

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

R.N., Appellant)

and)

DEPARTMENT OF THE ARMY, NATIONAL)
MUSEUM OF HEALTH & MEDICINE,)
Silver Spring, MD, Employer)

**Docket No. 21-0948
Issued: August 18, 2022**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 4, 2021 appellant filed a timely appeal from a December 23, 2020 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

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include additional medical conditions causally related to her accepted February 28, 2014

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.*

employment injury resulting in a recurrence of disability, commencing September 11, 2014, 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 decisions 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 returned to work performing limited-duty 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 for intermittent periods of disability on the supplemental rolls commencing 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 decision dated December 11, 2014, OWCP denied appellant's recurrence claim, finding that the medical evidence of record was insufficient to establish a recurrence of total disability commencing September 11, 2014 causally related to her February 28, 2014 employment injury.

Appellant subsequently requested reconsideration and submitted additional evidence, including medical reports from Dr. David L. Taragin, a Board-certified neurologist. He opined that she was totally disabled from work due to her February 28, 2014 employment injury and advised that she remain off work for three months. Dr. Taragin indicated that she had disability due to employment-related right upper extremity conditions of complex regional pain syndrome (CRPS) and brachial plexopathy. OWCP also received reports from Dr. Dexter W. Love, a Board-certified orthopedic surgeon, who opined that appellant was totally disabled from work due to her February 28, 2014 employment injury. He diagnosed employment-related degenerative disc disease of the cervical spine, cervical radiculopathy, and anterior/inferior labrum tear of the right shoulder.

OWCP referred appellant, along with a statement of accepted facts (SOAF) and a series of questions, for a second opinion examination with Dr. Robert A. Smith, a Board-certified

³ Docket No. 16-1279 (issued November 7, 2017); Docket No. 19-0994 (issued November 7, 2019).

⁴ OWCP assigned the claim OWCP File No. xxxxxx748.

⁵ Appellant previously filed a claim, assigned by OWCP as File No. xxxxxx834, in which she alleged that on August 1, 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 only a limited amount of medical benefits, without formally considering the merits of the claim. Appellant's claims have not been administratively combined by OWCP.

orthopedic surgeon. In a November 19, 2014 report, Dr. Smith determined that appellant 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. Dr. Smith opined that she could return to her full-duty job at her previous position.

Following a December 11, 2014 notice of proposed termination, by decision dated February 5, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits, effective February 2, 2015, based on Dr. Smith's November 19, 2014 report.

By decisions dated June 12, September 14, and December 24, 2015, OWCP denied modification.

Appellant appealed the December 24, 2015 OWCP decision to the Board. By decision dated November 7, 2017,⁶ the Board set aside the December 24, 2015 decision and remanded the case to OWCP for further development. The Board found that the medical reports submitted were sufficient to require further development with respect to the question of whether appellant 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 she sustained a condition, other than a right shoulder/upper arm sprain, causally related to her accepted February 28, 2014 employment injury.

OWCP requested that Dr. Smith provide a supplemental report addressing the questions of whether appellant had disability from work commencing September 11, 2014 causally related to her February 28, 2014 employment injury, and whether the acceptance of 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 previous November 19, 2014 report with respect to appellant's claims for disability and expansion of the accepted conditions. In a March 21, 2018 work capacity evaluation (Form OWCP-5c), Dr. Smith indicated that she could return to her regular work without restrictions.

On April 30, 2018 OWCP found a conflict in the medical opinion evidence between Dr. Smith and Dr. Taragin regarding whether appellant was disabled from work commencing 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 as causally related to her February 28, 2014 employment injury. It referred appellant, along with an SOAF and a series

⁶ Docket No. 16-1279 (issued November 7, 2017).

of questions, to Dr. Steven L. Friedman, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on these issues.

In a June 4, 2018 report, Dr. Friedman reported the findings of his physical examination and noted that appellant 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 indicated 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 noted that, during his examination, she did not exhibit objective evidence of CRPS or brachial plexopathy. Dr. Friedman also opined that the diagnoses of degenerative disc disease of the cervical spine and tear of the anterior/inferior glenoid labrum of appellant's right shoulder were not related to the February 28, 2014 employment injury. For these reasons, he 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 had not met her burden of proof to establish a recurrence of disability, commencing September 11, 2014, causally related to her accepted February 28, 2014 employment injury. It further found that she had not met her burden of proof to expand the acceptance of her claim to include brachial plexopathy, CRPS, or any other medical condition causally related to her accepted February 28, 2014 employment injury.

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, "[t]he shoulder procedures would more definitively treat the shoulder injury sustained February 2014." Appellant also resubmitted a number of medical reports already of record.

By decision dated October 18, 2018, OWCP denied modification of the July 12, 2018 decision. Appellant appealed to the Board and, by decision dated November 7, 2019,⁷ the Board affirmed the October 18, 2018 decision.

On November 6, 2020 appellant requested reconsideration.

Appellant submitted a March 18, 2019 report from Dr. Peter S. Trent, a Board-certified orthopedic surgeon, who indicated that she had been diagnosed with right-sided injuries including CRPS, neuritis of the brachial plexus, tear of the glenoid labrum, acromioclavicular degenerative disease, rotator cuff tendinitis, and cervical spondylosis. He noted, "[t]he described accident of

⁷ Docket No. 19-0994 (issued November 7, 2019).

[February 28, 2014] is the competent producing mechanism of the injury[,] which the [appellant] sustained.” Dr. Trent indicated that, although the position of an arm (flexed, abducted, and externally rotated) could certainly produce a tear of the glenoid labrum, this was not the sole position that could produce such an injury. He opined that any downward force on the arm was capable of causing such a labral tear and advised that a May 21, 2018 MRI scan described such an injury to the right rotator cuff. Dr. Trent opined that appellant’s injury was caused by compression of the muscles and tendons of the rotator cuff between the head of the humerus and the greater tuberosity of the humerus and the acromion and acromioclavicular joint immediately above. He indicated that the February 28, 2014 accident certainly was capable of producing this type of injury to the musculo-tendinous structures. Dr. Trent opined that appellant’s continued use of the injured right shoulder, arm, and neck following the February 28, 2014 employment injury could certainly aggravate the condition of the tissues, which had not been allowed to heal. He noted that painful conditions resulting from injuries for which treatment is neglected can cause continued pain and result in the development of causalgia, a condition which was sometimes referred to as CRPS or reflex sympathetic dystrophy. Dr. Trent indicated that, “[t]his is a well-documented and accepted condition[,] which is unrelated to the severity of injury. Treatment of these injuries is very oftentimes unsuccessful.” He opined that, more likely than not, the September 28, 2014 employment injury caused “the current disabling symptoms” and he recommended that appellant undergo shoulder surgery. Dr. Trent noted, “[t]he complaints[,] which [appellant] has voiced, the treatments[,] which have been rendered, the diagnostic tests[,] which have been ordered as well as ... the time off from work and associated disability are all, more likely than not, a direct result of the injury[,] which she sustained.” He advised that, until definitive treatment was rendered and appellant was suitably rehabilitated, she remained disabled as of the date of his report, March 18, 2019.

Appellant also resubmitted numerous medical reports, which had previously been reviewed and considered by OWCP.

By decision dated December 23, 2020, OWCP determined that appellant had not met her burden of proof to expand the acceptance of her claim to include additional medical conditions causally related to her accepted February 28, 2014 employment injury. It also found that she had not met her burden of proof to establish a recurrence of disability, commencing September 11, 2014, causally related to her accepted February 28, 2014 employment injury.

LEGAL PRECEDENT

When 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.⁸ The medical evidence required to establish causal relationship between a specific condition, and the 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

⁸ *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

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.¹⁰ 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.¹¹ 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.¹²

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.

ANALYSIS

The Board finds that this case is not in posture for decision.

Preliminarily, the Board notes that it is unnecessary to consider the evidence that was of record prior to the issuance of OWCP's October 18, 2018 decision, which was considered by the Board in its November 7, 2019 decision. Findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.¹³

In a June 4, 2018 report, Dr. Friedman, the impartial medical specialist, reported the findings of his physical examination and noted that appellant 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 indicated 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 noted that, during his examination, she did not exhibit

⁹ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

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

¹¹ *Id.*

¹² *J.D.*, Docket No. 18-0616 (issued January 11, 2019); see *C.C.*, Docket No. 18-0719 (issued November 9, 2018).

¹³ *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

objective evidence of CRPS or brachial plexopathy. Dr. Friedman also opined that the diagnoses of degenerative disc disease of the cervical spine and tear of the anterior/inferior glenoid labrum of appellant's right shoulder were not related to the February 28, 2014 employment injury. For these reasons, he 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 denied appellant's recurrence claim and expansion of the acceptance of the claim to include additional conditions, based on the opinion of Dr. Friedman. Appellant requested reconsideration. By decision dated October 18, 2018, OWCP denied modification of the July 12, 2018 decision. Appellant appealed to the Board and, by decision dated November 7, 2019,¹⁴ the Board affirmed the October 18, 2018 decision.

On November 6, 2020 appellant requested reconsideration and submitted a March 18, 2019 report from Dr. Trent, who opined that appellant sustained conditions causally related to the accepted February 28, 2014 employment injury, in addition to those already accepted, which caused disability after September 11, 2014. He indicated that she had been diagnosed with right-sided injuries including CRPS, neuritis of the brachial plexus, tear of the glenoid labrum, acromioclavicular degenerative disease, rotator cuff tendinitis, and cervical spondylosis. Dr. Trent noted that, "[t]he described accident of [February 28, 2014] is the competent producing mechanism of the injury[,] which the patient sustained." He indicated that, although the position of an arm (flexed, abducted, and externally rotated) could certainly produce a tear of the glenoid labrum, this was not the sole position that could produce such an injury. Dr. Trent explained that appellant's injury was caused by compression of the muscles and tendons of the rotator cuff between the head of the humerus and the greater tuberosity of the humerus and the acromion and acromioclavicular joint immediately above. He indicated that the February 28, 2014 accident was capable of producing this type of injury to the musculo-tendinous structures. Dr. Trent opined that, more likely than not, the September 28, 2014 employment injury caused appellant's current disabling symptoms and noted that "[t]he complaints[,] which [appellant] has voiced, the treatments[,] which have been rendered, the diagnostic tests[,] which have been ordered as well as ... the time off from work and associated disability are all, more likely than not, a direct result of the injury[,] which she sustained."

The Board notes that proceedings under FECA are not adversarial in nature, and OWCP is not a disinterested arbiter.¹⁵ The Board finds that while Dr. Trent's March 18, 2019 report is insufficient to meet appellant's burden of proof regarding her expansion and recurrence of disability claims, it raises an uncontroverted inference of causal relation between her claimed additional employment injuries/period of disability and the accepted February 28, 2014 employment injury. Further development of appellant's claim is therefore required.¹⁶

The Board will, therefore, remand the case to OWCP for further development of the medical evidence. On remand, OWCP shall refer Dr. Trent's March 18, 2019 report to

¹⁴ Docket No. 19-0994 (issued November 7, 2019).

¹⁵ See *B.B.*, Docket No. 18-1321 (issued April 5, 2019).

¹⁶ See *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

Dr. Friedman for his review and a supplemental opinion regarding whether the acceptance of the claim should be expanded to include additional medical conditions causally related to her accepted February 28, 2014 employment injury; and whether appellant sustained a recurrence of disability commencing September 11, 2014, causally related to her accepted February 28, 2014 employment injury. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the December 23, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: August 18, 2022
Washington, DC

Alec J. Koromilas, 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