

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include additional conditions as a consequence of her accepted June 29, 2016 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On June 29, 2016 appellant, then a 43-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she injured her left upper and lower extremities when she fell down stairs while in the performance of duty. OWCP accepted the claim for strain of the fascia and tendon of the posterior muscle group of the left thigh, left hip contusion, left shoulder contusion, and strain of the fascia and tendon at the shoulder and upper arm level of the left arm. It paid appellant wage-loss compensation on the supplemental rolls commencing August 14, 2016 and on the periodic rolls commencing January 8, 2017.

On December 12, 2016 OWCP prepared a statement of accepted facts (SOAF) and referred appellant for a second opinion examination with Dr. Richard Y. Kimura, a Board-certified orthopedic surgeon, to assess her employment-related conditions and disability status. In a report dated February 1, 2017, Dr. Kimura reviewed her history of injury and medical treatment. He noted appellant's current physical examination findings and found that the magnetic resonance imaging (MRI) scan of her left shoulder revealed degenerative changes of the glenohumeral joint and acromioclavicular joint and partial tears in the subscapularis supraspinatus, and infraspinatus. Dr. Kimura opined that the partial tears of the rotator cuff and the calcific tendinitis in her left shoulder could have been caused by her fall. He diagnosed cervical strain, which was superimposed on prior degenerative disc disease and stenosis, and which he explained was probably strained by the bump during her fall. Dr. Kimura also diagnosed bilateral carpal tunnel syndrome and explained that, while appellant had right wrist symptoms prior to the fall, she did not have left carpal tunnel symptoms until after the fall; therefore, her left carpal tunnel syndrome could also have been precipitated by the fall. He opined that she was disabled from her date-of-injury position.

By letter dated March 2, 2017, OWCP requested that Dr. Kimura clarify his February 1, 2017 report, to provide definitive evidence establishing that appellant's cervical strain, carpal tunnel syndrome, and partial rotator cuff tears were caused by her fall on June 29, 2016.

In a supplemental report dated March 31, 2017, Dr. Kimura explained, with regard to the diagnoses of partial rotator cuff tears, that "in cases like this you cannot show definitive evidence to show that these problems were caused by the injury you can only go by the presence of symptoms which occurred after the injury." With regard to appellant's cervical strain, aggravation of her preexisting cervical conditions, and left carpal tunnel syndrome, he provided a similar response, noting that she had a positive nerve conduction velocity test, which was an objective finding, and that the time relationship of the injury to the subsequent symptoms would lead to these diagnoses. Dr. Kimura also noted that, aggravation of her preexisting cervical conditions should

⁴ *Order Remanding Case*, Docket No. 19-1397 (issued July 7, 2020).

have healed in approximately 8 to 10 months, however, she had not returned to her preexisting baseline condition. He explained that appellant's current medical restrictions were due to the fall of June 29, 2016.

Appellant returned to modified-duty work effective March 27, 2017. As of April 16, 2017, she claimed compensation for or intermittent disability from work. Appellant returned to work at four hours per day as of June 26, 2017, claiming compensation for four hours per day for disability from work. OWCP paid her compensation on the supplemental rolls for the claimed four hours per day.

As of March 23, 2018, appellant continued to claim compensation for total disability from work through March 2, 2019. OWCP continued to pay her compensation on the supplemental rolls for four hours per day, pending development of her claim for the four hours remaining on each claimed date.

By letter dated March 19, 2018, Dr. Diane Nagasaka, a family practitioner, requested that the acceptance of appellant's claim be expanded to include the additional conditions of chronic neck pain and cervical spondylosis without myelopathy. She indicated that recent diagnostics demonstrated severe changes from appellant's traumatic fall at work on June 29, 2016. Appellant continued to treat with Dr. Nagasaka through 2018 and 2019.

By letter dated April 26, 2018, Dr. Jon F. Graham, a neurosurgeon, requested that the acceptance of appellant's traumatic injury claim be expanded to include diagnoses of cervical radiculopathy and cervical spondylosis without myelopathy or radiculopathy.

On August 30, 2018 Dr. Nagasaka requested authorization for cervical surgery.

By letter dated December 24, 2018, Dr. Nagasaka stated, "It is evident that left arm symptoms were present at initial visit a cervical neck complaint. May not be addressed because the pain from other areas may be focused on the cervical osteophytes preceded the injury, but the chronicity bulge cannot be determined and may have been caused by [appellant's] fall." She advised that appellant's condition warranted surgery.

On January 9, 2019 OWCP forwarded the case record, along with a SOAF, to Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as district medical adviser (DMA), to determine whether appellant's cervical condition arose as a consequence of the accepted work-related injury and whether it had caused total disability since March 2018. It requested that he review specific reports from Dr. Nagasaka.

In a report dated January 15, 2019, Dr. Fellars reviewed the SOAF and the case record. He opined that it was medically probable that the work event did not cause appellant's radicular symptoms, but that she simply had a progression of her degenerative condition as her July 2016 MRI scan of the cervical spine showed degenerative disc disease and multiple levels of diffuse degenerative change, with no acute findings. Dr. Fellars further opined that her radicular symptoms and findings of degenerative disc disease were not related to the work injury, as these conditions likely preexisted her fall.

By decision dated March 18, 2019, OWCP denied expansion of the acceptance of appellant's claim to include cervical herniated disc, incomplete tear of the rotator cuff, numbness of the upper extremity, and bilateral spondylosis of the cervical spine with myelopathy.

Consequently, it also denied her claim for total disability from work for the period March 23, 2018 through March 2, 2019, as well as her request for authorization for surgery, as they were based upon the denied conditions. OWCP based its decision on the January 15, 2019 report of Dr. Fellars.

On June 11, 2019 appellant appealed the March 18, 2019 decision of OWCP to the Board. By order dated July 7, 2020, the Board set aside the March 18, 2019 decision and remanded the case for further development with regard to the issues of expansion, disability, and denial of surgical authorization.⁵ The Board noted that Dr. Fellars' January 15, 2019 report contained no reference to previous medical development on the part of OWCP and that he had not been asked to review the second opinion reports of Dr. Kimura dated February 1 and March 31, 2017, despite the fact that Dr. Kimura had in general, but insufficiently rationalized terms, supported that appellant's cervical conditions, including cervical strain and aggravation of her preexisting cervical conditions, left shoulder conditions including partial rotator cuff tear, and left carpal tunnel syndrome were causally related to her accepted June 29, 2016 employment injury.

On remand, OWCP requested that Dr. Fellars review the February 1 and March 31, 2017 reports of Dr. Kimura and provide an opinion as to the relationship between appellant's accepted work-related injury of June 29, 2016 and any additional work-related conditions. It further requested that Dr. Fellars provide an opinion as to whether, if a cervical condition had arisen as a consequence of the accepted work-related injury, it were of such a degree to create total disability since March 23, 2018.

In a report dated September 15, 2020, Dr. Fellars reviewed the SOAF and the case record, including the second opinion reports of Dr. Kimura. He noted that he had reviewed appellant's treating physician's opinion that appellant had developed cervical radiculopathy as a consequence of appellant's accepted work-related injury, and opined that the factual basis of medical records, including the reports of Dr. Kimura, did not support this. Dr. Fellars observed that Dr. Kimura's examination demonstrated that appellant did not have radicular symptoms, but had a neck strain. He opined that, as there was no evidence that she developed cervical radiculopathy as a consequence of her work-related injury, the question regarding disability as a result of such a cervical condition was not applicable.

OWCP again requested clarification from Dr. Fellars on October 8, 2020. It noted that Dr. Kimura had diagnosed consequential injuries of the left shoulder including partial rotator cuff tear and left carpal tunnel syndrome as a result of the accepted June 29, 2016 work-related injury. OWCP requested that he provide an opinion regarding the relationship between the work injury and the additional left upper extremity conditions.

In a supplemental report dated October 23, 2020, Dr. Fellars noted that, previously, he had opined that there was no evidence of work-related cervical radiculopathy, but that he did not comment as to whether carpal tunnel syndrome or rotator cuff tear were likely related to the work injury of June 29, 2016. He noted that carpal tunnel syndrome was not typically caused by this type of event, but that a left rotator cuff tear certainly is caused by this kind of event. Dr. Fellars opined that appellant likely had a permanent aggravation of her preexisting degenerative partial thickness rotator cuff tear as a result of the accepted work-related injury. He further opined that

⁵ *Id.*

her carpal tunnel syndrome was not a work-related condition, as it was bilateral, whereas her injury was to her left side, and as such, it would not be consistent with the facts of the case.

By decision dated October 26, 2020, OWCP expanded the acceptance of appellant's claim to include the condition of aggravation of incomplete rotator cuff tear or rupture of the left shoulder.

By separate decision of even date, OWCP denied expansion of the acceptance of appellant's claim to include cervical conditions, left carpal tunnel syndrome, numbness of the upper extremity, and bilateral spondylosis of the cervical spine with myelopathy.

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.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is causal relationship between the diagnosed condition and an accepted injury must be based on a complete factual and medical background.⁸ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale which, explains the nature of the relationship between the diagnosed condition and the accepted employment injury.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions as a consequence of her accepted June 29, 2016 employment injury.

On remand, OWCP properly requested that Dr. Fellars, serving as a DMA, review and comment as to the second opinion reports of Dr. Kimura dated February 1 and March 31, 2017, in which Dr. Kimura opined that appellant's cervical conditions and left carpal tunnel syndrome could have been precipitated by the accepted work injury of June 29, 2016.

In a report dated September 15, 2020, Dr. Fellars noted that he had reviewed appellant's treating provider's opinion that appellant had developed cervical radiculopathy as a consequence of appellant's accepted work-related injury, and opined that the factual basis of medical records, including the reports of Dr. Kimura, did not support this, as Dr. Kimura's examination demonstrated that she did not have radicular symptoms.

⁶ A.A., Docket No. 19-1165 (issued December 16, 2019); M.B., Docket No. 19-0485 (issued August 22, 2019); R.J., Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁷ E.M., Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ M.V., Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *Id.*

In a supplemental report dated October 23, 2020, Dr. Fellars noted that a left rotator cuff tear certainly is caused by this kind of event. He opined that carpal tunnel syndrome was not typically caused by this type of event, and that appellant's carpal tunnel syndrome was not a work-related condition, as it was bilateral, whereas her injury was to her left side, and as such, it would not be consistent with the facts of the case. The Board finds that the September 15 and October 23, 2020 reports of Dr. Fellars are well-rationalized, representing a complete review of the relevant medical evidence of record, and constitute the weight of the medical evidence in this case.¹⁰

In March 19 and December 24, 2018 letters, Dr. Nagasaka did not offer any rationale as to how diagnosed conditions were related to the work injury of June 29, 2016. The March 19, 2018 letter merely stated that chronic neck pain and cervical spondylosis without myelopathy were related to the June 29, 2016 work injury without elaboration. The December 24, 2018 letter contained qualifying language such as "may," indicating that the opinion was speculative in nature. The Board has held that reports which lack rationale are insufficient to meet appellant's burden of proof to establish a claim.¹¹ The Board has also held that, while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, it must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.¹² As such, these letters are insufficient to establish that the acceptance of appellant's claim should be expanded to include the requested additional conditions.

The remainder of the medical evidence from Drs. Nagasaka and Graham did not include any opinion as to whether these conditions are related to the accepted work injury of June 29, 2016. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹³ As such, the remainder of the medical evidence from Drs. Nagasaka and Graham is insufficient to establish that the acceptance of appellant's claim should be expanded to include the requested additional conditions.

As appellant has not submitted rationalized medical evidence establishing that the acceptance of her claim should be expanded to include left carpal tunnel syndrome, numbness of the upper extremity, and additional cervical conditions, including bilateral spondylosis of the cervical spine with myelopathy as causally related to the accepted June 29, 2016 employment injury, the Board finds that she 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.

¹⁰ See *R.J.*, Docket No. 17-1365 (issued May 8, 2019).

¹¹ See *K.T.*, Docket No. 17-1717 (issued March 27, 2018).

¹² *L.S.*, Docket No. 18-1494 (issued April 12, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001).

¹³ See *J.H.*, Docket No. 19-0838 (issued October 1, 2019); *S.G.*, Docket No. 19-0041 (issued May 2, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions as a consequence of her accepted June 29, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 26, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2022
Washington, DC

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

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

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