

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

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| E.R., Appellant |) | |
| |) | |
| and |) | Docket No. 19-0889 |
| |) | Issued: February 3, 2020 |
| U.S. POSTAL SERVICE, RESEDA POST |) | |
| OFFICE, Reseda, CA, Employer |) | |
| |) | |

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 27, 2019 appellant filed a timely appeal from a December 13, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of a medical condition, on or after September 10, 2016, causally related to her accepted December 22, 2015 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 prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On December 22, 2015 appellant, then a 58-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that same date she sustained back and right arm injuries when she slipped and fell on stairs delivering mail while in the performance of duty.

In a January 18, 2016 medical report, Dr. Ezequiel Suarez, a specialist in internal and occupational medicine, reported that physical examination of appellant's right elbow and lumbar spine revealed normal findings. He noted that her pain had resolved and she had reached maximum medical improvement (MMI). Dr. Suarez discharged appellant to full-duty work without restrictions.

By decision dated October 7, 2016, OWCP accepted appellant's claim for low back contusion, right elbow contusion, and right elbow abrasion. It noted that when the claim had been received it appeared to be a minor injury, which resulted in minimal or no lost time from work, and payment of a limited amount of medical expenses was administratively approved. OWCP had reopened the claim for consideration because appellant had filed a claim for recurrence, which was ultimately denied by decision dated November 7, 2016.⁴

On October 11, 2017 appellant requested reconsideration. In an accompanying narrative statement, she reported that her back was painful and she needed additional medical treatment.

In a September 15, 2016 medical report, Dr. Taha Mansoor Ahmad, Board-certified in internal medicine, noted that appellant complained of low back pain. She noted a history of injury that appellant had fallen and hit her back after slipping and falling on stairs while she was delivering mail. Dr. Ahmad also noted bilateral knee and right shoulder complaints under a different workers' compensation claim. She reported that x-rays revealed degenerative changes and an August 31, 2016 magnetic resonance imaging (MRI) scan of the lumbar spine revealed multilevel mild degenerative disc disease, mild spinal canal stenosis at T11-12, T12-L1, and L3-4,

³ Docket No. 18-0202 (issued June 5, 2018).

⁴ On September 10, 2016 appellant filed a notice of recurrence (Form CA-2a), but she did not stop work. On the reverse side of the form, appellant's supervisor indicated that, following her original injury, the employing establishment accommodated her modified duties until she was released to full-duty work on January 18, 2016. By decision dated November 7, 2016, OWCP denied appellant's recurrence claim finding that the medical evidence of record failed to establish that her need for additional medical treatment was due to a material change or worsening of her accepted work-related conditions, without intervening cause.

and mild right neural foraminal narrowing at L5-S1. Dr. Ahmad noted a clinical history of low back pain with intermittent pain and paresthesias in the lower extremity, ruling out lumbar disc diseases. She diagnosed low back contusion and lumbar spondylosis. Dr. Ahmad ordered eight physical therapy visits and reported that appellant could return to full-duty work.

In a November 1, 2016 work status report, Dr. Wilfred Anthony Williams, Board-certified in family medicine, released appellant to full-duty work on that date.

The employing establishment submitted an offer of a modified assignment (limited duty) for a modified carrier technician position, which appellant accepted on December 21, 2016.

By decision dated October 18, 2017, OWCP denied modification of the November 7, 2016 decision finding that the medical evidence of record failed to establish that appellant's need for additional medical treatment was due to a material change/worsening of her accepted employment-related condition.

On November 6, 2017 appellant filed an appeal with the Board. By decision dated June 5, 2018, the Board affirmed OWCP's October 18, 2017 decision. The Board found that appellant had not met her burden of proof to establish a recurrence of a medical condition, on or after September 10, 2016, causally related to her accepted December 22, 2015 employment injury.⁵

On October 2, 2018 appellant requested reconsideration and submitted additional medical evidence in support of her claim.

In a report dated June 26, 2018, Dr. Ahmad noted that appellant had a recurrence of back and right shoulder pain. She provided diagnoses of right sacroiliac joint pain, mechanical low back pain, and right rotator cuff tear. Dr. Ahmad reported that appellant was a letter carrier who sustained a fall in 2013 and another fall in 2015. She reported that in 2015 appellant had fallen and injured her right shoulder and lower back. Dr. Ahmad described the incident, noting that it was raining when appellant ascended tiled stairs and fell, causing her to hit each step on her back. She reported that appellant's back condition improved after a month. Appellant was off work for approximately four months for a nonindustrial condition and was subsequently released to work. She complained that her back and right shoulder hurt following her return to full-duty work with no specific injury. Dr. Ahmad provided findings on physical examination and reviewed diagnostic studies. She reported that appellant sustained a recurrence due to back and right shoulder pain. Dr. Ahmad opined that appellant's return to carrying duties exacerbated her right shoulder condition that was known to be a rotator cuff tear based upon a 2013 MRI scan, and that she had findings of spondylosis in her low back, but that clinically there was a component of sacroiliac (SI) joint dysfunction. She reported that the latter was triggered by walking, bending, and carrying activities. Dr. Ahmad opined that because there was no specific injury appellant's symptoms were exacerbated from her return to her employment duties which had resulted in a recurrence of back pain and right shoulder rotator cuff tear symptoms, and the need for further medical treatment *via* injections or physical therapy. She provided modified work restrictions.

⁵ *Id.*

In an attending physician's supplemental report dated July 30, 2018, Dr. Ahmad repeated appellant's history of symptoms, since her return to work, as well as her diagnoses and work restrictions from her June 26, 2018 report. She referred appellant to physical therapy and concluded that "this injury has resulted in permanent restriction, total or partial loss of function of a part or member, or permanent disfigurement of the head, face, neck or some other part of the body which will handicap the employee in securing or maintaining employment."

Dr. Ahmad provided a supplemental report dated September 10, 2018 in which she related that appellant had several open claims for employment injuries. She explained that appellant's bilateral knee pain was due to degenerative osteoarthritis, but that appellant had argued with her that the bilateral knee osteoarthritis was due to her job where she had to walk a lot, and she contused the knee on September 25, 2013. Dr. Ahmad noted that appellant had osteoarthritic changes in the knees even back in September 2013.

In a supplemental report dated November 15, 2018, Dr. Ahmad related diagnoses of lumbar spondylosis and low back contusion. She noted that appellant's injury had not resulted in permanent restriction, total or partial loss of function of a part or member, or permanent disfigurement of the head, face, neck, or some other part of the body which would handicap the employee in securing or maintaining employment. Dr. Ahmad assigned work restrictions of standing and walking no more than five hours a day. She noted that appellant had been referred for acupuncture and physical therapy, and that rehabilitation service had been recommended, but not authorized.

By decision dated December 13, 2018, OWCP denied modification finding that the medical evidence of record was insufficient to establish that appellant's need for additional medical treatment was causally related to the accepted December 22, 2015 employment injury.

LEGAL PRECEDENT

A recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment.⁶

If a claim for a recurrence of a medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting causal relationship between the employee's current condition and the original injury in order to meet her burden.⁷

⁶ 20 C.F.R. § 10.5(y).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013); *see also J.M.*, Docket No. 09-2041 (issued May 6, 2010).

An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury.⁸ To meet this burden, the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.⁹ Where no such rationale is present, the medical evidence is of diminished probative value.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of a medical condition, on or after September 10, 2016, causally related to her accepted December 22, 2015 employment injury.

Preliminarily, the Board notes that it is unnecessary for it to consider the evidence appellant submitted prior to the issuance of OWCP's October 18, 2017 merit decision. The Board previously considered that evidence in its June 5, 2018 decision and found it insufficient to establish the claimed recurrence. Absent further merit review by OWCP pursuant to section 8128 of FECA, the Board's prior findings with regard to the earlier medical evidence are *res judicata*.¹¹ The Board, therefore, will not review the evidence addressed in the prior appeal.¹²

Appellant has maintained that she required additional medical treatment due to her accepted December 22, 2015 employment injury, which was accepted for low back contusion, right elbow contusion, and right elbow abrasion. Following OWCP's October 18, 2017 decision, appellant submitted medical reports dated June 26 through November 15, 2018 from Dr. Ahmad, her treating physician.

In her June 26, 2018 report, Dr. Ahmad noted findings of right sacroiliac joint pain, low back pain, and right rotator cuff tear, as well as low back spondylosis, and SI joint dysfunction. She opined that there was no specific injury following appellant's return to her employment duties and that she sustained a recurrence of her back pain and right shoulder rotator cuff tear symptoms. While the physician noted that appellant had back and shoulder pain complaints and that she required additional medical treatment, she failed to relate the need for continued treatment to the accepted conditions of low back contusion, right elbow contusion, and right elbow abrasion.¹³ The Board finds that the opinions of Dr. Ahmad, as set forth in her medical reports, are not well rationalized and are therefore insufficient to establish that appellant sustained a recurrence of her

⁸ *D.K.*, Docket No. 17-1829 (issued February 7, 2018); *C.C.*, Docket No. 18-0719 (issued November 9, 2018).

⁹ *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

¹⁰ *H.T.*, Docket No. 17-0209 (issued February 8, 2018); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

¹¹ *See M.S.*, Docket No. 18-0877 (issued November 21, 2018).

¹² *See L.E.*, Docket No. 18-1138 (issued February 1, 2019); *B.R.*, Docket No. 17-0294 (issued May 11, 2018).

¹³ *Supra* note 8.

accepted medical conditions.¹⁴ Moreover, Dr. Ahmad failed to provide an opinion causally relating the additional diagnosed conditions of lumbar spondylosis, SI joint dysfunction, and right rotator cuff tear to the December 22, 2015 employment injury and the need for continued treatment.¹⁵ For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.¹⁶ As Dr. Ahmad did not offer an opinion or medical rationale causally relating these diagnosed medical conditions to appellant's accepted employment injury, her report was insufficient to establish a recurrence of a medical condition.¹⁷

In her supplemental report dated July 30, 2018, Dr. Ahmad noted that she had referred appellant to physical therapy and she opined in part that "[t]his injury has resulted in permanent restriction, total or partial loss of function of a part or member...." She again, however, failed to address the accepted conditions of low back and right elbow contusion, and right elbow abrasion, nor has she explained why these conditions necessitated further medical treatment. As Dr. Ahmad failed to find that appellant had a need for further medical treatment due to her accepted conditions, her opinion is of little probative value on the issue of whether appellant experienced a recurrence of the need for medical treatment due to her December 22, 2015 employment injury.¹⁸

Dr. Ahmad, on September 10, 2018, noted that appellant had several claims for employment injuries. She then addressed appellant's bilateral knee condition and noted that it was caused by degenerative arthritis. Dr. Ahmad, again, did not address appellant's need for further medical treatment due to the accepted conditions arising from her December 22, 2015 employment injury; therefore, her opinion is insufficient to support that appellant sustained a worsening of her work-related conditions.¹⁹

Finally, in her November 15, 2018 report, Dr. Ahmad related that she had referred appellant for acupuncture and physical therapy for her diagnoses of lumbar spondylosis and low back contusion. As previously noted, lumbar spondylosis is not an accepted condition. While low back contusion was an accepted condition, Dr. Ahmad has not explained why a contusion sustained on December 22, 2015, would require physical therapy and acupuncture, almost three

¹⁴ *E.G.*, Docket No. 18-1383 (issued March 8, 2019).

¹⁵ *A.C.*, Docket No. 17-0521 (issued April 24, 2018).

¹⁶ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁷ *J.H.*, Docket No. 17-1456 (issued December 11, 2017); *see also L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018) (medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship).

¹⁸ *See E.R.*, Docket No. 18-0202 (issued June 5, 2018).

¹⁹ *Id.*

years later.²⁰ Her opinion is therefore insufficient to establish that appellant had a need for medical treatment causally related to the accepted injury.²¹

In this instance, appellant filed the recurrence more than 90 days following her last medical treatment for her accepted employment conditions, she was thus required to submit a rationalized medical opinion establishing causal relationship between her current condition and the original injury, without intervening cause.²² She submitted no such evidence. As appellant has not submitted medical evidence establishing a recurrence of medical condition due to her accepted December 22, 2015 employment injury, the Board finds that she has not met her burden of proof.²³

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 10.607.²⁴

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of her medical condition on or after September 10, 2016 causally related to her accepted December 22, 2015 employment injury.

²⁰ *Gregory L. Strodman*, Docket No. 04-1881 (issued April 18, 2005).

²¹ *Id.*

²² *Supra* note 7; *see also O.H.*, Docket No. 15-0778 (issued June 25, 2015).

²³ *See E.R.*, Docket No. 18-0202 (issued June 5, 2018).

²⁴ The Board notes that appellant requested reconsideration before OWCP on March 16, 2019 and by decision dated March 28, 2019, OWCP denied modification of the December 13, 2018 decision. The Board and OWCP may not exercise simultaneous jurisdiction over the same issue(s) in a case on appeal. 20 C.F.R. § 501.2(c)(3). Following the docketing of an appeal before the Board, OWCP does not retain jurisdiction to render a further decision regarding the issue(s) on appeal until after the Board relinquishes jurisdiction. *Id.* Therefore, the subsequent decision of OWCP dated March 28, 2019 is null and void as the Board and OWCP may not simultaneously have jurisdiction over the same issue. *See* 20 C.F.R. § 10.626; *see also A.C.*, Docket No. 18-1730 (issued July 23, 2019); *M.C.*, Docket No. 18-1278, n.1 (issued March 7, 2019); *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

ORDER

IT IS HEREBY ORDERED THAT the December 13, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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