

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

E.N., Appellant)

and)

DEPARTMENT OF THE ARMY, U.S. ARMY)
MEDICAL COMMAND, Fort Hood, TX,)
Employer)

**Docket No. 12-751
Issued: October 9, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 14, 2012 appellant filed a timely appeal from a November 18, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her claim for a recurrence. 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 met her burden of proof to establish that she sustained a recurrence of her medical condition commencing March 17, 2010 causally related to her April 11, 2007 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the November 18, 2011 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

On appeal appellant contends that she continues to suffer residuals from her employment injury and requests further treatment.

FACTUAL HISTORY

On April 12, 2007 appellant, then a 47-year-old dental assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained right arm and wrist pain as a result of moving a dental chair headlight while in the performance of duty on April 11, 2007. OWCP accepted the claim for sprain of right shoulder and upper arm, lesion of right ulnar nerve and displacement of cervical intervertebral disc without myelopathy. Appellant received compensation for leave without pay for intermittent periods between January 29 and October 25, 2008.

On January 16, 2009 appellant returned to full-time, full-duty work based on a January 16, 2009 report by Dr. James E. Hansen, a Board-certified neurosurgeon, who released her to regular duty that same day.

Appellant submitted a March 26, 2010 magnetic resonance imaging (MRI) scan which revealed mild partial tear of the common extensor tendon of the right elbow, an April 2, 2010 MRI scan showing C5-6 shallow anterior disc bulge and reversed cervical lordosis and an April 2, 2010 MRI scan of the right shoulder revealing some supraspinatus tendinopathy and mild bursitis. She also submitted an April 16, 2010 report by Dr. Shawn A. Fyke, a chiropractor, who indicated that appellant had an abnormal muscle study and recommended therapeutic activities and exercises.

By letter dated April 26, 2010, OWCP acknowledged that appellant was claiming additional medical care and requested a completed Form CA-2a, for each claimed recurrence, through the employing establishment and additional evidence in support of her claim. It afforded her 30 days to respond to its inquiries.

Subsequently, appellant submitted a notice of recurrence (Form CA-2a) dated September 17, 2010, indicating that the alleged recurrence was for "Medical Treatment Only," commencing March 17, 2010. She indicated that she had physical therapy twice a week and suffered neck pain, was not able to lift her right arm or write for a long period of time and experienced shoulder pain and hand numbness. The employing establishment indicated that appellant worked Monday through Friday from 7:30 a.m. to 4:30 p.m., half the day chair-side assisting a dentist and half the day at the front desk filing records. In an undated narrative statement, she indicated that she needed to continue her medical treatment.

A March 26, 2011 MRI scan of the cervical spine revealed very small C4-5 and larger but still small C5-6 midline bulging disc without evidence of spinal or foraminal stenosis.

A March 26, 2011 MRI scan of the right elbow showed no internal derangement of the joint. The abnormal signal within the common extensor tendon suggesting a partial tear on the April 22, 2010 MRI scan was not identified on this study.

A March 26, 2011 MRI scan of the right shoulder revealed no evidence for internal derangement of the joint and the reported tendinopathy from the April 22, 2010 MRI scan was not seen.

Appellant submitted electrodiagnostic studies dated June 3, 2012 and a June 24, 2010 electrodiagnostic interpretation report by Dr. Meyer L. Proler, a clinical neurophysiologist, who found evidence of acute right C6 cervical radiculopathy and right radial mononeuropathy of uncertain etiology.

By decision dated July 25, 2011, OWCP denied appellant's recurrence claim on the basis that the medical evidence submitted was insufficient to establish that she sustained a recurrence of her medical conditions commencing March 17, 2010 causally related to the employment injury.

On September 9, 2011 appellant filed a second notice of recurrence.

In a September 27, 2011 letter, OWCP requested additional evidence in support of appellant's recurrence claim and afforded her 30 days for submission. Appellant did not respond.

By decision dated November 18, 2011, OWCP denied appellant's claim for a recurrence on the basis that the medical evidence submitted was insufficient to establish that she sustained a recurrence of her medical conditions beginning March 17, 2010 causally related to the April 11, 2007 employment injury.

LEGAL PRECEDENT

A recurrence of a medical condition is defined as a documented need for further medical treatment after release from treatment for the accepted condition or injury.³ 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.⁴ As distinguished from a recurrence of disability, a recurrence of a medical condition does not involve an accompanying work stoppage.⁵ It is the employee's burden to establish that the claimed recurrence is causally related to the original injury.⁶ Causal relationship is a medical issue that can generally be resolved only by rationalized medical opinion evidence.⁷

ANALYSIS

OWCP accepted that on April 11, 2007 appellant sustained sprain of right shoulder and upper arm, lesion of right ulnar nerve and displacement of cervical intervertebral disc without myelopathy. Appellant returned to full-time, full-duty work on January 16, 2009. On September 17, 2010 she submitted a recurrence claim for medical treatment indicating that she

³ 20 C.F.R. § 10.5(y).

⁴ *Id.*

⁵ *Id.* at § 10.5(x).

⁶ *Id.* at § 10.104. *See also Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

⁷ *See Jennifer Atkerson*, 55 ECAB 317 (2004).

suffered residuals of her employment injury. The issue on appeal is whether appellant has established a recurrence of her medical condition commencing March 17, 2010 causally related to her accepted employment injury. The Board finds that she did not submit sufficient evidence to establish a recurrence of a medical condition.

On June 24, 2010 Dr. Proler found evidence of acute right C6 cervical radiculopathy and right radial mononeuropathy of uncertain etiology. The report from Dr. Proler is insufficient to establish that appellant sustained a recurrence of her accepted medical conditions. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸ Dr. Proler failed to provide sufficient medical rationale explaining how appellant's symptoms beginning on March 17, 2010 were causally related to the April 11, 2007 employment injury. For this reason, the Board finds that appellant did not meet her burden of proof with this submission.

The April 16, 2010 report of Dr. Fyke, a chiropractor, is of no probative value. The Board has held that a chiropractor is a physician as defined under FECA to the extent that the reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.⁹ Dr. Fyke indicated that appellant had an abnormal muscle study and recommended therapeutic activities and exercises. There is no indication in the report that he diagnosed a subluxation as demonstrated by x-ray to exist. Dr. Fyke is not a physician as defined under FECA and thus his report does not constitute competent medical opinion evidence. Consequently, this report is insufficient to establish appellant's claim.

The MRI scans and electrodiagnostic studies are diagnostic in nature and therefore do not address causal relationship. As such, the Board finds that they are insufficient to establish appellant's claim.

The Board finds that the evidence submitted by appellant lacks adequate rationale to establish a causal connection between the alleged recurrence of her medical conditions and the accepted employment injury. Thus, appellant did not meet her burden of proof to establish a claim for a recurrence.

On appeal appellant contends that she continues to suffer residuals of her employment injury and requests further treatment. For the reasons stated above, the Board finds appellant's argument is not substantiated and denies authorization of further medical treatment.

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.

⁸ See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997).

⁹ 20 C.F.R. § 10.311(a). *Cf.*, *D.S.*, Docket No. 09-860 (issued November 2, 2009).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of her accepted medical conditions.

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 9, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board