United States Department of Labor
Employees' Compensation Appeals Board

S.P., Appellant **and** **DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, St. Louis, MO, Employer**	)	**Docket No. 19-0573** **Issued: May 6, 2021**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 16, 2019 appellant filed a timely appeal from an October 26, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal

[1] Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of her oral argument request, appellant asserted that OWCP improperly denied her claim for a recurrence of the need for medical treatment. The Board, in exercising its discretion, denies appellant's request for oral argument because this matter requires an evaluation of the medical evidence presented. As such, the arguments on appeal can be adequately addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of the need for medical treatment on or after February 5, 2018 causally related to her accepted employment injuries.

FACTUAL HISTORY

On September 28, 2010 appellant, then a 41-year-old processor, filed an occupational disease claim (Form CA-2) alleging that she sustained injury to her upper extremities due to factors of her federal employment including engaging in repetitive typing and using a computer mouse at work. She noted that she first became aware of her claimed conditions and realized their relation to her federal employment on August 17, 2004. Appellant did not stop work. OWCP accepted her claim for bilateral tenosynovitis of the hands and wrists.[4]

Appellant subsequently submitted February 5 and 22, 2018 reports from Rachel Ott, a nurse practitioner, who diagnosed bilateral synovitis/tenosynovitis and prescribed physical therapy. She also submitted an administrative document regarding a February 28, 2018 appointment with Dr. Tahir Qayum, a Board-certified internist.

On February 28, 2018 appellant filed a Form CA-2a alleging that she sustained a recurrence of the need for medical treatment, commencing February 5, 2018, causally related to her accepted employment conditions. She asserted that, during the prior week, she had experienced fatigue and pain in her arms, including her wrists and elbows. Appellant advised that she did not miss any time from work.

In a development letter dated March 5, 2018, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation as to the relationship between her current need for medical treatment and the accepted

[2] 5 U.S.C. § 8101 *et seq.*

[3] 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.*

[4] On November 14, 2013 appellant filed a notice of recurrence (Form CA-2a) alleging that she sustained a recurrence of the need for medical treatment, commencing November 1, 2013, causally related her accepted employment conditions. By decision dated January 17, 2014, OWCP accepted appellant's claim for a recurrence of the need for medical treatment, commencing November 1, 2013, but it later closed her claim for medical treatment due to inactivity.

employment conditions. It provided a questionnaire for her completion, which posed questions regarding her medical treatment.[5] OWCP afforded appellant 30 days to respond.

In response, appellant submitted a March 9, 2018 statement in which she reported that, over the years, she had experienced fatigue, pain, and weakness in her arms, including her wrists and elbows. She advised that she did not have any problems with her arms between January 31, 2014 and February 4, 2018.

Appellant submitted a February 6, 2018 report from Ms. Ott who described appellant's upper extremity complaints and diagnosed strain of the right latissimus dorsi muscle, and extensor tenosynovitis of the wrists.

In a February 28, 2018 report, Dr. Qayum noted that appellant was previously seen on February 6, 2018 at which time she complained of some backache and right arm discomfort that she believed constituted "a work-related issue." He diagnosed medial epicondylitis of the right elbow and gastroesophageal reflux disease without esophagitis. Dr. Qayum recommended physical therapy to treat appellant's epicondylitis.

In a March 23, 2018 patient history form, Dr. Qayum noted under the section "chief complaint" that appellant reported aching, pain, and fatigue in her wrists/elbows and an inability to open bottles. Under the section, which asked whether the reported symptoms were related to a "fall or accident," he noted, "work – repetitive."[6]

In progress notes dated March 23, 26, 31, April 2, 3, 4, 11, and 13, 2018, Dr. Jeffrey R. Stark, a chiropractor, provided joint fixation findings for appellant's cervical, lumbar, and thoracic spine, as well as for her sacrum/pelvis. In some of the reports, he noted that appellant reported symptoms in her wrists/elbows.

By decision dated April 30, 2018, OWCP denied appellant's recurrence claim, finding that the medical evidence of record was to establish a recurrence of the need for medical treatment on or after February 5, 2018 causally related to her accepted employment injuries.

On May 15, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant subsequently submitted reports dated: March 26, April 21, and May 22, 2015; February 9, May 13, June 10, and August 9, 2016; and June 20, 2017 in which Dr. Qayum discussed the medical treatment appellant received for gastroesophageal reflux disease, iron deficiency, seasonal allergic rhinitis/sinus problems, acute bronchitis, axilla dermatitis, folliculitis, left hip bursitis, left leg swelling, and bilateral knee pain. She also submitted administrative

[5] OWCP advised appellant that, if a new traumatic work injury or occupational disease produced by the work environment occurred, a new claim might need to be filed.

[6] Under the section that asked whether the reported symptoms constituted a "recurrence," Dr. Qayum provided an illegible response. Appellant also submitted patient information forms she completed in March 2018.

documents regarding a February 6, 2018 appointment with Ms. Ott and a February 28, 2018 appointment with Dr. Qayum.

In progress reports dated April 18, 20, and 25, 2018, Dr. Stark provided joint fixation findings for appellant's cervical, lumbar, and thoracic areas of the spine. On April 27, 2018 he provided range of motion findings for her cervical spine. In a May 2, 2018 report, Dr. Stark noted that cervical spine x-rays showed loss of the normal lordotic curve with no bone destruction and normal soft tissues. He diagnosed other synovitis and tenosynovitis of the right hand, other synovitis and tenosynovitis of the left hand, myalgia, and contracture of muscle (multiple sites). In July 12, 26, and August 14, 2018 reports, Anna Van Voorhis, an occupational therapist, described her therapy sessions with appellant.

In an August 1, 2018 report, Dr. Bruce Schlafly, a Board-certified orthopedic surgeon, reported that he was seeing appellant for the first time and noted that she presented with complaints of experiencing problems with her hands and upper extremities since 2004. Appellant currently complained of fatigue in her hands and elbows, and advised that she had difficulty opening jars and had been sleeping with wrist splints. Dr. Schlafly noted that Dr. Stark had concluded that appellant's symptoms were due to "constant typing and repetitive work." He reported his own physical examination findings, noting that appellant described some soreness in her forearms/elbows, but exhibited good range of motion in her hands, wrists, and elbows with no obvious swelling or atrophy. Dr. Schlafly noted that appellant had grip strength of 31 pounds in each hand and that there was no positive Tinel's sign in the median nerve of either wrist. He recommended that she undergo hand therapy once every two weeks for eight weeks to treat the "diagnosis of work-related bilateral tenosynovitis of her hands and wrists." Dr. Schlafly indicated that he might order electrical studies if appellant's problems persisted.

By decision dated October 26, 2018, OWCP's hearing representative affirmed the April 30, 2018 decision.[7]

LEGAL PRECEDENT

A recurrence of a 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.[8] 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 without intervening cause.[9]

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal

[7] The hearing representative noted that appellant continued to work between January 2014 and February 2018 "performing activities, which may have contributed to her condition" and advised that she might consider filing a claim for a new traumatic injury or occupational disease.

[8] 20 C.F.R. § 10.5(y).

[9] *M.P.*, Docket No. 19-0161 (issued August 16, 2019); *E.R.*, Docket No. 18-0202 (issued June 5, 2018).

relationship between the employee's current condition and the original injury in order to meet his or her burden.[10] 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.[11] Where no such rationale is present, medical evidence is of diminished probative value.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of the need for medical treatment on or after February 5, 2018 causally related to her accepted employment injuries.

In an August 1, 2018 report, Dr. Schlafly reported that he was seeing appellant for the first time and noted that she presented with complaints of experiencing problems with her hands and upper extremities since 2004. He noted that Dr. Stark had concluded that appellant's symptoms were due to "constant typing and repetitive work." Dr. Schlafly reported his own physical examination findings, noting that appellant described some soreness in her forearms/elbows, but exhibited good range of motion in her hands, wrists, and elbows with no obvious swelling or atrophy. He noted that appellant had grip strength of 31 pounds in each hand and that there was no positive Tinel's sign in the median nerve of either wrist. Dr. Schlafly recommended that appellant undergo hand therapy once every two weeks for eight weeks to treat the "diagnosis of work-related bilateral tenosynovitis of her hands and wrists." Although Dr. Schlafly related appellant's bilateral tenosynovitis to her work and recommended treatment in the form of hand therapy, his report is of limited probative value on the underlying issue of this case because he did not provide a rationalized opinion explaining the causal relationship between appellant's need for medical treatment and the accepted employment conditions, *i.e.*, bilateral tenosynovitis of the hands and wrists. He did not describe appellant's accepted employment conditions in any detail or explain the pathophysiological process through which such conditions, sustained in approximately August 2004, would require medical treatment in 2018. Dr. Schlafly did not adequately explain how appellant sustained a spontaneous recurrence of the accepted employment conditions, without an intervening cause, such that she needed medical treatment for those conditions. The Board has held that a report is of limited probative value if it does not contain medical rationale explaining a causal relationship between the claimed disability and the accepted employment-related injury. Dr. Schlafly did not provide adequate bridging evidence regarding appellant's medical condition/treatment between February 2014 and January 2018, sufficient to establish a recurrence of her accepted upper extremity conditions and the need for medical treatment.[13] Although he suggested that appellant might have sustained a new work injury due to

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

[11] *A.C.,* Docket No. 17-0521 (issued April 24, 2018); *O.H.,* Docket No. 15-0778 (issued June 25, 2015).

[12] *M.P., supra* note 9; *Michael Stockert,* 39 ECAB 1186 (1988).

[13] *See L.A.,* Docket No. 18-1570 (issued May 23, 2019) (regarding the importance of bridging evidence in establishing causal relationship between a claimed injury and employment factors).

exposure to new work factors, the case record does not contain a final decision of OWCP regarding a new work injury and the matter is not currently before the Board on appeal.[14] Therefore, Dr. Schlafly's August 1, 2018 report is insufficient to establish appellant's claim.

Appellant submitted a February 28, 2018 report from Dr. Qayum who diagnosed medial epicondylitis of the right elbow, recommended physical therapy to treat appellant's epicondylitis,. In a March 23, 2018 patient history form, Dr. Qayum noted under the section "chief complaint" that appellant reported aching, pain, and fatigue in her wrists/elbows and an inability to open bottles. Under the section that asked whether the reported symptoms were related to a "fall or accident," he noted, "work -- repetitive." Although Dr. Qayum recommended treatment for appellant's epicondylitis and suggested a work-related cause for the condition, the opinions contained in these reports are of limited probative value on the underlying issue of this case because he did not provide adequate medical rationale in support of his opinion on causal relationship. Dr. Qayum failed to provide an explanation, with supporting bridging medical evidence, of the medical process through which the accepted employment conditions would require medical treatment in 2018 without an intervening cause.[15] He suggested that appellant might have sustained a new work injury. However, as noted above, the case record does not contain a final decision of OWCP regarding a new work injury and the matter is not currently before the Board on appeal.[16] As previously noted, a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition has an employment-related cause.[17] Therefore, these reports are insufficient to establish appellant's claim.

In reports dated March 26, April 21, and May 22, 2015, February 9, May 13, June 10, and August 9, 2016, and June 20, 2017, Dr. Qayum collectively discussed the medical treatment appellant received for gastroesophageal reflux disease, iron deficiency, seasonal allergic rhinitis/sinus problems, acute bronchitis, axilla dermatitis, folliculitis, left hip bursitis, left leg swelling, and bilateral knee pain. In these reports, he did not provide a discussion of appellant's accepted employment conditions or the need to provide medical treatment for them and, therefore, these reports are of no probative value regarding appellant's claim for a recurrence of the need for medical treatment. The Board has held that a medical report is of no probative value on a given medical matter if it does not contain an opinion on that matter.[18] Thus, these reports are insufficient to establish appellant's claim.

Appellant submitted reports, dated March 23 to May 2, 2018, from Dr. Stark, a chiropractor. Under FECA, the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine

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[14] *See* 20 C.F.R. § 501.2(c).

[15] *See supra* note 13.

[16] *See supra* note 14.

[17] *See supra* note 11.

[18] *T.H.,* Docket No. 18-0704 (issued September 6, 2018); *see also Charles H. Tomaszewski*, 39 ECAB 461 (1988).

to correct a subluxation as demonstrated by x-rays to exist.[19] OWCP's regulations at 20 C.F.R. § 10.5(bb) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation, or abnormal spacing of the vertebrae which must be demonstrable on an x-ray film to an individual trained in the reading of x-rays.[20] However, these submitted reports do not constitute probative medical evidence because Dr. Stark did not treat spinal subluxations as demonstrated by x-ray to exist and he is not considered to be a physician as defined under FECA.[21] Therefore, these reports are insufficient to establish appellant's claim.

Appellant also submitted February 5, 6, and 22, 2018 reports of Ms. Ott, a nurse practitioner, and July 12, 26, and August 14, 2018 reports of Ms. Van Voorhis, an occupational therapist. However, these reports are of no probative value regarding appellant's recurrence claim because nurse practitioners and occupational therapists are not considered to be physicians as defined under FECA and their reports do not constitute competent medical evidence.[22] Therefore, these reports are insufficient to meet appellant's burden of proof.

As the medical evidence of record does not contain a rationalized medical opinion establishing that appellant required further medical care on or after February 5, 2018 causally related to her accepted employment conditions, the Board finds that appellant has not met her burden of proof to establish her recurrence claim.

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 the need for medical treatment on or after February 5, 2018 causally related to her accepted employment conditions.

[19] 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

[20] 20 C.F.R. § 10.5(bb).

[21] *See A.C.,* Docket No. 19-1950 (issued May 27, 2020). On May 2, 2018 Dr. Stark noted that cervical spine x-rays showed loss of the normal lordotic curve with no bone destruction and normal soft tissues. However, he did not diagnose a spinal subluxation or otherwise indicate that the cervical x-rays demonstrated the existence of a subluxation of a vertebrae within the above-described definition. *See id.*

[22] Section 8101(2) provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." *See* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship,* Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the October 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board