden of proof to establish a recurrence of disability, commencing on or after September 11, 2014, causally related to her accepted February 28, 2014 employment injury. It further found that she did not meet her burden of proof to establish that the acceptance of her claim should be expanded to include brachial plexopathy, CRPS or any other medical condition causally related to her accepted February 28, 2014 employment injury.

⁹ Dr. Friedman also indicated that appellant had no significant motor weakness with respect to resisted internal or external rotation of the right shoulder. Appellant had pain with right shoulder impingement maneuvers and examination of the cervical spine revealed that cervical extension caused right trapezial pain.

¹⁰ Dr. Friedman indicated that, in reviewing the medical records, he did not see any evidence of CRPS in the past.

Appellant requested reconsideration of the July 12, 2018 decision and argued that she sustained more serious medical conditions related to her February 28, 2014 employment injury than had been accepted by OWCP. She submitted a July 17, 2018 report of Dr. Love who indicated that he had treated her since February 25, 2016. Dr. Love noted that appellant reported experiencing chronic right shoulder pain following an injury at work on February 28, 2014. He advised that her right shoulder condition could benefit from further physical therapy, subacromial corticosteroid injection, and, if necessary, arthroscopic repair of the rotator cuff/biceps tendon and subacromial decompression. Dr. Love noted, “The shoulder procedures would more definitively treat the shoulder injury sustained February 2014.”¹¹

By decision dated October 18, 2018, OWCP denied modification of the July 12, 2018 decision.

LEGAL PRECEDENT -- ISSUES 1 & 2

An employee seeking benefits under FECA has the burden of establishing 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 timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any specific condition and/or disability for which compensation is claimed are causally related to the employment injury.¹² 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.¹³

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.¹⁴ 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 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.¹⁵ 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

¹¹ Appellant also submitted a number of medical reports already of record.

¹² *J.F.*, Docket No. 09-1061 (issued November 17, 2009). *See also J.T.*, Docket No. 17-0578 (issued December 6, 2017).

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

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

¹⁵ *Id.*

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.¹⁶

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.¹⁷ Where no such rationale is present, the medical evidence is of diminished probative value.¹⁸

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.¹⁹ The medical evidence required to establish causal relationship between a claimed period of disability or specific condition and an employment injury is rationalized medical opinion evidence. 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.²⁰

Section 8123(a) of FECA provides in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”²¹ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.²²

ANALYSIS -- ISSUES 1 & 2

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability, commencing on or after September 11, 2014, causally related to her accepted

¹⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁷ *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *see C.C.*, Docket No. 18-0719 (issued November 9, 2018).

¹⁸ *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

¹⁹ *C.S.*, Docket No. 17-1686 (issued February 5, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

²⁰ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

²¹ 5 U.S.C. § 8123(a).

²² *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).

February 28, 2014 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 additional medical conditions causally related to her accepted February 28, 2014 employment injury.

The Board finds that OWCP properly determined that a conflict existed in the medical opinion between Dr. Taragin, an attending physician, and Dr. Smith, an OWCP referral physician, regarding whether appellant sustained a recurrence of disability, commencing on or after September 11, 2014, causally related to her February 28, 2014 employment injury, and whether the acceptance of her claim should be expanded to include additional medical conditions causally related to her February 28, 2014 employment injury. In order to resolve the conflict, OWCP properly referred her, pursuant to section 8123(a) of FECA, to Dr. Friedman for an impartial medical examination and an opinion on the matter.²³

The Board finds that the special weight of the medical opinion evidence regarding the above-noted issues is represented by the thorough, well-rationalized opinion of Dr. Friedman.²⁴ The June 4, 2018 report of Dr. Friedman establishes that appellant did not sustain disability on or after September 11, 2014 causally related to her February 28, 2014 employment injury and that she did not sustain any condition causally related to that injury other than the accepted right shoulder/upper arm sprain.

In his June 4, 2018 report, Dr. Friedman explained that the February 28, 2014 employment injury was relatively minor in nature and that it was the type of injury that would have fully resolved to the extent that appellant would have been able to return to work without specific restrictions six weeks after February 28, 2014. He further advised that he did not see objective evidence upon his own examination or in the medical documents of record that she ever exhibited objective evidence of CRPS or brachial plexopathy. Dr. Friedman also opined that the diagnosis of degenerative disc disease of the cervical spine was not related to the February 28, 2014 employment injury as there was no trauma to the cervical spine on February 28, 2014 and there was convincing diagnostic evidence that appellant had degenerative disease of the cervical spine prior to February 28, 2014. He maintained that the tear of the anterior/inferior glenoid labrum of her right shoulder was not caused by the February 28, 2014 employment injury. Dr. Friedman explained that an MRI scan taken in March 2014 showed a degenerative labral tear, and that the mechanism of the February 28, 2014 incident as described by appellant would not be consistent with a diagnosis of traumatic anterior/inferior glenoid labial tear.

The Board finds that Dr. Friedman's opinion has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issues of the present case. Dr. Friedman provided a thorough factual and medical history, and he accurately summarized the relevant medical evidence. He provided medical rationale for his opinion by explaining that the findings of record did not support disability on or after September 11, 2014 causally related to the

²³ See *id.*

²⁴ See *id.*

February 28, 2014 employment injury or that appellant sustained an injury other than a right shoulder/upper arm sprain causally related to that injury.²⁵

After OWCP denied appellant's claims for recurrence of disability and expansion of accepted conditions based on Dr. Friedman's opinion, she submitted a July 17, 2018 report of Dr. Love who indicated that her right shoulder condition could benefit from further physical therapy, subacromial corticosteroid injection, and, if necessary, arthroscopic repair of the rotator cuff/biceps tendon and subacromial decompression. Dr. Love further indicated, "The shoulder procedures would more definitively treat the shoulder injury sustained February 2014." By indicating that appellant might need surgery in the future to address her right shoulder condition related to her February 28, 2014 employment injury, Dr. Love suggested that she sustained right shoulder conditions related to that injury other than a right shoulder/upper arm sprain. However, Dr. Love's July 17, 2018 report does not establish her request to expand the accepted conditions in that he did not provide a rationalized medical explanation for his ostensible opinion that she sustained a more serious right shoulder condition related to her February 28, 2014 employment injury than had already been accepted. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.²⁶

Accordingly, the Board finds that the special weight of the medical evidence is represented by the impartial medical examiner Dr. Friedman and establishes that appellant did not sustain a recurrence of disability commencing on or after September 11, 2014, causally related to her accepted February 28, 2014 employment injury and that the acceptance of her claim should not be expanded to include additional medical conditions causally related to the accepted February 28, 2014 employment injury. As such, appellant has not met 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 appellant has not met her burden of proof to establish a recurrence of disability, commencing on or after September 11, 2014, causally related to her accepted February 28, 2014 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 additional medical conditions causally related to her accepted February 28, 2014 employment injury.

²⁵ See *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *Melvina Jackson*, 38 ECAB 443 (1987) (regarding the importance, when assessing medical evidence, of such factors as a physician's knowledge of the facts and medical history, and the care of analysis manifested and the medical rationale expressed in support of the physician's opinion).

²⁶ *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board