

L.L., Appellant

**U.S. POSTAL SERVICE, SOUTHEAST POST
OFFICE, Burton, MI, Employer**

Case Submitted on the Record

³ The Board notes that following the November 8, 2021 decision, OWCP received additional evidence. 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 disability commencing December 5, 2019 causally related to her accepted January 16, 2018 employment injury.

FACTUAL HISTORY

On January 16, 2018 appellant, then a 45-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she experienced numbness in her head, shoulder, arm, and back after a rack of flats fell on her while she was in the performance of duty. She stopped work on January 16, 2018. OWCP accepted the claim for sprains of the right shoulder joint and ligaments of the cervical spine.⁴ It subsequently expanded the acceptance of the claim to include lumbar and cervical radiculopathy. OWCP paid appellant wage-loss compensation on the supplemental rolls effective March 17, 2018 and on the periodic rolls effective August 19, 2018. Appellant returned to her regular employment on October 13, 2018.

On January 22, 2020 Dr. James D. Walker, II, Board-certified in family practice, discussed appellant's history of an employment injury on January 16, 2018 when four stacks of magazines and books fell on her head, right neck, upper back, and right shoulder. He advised that she had sustained a loss of peripheral vision on the right at the time of the incident which had appeared to resolve. Dr. Walker related that appellant "suffers from chronic headaches, neck pain, paresthesia and weakness of [the] bilateral upper arms, (with the right being more intermittent than the left which is constant), left leg paresthesia and weakness causing repeated tripping and near falls, seizures, right-sided eye pain and optic nerve swelling, post-concussive syndrome, insomnia, and depression" and attributed the conditions to the accepted employment injury.⁵

On January 23, 2020 appellant advised OWCP that she had been off work since December 5, 2019 due to a seizure at work. She indicated that she had a swollen optic nerve, weakness along the left side of the body, and possible multiple sclerosis. Appellant asserted that she may have sustained a head injury at the time of her January 16, 2018 employment injury.

On February 3, 2020 appellant filed a claim for compensation (Form CA-7) for disability from work commencing December 21, 2019. She thereafter continued to file CA-7 forms claiming additional wage loss.

A nurse practitioner completed a February 6, 2020 duty status report (Form CA-17).

⁴ OWCP assigned the present claim OWCP File No. xxxxxx763. Appellant had previously filed a traumatic injury claim for an injury when she slipped and fell on December 30, 2005. OWCP assigned that claim OWCP File No. xxxxxx537. In August 2002 appellant filed an occupational disease claim (Form CA-2) for carpal tunnel syndrome. OWCP has administratively combined OWCP File Nos. xxxxxx537, xxxxxx739, and xxxxxx763, with the latter serving as the master file.

⁵ Dr. Walker indicated that the injury occurred on January 16, 2020 instead of January 16, 2018; however, this appears to be a typographical error.

On February 25, 2020 OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions to Dr. Mahmoud S. Mohamed, a Board-certified neurologist, for a second opinion examination.

In a report dated March 5, 2020, Dr. Lisa L. Guyot, a Board-certified neurosurgeon, related that she had initially evaluated appellant in May 2017 for neck and back pain that had begun when a rack of mail fell on her on January 16, 2018. She noted that she had experienced a seizure at work on November 5, 2018, and that she had “flashes every week now which she thinks are mini seizures.” Dr. Guyot indicated that an ophthalmologist had told appellant that she had a swollen right optic nerve but that a magnetic resonance imaging (MRI) scan of the brain was negative. She discussed the findings of a February 1, 2020 MRI scan of the lumbar spine showing left foraminal protrusion, an annular fissure, a small disc protrusion at L4-5, and degenerative changes; and an MRI scan of the cervical spine showing partial straightening of the lordotic curve and mild spondylosis without fracture or subluxation.

In a report dated March 19, 2020, Dr. Mohamed reviewed the history of injury and appellant’s complaints of headaches, neck pain radiating into the right shoulder, and low back pain radiating into the right lower extremity. He advised that she received treatment at the emergency department after she lost her peripheral vision at work and was diagnosed with a panic attack. Dr. Mohamed diagnosed neck sprain/strain, right shoulder sprain/strain, cervical radiculopathy, low back sprain/strain, lumbar radiculopathy, and headache as causally related to the January 16, 2018 employment injury. He contended that the January 16, 2018 employment injury, however, did not cause the conditions and symptoms found by Dr. Walker. Dr. Mohamed determined that appellant had not sustained a seizure, noting that she had advised that she had instead experienced anxiety and a panic attack. He opined that the diagnosed conditions of sprain/strain of the neck, right shoulder, and low back had resolved but that she had continued residuals of her cervical and lumbar radiculopathy and headaches. Dr. Mohamed found that appellant was not capable of working in her date-of-injury position as a rural carrier due to her “ongoing symptomatology from the conditions of cervical radiculopathy, lumbar radiculopathy, and headaches, as well as due to other conditions, such as her significant obesity and body habitus.” He provided work restrictions.

In a supplemental report dated June 7, 2020, Dr. Mohamed noted that OWCP had advised him that it had accepted the conditions of cervical and lumbar radiculopathy. He indicated that lumbar and cervical radiculopathy could worsen over time and the fact that a person could perform a job for a year or so with the conditions did not preclude the conditions from causing later disability. Dr. Mohamed reiterated that, at the time of his March 19, 2020 evaluation, he “did not think, based on both accepted conditions in the claim and non-accepted conditions in the claim, that [appellant] would be able to do her job as a [r]ural [c]arrier.”

OWCP determined that a conflict existed between Dr. Walker and Dr. Mohamed regarding whether appellant had continuing disability, and the extent of any physical limitations. It referred appellant along with a SOAF, the medical record and a series of questions, to Dr. Edward Atty, a Board-certified physiatrist, for an impartial medical examination. OWCP specifically requested that Dr. Atty advise whether appellant’s disability from work commencing December 2019 was causally related to her accepted January 16, 2018 employment injury.

An electromyogram and nerve conduction velocity study performed on August 7, 2020 showed carpal tunnel syndrome, but no evidence of cervical radiculopathy, brachial plexopathy, or other neuropathy of the upper extremities.

In a report dated August 28, 2020, Dr. Atty discussed appellant's history of injury and complaints of headaches and pain in the lower back, neck, right shoulder. He diagnosed neck pain due to sprain/strain/myofascial pain syndrome, right shoulder pain due to a sprain/strain of the rotator cuff tendons and possible bursitis, and low back pain due to sprain/strain/myofascial pain syndrome as related to the January 16, 2018 employment injury. Dr. Atty opined that the diagnosed conditions of cervical and lumbar radiculopathy were unrelated to the accepted work injury. He determined that appellant could perform her usual work duties without restrictions.

By decision dated September 22, 2020, OWCP denied appellant's claim for disability from work commencing December 21, 2019.

On September 30, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on January 26, 2021.

By decision dated March 26, 2021, OWCP's hearing representative set aside the September 22, 2020 decision, finding that the opinions of treating physicians Dr. Walker and Dr. Guyot were not based on a complete medical record and thus are of diminished probative value. Because of the lack of contemporaneous medical evidence, the hearing representative found that the report of second opinion physician Dr. Mohamed was also of diminished probative value. The hearing representative further found that Dr. Atty's opinion was contrary to the SOAF as he found that the conditions of lumbar and cervical radiculopathy were not employment related. She therefore instructed OWCP, on remand, to issue a new development letter explaining the deficiencies in appellant's claim for a recurrence of disability and to request rationalized medical evidence addressing disability, including a narrative report from a physician explaining how her claimed disability commencing December 5, 2019 was causally related to her January 16, 2018 employment injury.

In a development letter dated April 1, 2021, OWCP informed appellant of the deficiencies of her recurrence claim. It advised her of the type of additional medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

Appellant submitted an unsigned March 19, 2021 chart note regarding follow-up after physical therapy.

In an undated statement received April 12, 2021, appellant related that on December 5, 2019 she experienced muscle tightening, a blank stare, and skin crawling. She attributed her seizure to her employment injury, asserting that she was hit on the head and had a concussion due to the injury. Appellant advised that she continued to have headaches and pain in her low back and neck when she returned to work.

By *de novo* decision dated May 7, 2021, OWCP denied appellant's claim for compensation, finding that the medical evidence of record was insufficient to establish a recurrence of disability commencing December 5, 2019 causally related to her January 16, 2018 employment injury.

On May 18, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on September 1, 2021.

By decision dated November 8, 2021, OWCP's hearing representative affirmed the May 7, 2021 decision.

LEGAL PRECEDENT

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.⁶ 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.⁷

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 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.⁸

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.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 disability commencing December 5, 2019, causally related to her accepted January 16, 2018 employment injury.

OWCP found that a conflict in the medical opinion evidence existed between Dr. Walker, appellant's treating physician, and Dr. Mohamed, the second opinion physician regarding the

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

⁷ *Id.*

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

⁹ *L.O.*, Docket No. 19-0953 (issued October 7, 2019); *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

¹⁰ *M.G.*, Docket No. 19-0610 (issued September 23, 2019); *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

extent of her disability. It referred appellant to Dr. Atty to resolve the conflict. OWCP's hearing representative, however, set aside the March 26, 2021 decision, finding that the opinions of appellant's treating physicians Dr. Walker and Dr. Guyot were not based on a complete medical record and thus is of diminished probative value. Because of the lack of contemporaneous medical evidence, the hearing representative found that the report of second opinion physician Dr. Mohamed was also of diminished probative value. The hearing representative further found that Dr. Atty's opinion was contrary to the SOAF as he found that the conditions of lumbar and cervical radiculopathy were not employment related. The factors that determine probative medical evidence include the opportunity for and thoroughness of examination performed by the physician, the accuracy or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed by the physician on the issue addressed to him by OWCP.¹¹ The Board thus finds that the hearing representative properly determined that the opinions of appellant's treating physicians, the second opinion physician, and the IME were all of diminished probative value.

OWCP's hearing representative instructed OWCP to issue a new development letter on remand explaining the deficiencies in appellant's claim for a recurrence of disability and to request rationalized medical evidence addressing disability, including a narrative report from a physician explaining how her claimed disability commencing December 5, 2019 was causally related to her January 16, 2018 employment injury.

On remand appellant submitted an unsigned March 19, 2021 chart note regarding follow-up after physical therapy. The Board has held that a medical note, which is unsigned or contains an illegible signature, is of no probative value, as it is not established that the author is a physician.¹² The March 19, 2021 chart note is therefore of no probative value and is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a recurrence of disability commencing December 5, 2019 causally related to her accepted January 16, 2018 employment injury, the Board finds that appellant has not met her burden of proof.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing December 5, 2019, causally related to her accepted January 16, 2018 employment injury.

¹¹ *B.L.*, Docket No. 22-0812 (issued December 29, 2022); *A.G.*, Docket No. 20-0187 (issued December 31, 2020); *James T. Johnson*, 39 ECAB 1252 (1988).

¹² *See H.L.*, Docket No. 22-1058 (issued January 18, 2023); *D.H.*, Docket No. 20-1410 (issued December 21, 2022); *Z.G.*, Docket No. 19-0967 (issued October 21, 2019); *R.M.*, 59 ECAB 690 (2008); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the November 8, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 10, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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