United States Department of Labor
Employees' Compensation Appeals Board

S.G., Appellant	)	
and	)	**Docket No. 20-0828**
	)	**Issued: January 6, 2022**
U.S. POSTAL SERVICE, THE WOODLANDS METRO STATION OFFICE, The Woodlands, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 21, 2020 appellant filed a timely appeal from an August 27, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal 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]

[1] By decision dated February 26, 2021, OWCP denied modification of its March 28, 2019 decisions, regarding the same issue currently on appeal. However, appellant filed the current appeal to the Board on February 21, 2020, prior to the issuance of the February 26, 2021 decision. As OWCP issued its February 26, 2021 decision during the pendency of this appeal, that decision is null and void as the Board and OWCP may not simultaneously have jurisdiction over the same issue. *See L.F.*, Docket No. 19-1275 (issued October 29, 2020); *Terry L. Smith*, 51 ECAB 182 (1999); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that, following the August 27, 2019 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 November 30, 2018 causally related to her accepted December 4, 2012 employment injury.

FACTUAL HISTORY

On January 3, 2013 appellant, then a 56-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 4, 2012 she sprained her back in a motor vehicle accident (MVA) while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx693 and accepted it for thoracic sprain, lumbar sprain, neck sprain, cervical radiculopathy, and cervical disc displacement. On April 14, 2016 appellant underwent an OWCP-authorized anterior discectomy and fusion at C6-7. OWCP paid her wage-loss compensation on the supplemental rolls from April 15 through September 17, 2016 and on the periodic rolls from September 18, 2016 to December 9, 2017.[4]

Appellant accepted a modified position with the employing establishment performing sedentary duty for eight hours per day. She returned to work on January 19, 2018 and stopped work on February 5, 2018. OWCP paid appellant wage-loss compensation on the supplemental rolls from February 5 through March 16, 2018.[5] Appellant accepted a March 16, 2018 job offer performing sedentary duties using a telephone and computer for eight hours per day. The duties included lifting a telephone weighing up to two pounds intermittently and walking and standing for one hour per day. Appellant claimed disability for four hours per day, commencing June 20, 2018, based on her doctor's restrictions. OWCP paid her wage-loss compensation on the supplemental rolls from June 20 through November 29, 2018.

Appellant subsequently filed claims for compensation (Form CA-7) for disability commencing November 30, 2018.

In a report dated December 10, 2018, Dr. Robert Lowry, a physiatrist, noted that appellant related that her supervisor had insisted that she work eight rather than four hours per day. He discussed the history of her employment-related motor vehicle accident and April 2016 cervical spinal fusion. Dr. Lowry indicated that appellant was currently answering telephones at work. He advised that he had placed her on four hours per day sedentary work. Dr. Lowry concluded that she was unable to return to her usual employment.

In a report dated January 24, 2019, Dr. John W. Ellis, Board-certified in family practice, reviewed appellant's history of employment injuries on March 17, 1997 and December 4, 2012. He opined that the "accepted thoracic and lumbar conditions with surgery have resulted in bilateral spinal nerve root radiculopathy down both lower extremities." Dr. Ellis further found that appellant had developed bilateral medial and lateral epicondylitis with cubital tunnel syndrome and bilateral wrist tendinitis with carpal tunnel syndrome as a result of her employment duties and

[4] OWCP previously accepted that appellant sustained a neck sprain and displacement of a cervical intervertebral disc without myelopathy on March 17, 1997, assigned OWCP File No. xxxxxx544. Appellant underwent a discectomy at C6-7 and fusion at C5-6 on June 27, 2007. OWCP has administratively combined OWCP File Nos. xxxxxx693 and xxxxxx544, with the latter serving as the master file.

[5] OWCP paid her for total disability during this period as no work was available within her restrictions.

neck injury. He recommended either that OWCP expand the acceptance of her claim to include the additional diagnosed conditions or that she file a new occupational disease claim for injuries to her elbows and wrists. Dr. Ellis advised that appellant's neck and spinal nerve injury was a "double crush syndrome wherein even a little bit of impingement of the ulnar nerve at the elbow or median nerve at the wrist will cause both the spinal nerve impingement in the upper and lower extremities and ulnar nerve and medial nerve impingement." He opined that she "may not be able to continue working even four hours per day," but that he would leave her restrictions to her attending physician. Dr. Ellis found that appellant was partially disabled.

On January 28, 2019 Dr. Lowry advised that the employing establishment had not offered appellant a "true sedentary job" as recommended by the second opinion examiners. He noted that Dr. Ellis had found that she was unable to work at this time. In a duty status report (Form CA-17) of even date, Dr. Lowry determined that appellant could work four hours per day with restrictions.

In a February 18, 2019 report, Dr. Lowry diagnosed cervical disc displacement, cervical radiculopathy, neck sprain, lumbar sprain, and thoracic sprain. He advised that he agreed with Dr. Ellis that she should be off duty "as it is just too taxing to be at work each day for so long given her total spine problems." In a Form CA-17 of even date, Dr. Lowry found that appellant was totally disabled from work.

In a development letter dated February 26, 2019, OWCP informed appellant of the definition of a recurrence of disability and requested additional factual and medical evidence, including a report from her physician explaining how her accepted condition worsened such that she was unable to work. It afforded her 30 days to submit the requested information. No response was received within the time allotted.

By decisions dated March 28, 2019, OWCP found that appellant had not established a recurrence of disability causally related to her accepted December 4, 2012 employment injury.

In a report dated April 1, 2019, Dr. Lowry indicated that he had reviewed letters from OWCP advising that it required further evidence in support of appellant's claim. He related that he was "at a loss as to what they would be looking for from a medical standpoint." Dr. Lowry recommended that appellant attempt to obtain specifics of what OWCP needed and noted that conditions related to her injury "negatively affected her such that she can no longer work." In a CA-17 of even date, he found that she was totally disabled.

On April 18, 2019 appellant requested reconsideration. She submitted a report dated April 15, 2019 from Dr. Lowry. Dr. Lowry discussed appellant's history of an employment-related motor vehicle accident and cervical surgeries in June 2007 and April 2016 and her current complaints of significant neck pain and spasms of the lumbar and cervical spine. He advised that appellant's injuries had "spontaneous returned without intervening cause while working administrative duties answering [a] [tele]phone. [Appellant] has been removed from duty due to the previously injuries spontaneous return." On examination Dr. Lowry found tenderness and reduced motion of the neck and muscle spasms of the paraspinal muscles. He reviewed the reports of record, noting that electrodiagnostic studies of the upper extremities performed on October 28, 2016 showed evidence of C6 radiculopathy. Dr. Lowry diagnosed cervical, lumbar, and thoracic sprains, cervical radiculopathy, and cervical disc displacement. He opined that appellant's lumbar, thoracic, and cervical problems had reoccurred and were "related to her original injury from when she was on route and was struck from behind by another vehicle on December 4, 2012."

Dr. Lowry noted that she was "unable to move her neck much at all." He found that she was currently unable to return to work. Dr. Lowry indicated that she had worked full time until June 2018, when her hours were reduced to part time, and that he believed she could not do well even at four hours. Dr. Lowry advised that he had agreed with Dr. Ellis that appellant should be off work. He attributed her pain to her accepted employment injury.

On a May 21, 2019 Form CA-17, Dr. Lowry indicated that appellant was disabled from work.[6]

By decision dated August 27, 2019, OWCP denied modification of its March 28, 2019 decisions.

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.[7] 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.[8] Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.[9]

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.[10]

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

[6] Appellant continued to receive treatment from Dr. Alcaraz and from Dr. Zaid Malik, who specializes in pain medicine.

[7] 20 C.F.R. § 10.5(x); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

[8] *Id*.

[9] *See M.F.*, Docket No. 20-0136 (issued August 5, 2021); *G.L.*, Docket No. 16-1542 (issued August 25, 2017); *Theresa L. Andrews*, 55 ECAB 719, 722 (2004). *See also Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

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

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.[11] Where no such rationale is present, the 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 disability, commencing November 30, 2018, causally related to her accepted December 4, 2012 employment injury.

Appellant has not alleged that the employing establishment withdrew her limited-duty position, but instead attributed her recurrence of disability to a change in the nature and extent of her employment-related conditions.

On April 15, 2019 Dr. Lowry reviewed appellant's history of a MVA at work and her prior cervical surgeries. He discussed her complaints of neck pain and lumbar and cervical spasms. Dr. Lowry indicated that the employing establishment had transferred her to another facility and reduced her work hours to four hours per day. He diagnosed sprains of the cervical, lumbar, and thoracic spine, cervical radiculopathy, and cervical disc displacement. Dr. Lowry advised that appellant's condition had spontaneously reoccurred while she performed administrative duties at work such that she was disabled from employment. He attributed her current lumbar, thoracic, and cervical problems to her December 4, 2012 employment injury. Dr. Lowry found that appellant was totally disabled from employment given her spinal condition. He did not, however, sufficiently explain why she became disabled on or after November 30, 2018 such that she was unable to perform her sedentary employment duties due to a worsening or her condition.[13] A mere conclusion without the necessary rationale is insufficient to meet a claimant's burden of proof.[14]

On December 10, 2018 Dr. Lowry reviewed appellant's history of an employment-related MVA and 2016 cervical spinal fusion. He noted that she answered telephones at work. Dr. Lowry indicated that he had found that appellant could only perform four hours per day of sedentary work. He, however, failed to provide any rationale for his opinion or reference the duties required by appellant's modified position that were outside of her restrictions. As noted, 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.[15] Consequently, Dr. Lowry's opinion is insufficient to meet appellant's burden of proof.

On January 24, 2019 Dr. Ellis discussed appellant's history of injuries at work on March 17, 1997 and December 4, 2012. He found that she had developed bilateral medial and lateral epicondylitis, bilateral cubital tunnel syndrome, bilateral wrist tendinitis, and bilateral

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

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

[13] *See A.D.*, Docket No. 20-0962 (issued April 13, 2021); *T.G.*, Docket No. 20-0032 (issued November 10, 2020).

[14] *B.L.*, Docket No. 20-1685 (issued May 25, 2021).

[15] *See S.P.*, Docket No. 19-0573 (issued May 6, 20201);

carpal tunnel syndrome due to her employment duties and the injury to her neck. Dr. Ellis opined that OWCP should expand acceptance of her claim to include additional conditions or that appellant should file a new occupational disease claim. He indicated that she had sustained double crush syndrome due to the injury to her neck and spine and found that she might not be able to continue working four hours per day. Dr. Ellis advised that appellant's attending physician should provide her work restrictions. He opined that she was partially disabled. While he generally indicated that she might not be able to continue working part time, Dr. Ellis did not specifically address the issue of disability, instead noting that her attending physician would address work restrictions. As Dr. Ellis failed to directly address the dates of disability from work for which compensation is claimed, his report is insufficient to meet appellant's burden of proof.[16]

In a January 28, 2019 report, Dr. Lowry maintained that the job provided by the employing establishment was not sedentary. He indicated that Dr. Ellis had found that appellant was unable to work. In a CA-17 form of even date, Dr. Lowry found that she was disabled from work. He did not, however, explain what duties appellant performed that were not sedentary or provide any rationale for his disability determination. A medical opinion not fortified by medical rationale is of diminished probative value.[17] Consequently, Dr. Lowry's report is insufficient to meet appellant's burden of proof.

On February 18, 2019 Dr. Lowry diagnosed cervical disc displacement, cervical radiculopathy, neck sprain, lumbar sprain, and thoracic sprain. He indicated that he agreed with Dr. Ellis that appellant should not work given the problems with her spine. In an April 1, 2019 report, Dr. Lowry advised that he was unclear what OWCP needed to support appellant's claim. He asserted that her conditions had adversely affected her to the extent that she was unable to work. Again, however, Dr. Lowry did not explain why she was unable to perform the duties of her modified employment commencing November 30, 2018. As discussed, medical reports without adequate rationale are of diminished probative value and insufficient to meet appellant's burden of proof.[18] For this reason, Dr. Lowry's reports are insufficient to establish that appellant sustained a recurrence of disability.

Appellant submitted pain management reports from Dr. Alcarez and Dr. Malik; however, these reports failed to address causation or disability from employment. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[19]

Appellant further submitted CA-17 form reports from Dr. Lowry. These reports, however, are merely form reports and do not contain an opinion on whether the accepted employment injury caused disability from employment; consequently, they are of no probative value on the issue of causal relationship.[20]

[16] *See L.V.*, Docket No. 19-1725 (issued April 5, 2021); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[17] *See B.T.*, Docket No. 19-1505 (issued April 2, 2021); *T.L.*, Docket No. 18-0536 (issued November 27, 2018).

[18] *See E.H.*, Docket No. 19-1352 (issued December 18, 2019); *E.C.*, Docket No. 17-1645 (issued June 11, 2018).

[19] *K.F.*, Docket No.19-1846 (issued November 3, 2020); *L.O.*, *supra* note 11; *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[20] *L.S.*, Docket No. 20-0570 (issued December 15, 2020).

As appellant has not submitted rationalized medical opinion evidence establishing disability from work commencing November 30, 2018, 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 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 disability, commencing November 30, 2018, causally related to her accepted December 4, 2012 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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