United States Department of Labor
Employees' Compensation Appeals Board

S.C., Appellant	)	
and	)	**Docket No. 16-1073**
	)	**Issued: July 13, 2017**
DEPARTMENT OF THE ARMY,	)	
Fort Belvoir, VA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 25, 2016 appellant filed a timely appeal from a February 11, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish a recurrence of disability causally related to her January 12, 2011 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Together with her appeal request appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). By order dated November 16, 2016, the Board denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 16-1073 (issued November 16, 2016).

FACTUAL HISTORY

On April 28, 2011 appellant, then a 44-year-old contract specialist (working under a term appointment) filed an occupational disease claim (Form CA-2) alleging that she developed a herniated disc at C6 due to sitting at her computer at work for long periods of time. She listed her date of injury as January 18, 2011. On March 10, 2011 appellant underwent an anterior cervical discectomy and fusion at C4-7 with C6 corpectomy. She was paid wage-loss compensation for the period April 24 to May 7, 2011 and June 5 to 8, 2011. Appellant used personal leave for the remaining dates.

In a statement dated May 23, 2011, appellant noted that she had served in Iraq as a contract specialist beginning July 20, 2009 and had worked at a computer for 12 hours a day seven days a week. On June 9, 2011 she listed her duties of wearing a 30-pound bullet-proof vest and 8-pound helmet during any travel period, carrying two 20- to 30-pound duffle bags, running from rocket and mortar attacks two to three times a week with her protective gear, hiding in concrete bunkers, and occasionally striking her head on those bunkers due to her height. Appellant explained that she was required to relocate her office twice, which entailed lifting heavy boxes, computers, monitors, and office furniture and equipment weighing up to 70 pounds. She was also required to work as the postal clerk picking up mail and walking with heavy boxes. These duties were in addition to appellant's computer duties.

The employing establishment terminated appellant's position on June 15, 2011 due to the expiration of her appointment.

OWCP accepted appellant's claim on July 22, 2011 for intervertebral disc disorder with myelopathy. In a report dated August 4, 2011, OWCP's medical adviser determined that appellant's March 10, 2011 surgery was necessary and warranted due to her work-related injury and should be approved.

On November 23, 2011 appellant filed a claim for compensation (Form CA-7) for the period June 19 to October 23, 2011. OWCP denied that claim by decision dated January 4, 2012. Appellant requested reconsideration and, by decision dated May 30, 2012, a hearing representative denied modification of the earlier decision. After a second request for reconsideration, on September 24, 2012, OWCP accepted appellant's claim for total disability for the period June 19 through October 23, 2011 based on the second opinion report of Dr. Willie E. Thomas, a Board-certified orthopedic surgeon, and treating physician reports from Drs. Mia Finkelston and Eric Dawson, both orthopedic surgeons. It found the overwhelming weight of the medical evidence supported that appellant continued to be disabled due to the approved surgery.[3]

[3] Appellant worked in the private sector for Phoenix Systems from October 23, 2011 to January 5, 2012 and for MAIC, Inc. from June 1, 2012 to August 2013.

Appellant filed another claim on March 4, 2013 alleging a recurrence of disability from January 5 to June 1, 2012. She later returned to private-sector work in June 2012.[4]

In a letter dated May 15, 2013, OWCP informed appellant that she was entitled to medical care due to her accepted condition, but denied any disability for the requested period because her appointment at the employing establishment had terminated on June 15, 2011. It found her wage loss resulted from an end to her term appointment rather than due to her accepted medical condition. OWCP also advised appellant that she could not receive wage-loss compensation during the same period that she was receiving schedule award benefits.

Thereafter, OWCP received a February 14, 2013 report from Dr. Dawson who noted multiple levels of cervical discopathies. He found that there was no major motor involvement and that appellant's condition was relatively stable. Dr. Dawson found that appellant could work with lifting restrictions of 10 pounds regularly and 20 pounds intermittently. Appellant was not to lift over her shoulders particularly on the left.

Appellant underwent a cervical magnetic resonance imaging (MRI) scan on June 21, 2013 which demonstrated large central C2-3 and C3-4 disc protrusions producing significant spinal canal compromise. It also reflected a previous anterior cervical fusion from C4 through C7. Dr. Dawson examined appellant on June 26, 2013 and reviewed her MRI scan. He found two new disc ruptures superior to the old three that had been fused. Dr. Dawson opined that the new disc ruptures were "basically evolutionary" of her underlying condition. He reported that appellant had nerve impingement. Dr. Dawson indicated that appellant was totally disabled. On November 8, 2013 he noted that appellant had a somewhat depressed demeanor. Dr. Dawson reviewed cervical x-rays and found that the fusion from C4-6 was not a complete bone fusion and that the fusion mass was being held together by two semi-parallel plates with fixating screws that were developing lucency. He diagnosed cervical discopathy and cervicodorsal myofasciitis with nerve irritability. Dr. Dawson provided work restrictions.

In a note dated March 18, 2014, Dr. Dawson diagnosed continued problems with cervical discopathy and multilevel cervical disc with nerve impingement. He opined that appellant was developing failure of the more mobile units. Dr. Dawson found increased tone and spasm of the cervicodorsal musculature and weakness to extension of the right elbow with fasciculations as well as trace grasp strength weakness bilaterally.

On July 1, 2014 Dr. Dawson described appellant's pain, spasm, and stiffness in the neck and shoulder area. He noted that appellant had difficulty sleeping and was developing possible depressive affect. Dr. Dawson diagnosed cervical disc protrusion with a malunion overall. He provided restrictions including no lifting more than 10 pounds and no bending, pushing, lifting, or pulling. Dr. Dawson recommended a semi-sedentary lifestyle. In a note dated August 26, 2014, he indicated that appellant was capable of only the lightest of activities of daily living with no lifting, pushing, pulling, bending, twisting, or stooping. Appellant had severe pain in the left

[4] By decision dated April 30, 2013, OWCP granted a schedule award for 47 percent permanent impairment of appellant's right upper extremity for the period March 10, 2012 through December 31, 2014. Appellant requested a lump-sum payment. She provided OWCP with her employment records. OWCP provided appellant with a lump-sum payment of her schedule award on March 21, 2014 in the amount of $79,168.44.

neck and shoulder area and was distressed. She demonstrated severe weakness to extension of the right elbow with some cog-wheeling in both upper extremities. Dr. Dawson found definite motor and sensory impairment. On September 16, 2014 he noted that appellant had normal upper extremity muscle strength, but diminished trigger point to palpation. Dr. Dawson diagnosed multiple discopathies and nerve impingement. He noted that appellant had anxiety issues and trouble sleeping at night. On January 7, 2015 Dr. Dawson opined that appellant was totally disabled due to multiple cervical disc ruptures at the two superior levels, following surgery, with documented nerve impingement.

Appellant advised OWCP, by letter dated January 8, 2015, that she had been offered an opportunity by the Department of State to deploy to Afghanistan, but that the offer had been withdrawn due to Dr. Dawson's reports. She explained that she was filing numerous forms for compensation because, due to her employment injury, she had lost an opportunity to earn over $300,000.00.

On January 8, 2015 OWCP received a claim for a schedule award (Form CA-7). It received a Form CA-7 for the period "November 2014 to the present," and on January 21, 2015 it received a Form CA-7 claiming wage-loss compensation for "LWEC." She noted that she had worked in the private sector from February through November 2014 as a contract specialist.

OWCP also received, on January 22, 2015, a claim for recurrence of disability (Form CA-2a) for the period August 23, 2013 to April 28, 2014 due to appellant's January 18, 2011 employment injury. Appellant claimed that she had sustained additional cervical disc herniations due to sitting at her computer for a full workday.[5]

Appellant submitted medical evidence in support of her numerous claims. In a report dated January 7, 2015, Dr. Dawson opined that appellant's condition had worsened in the previous 22 months. He related appellant's history of injury and her medical treatment. Dr. Dawson found that appellant had severe C6-7 motor and sensory impairments. He opined that her surgical fusion resulted in decompensation of the superior discs at C2-3 and C3-4 as demonstrated by her cervical spine MRI scan. Appellant demonstrated significant losses of reflexes in the upper and lower extremities with evidence of cord compression. Dr. Dawson opined that appellant's percentage of permanent impairment for schedule award purposes had increased. He noted that appellant's accepted injury had significantly evolved with the passage of time and that there were no intervening factors, such as a subsequent accident or injury. Dr. Dawson further opined that it was doubtful that appellant could carry out any practical workplace duties.

On January 13, 2015 Dr. Dawson found pain, spasms, and stiffness with slight fasciculations present. He noted tenderness to C5-6 and C6-7 with motor and sensory deficits.

[5] Appellant filed another claim for compensation (Form CA-7) for the period August 2013 to November 2014. By letter dated January 14, 2015, OWCP advised appellant that it would not adjudicate that claim until it was completed by the employing establishment. Appellant also filed a new occupational disease claim (Form CA-2) alleging post-traumatic stress disorder (PTSD) due to her deployment in Iraq. OWCP has not issued a final decision regarding these issues and thus these claims will not be addressed by the Board. 20 C.F.R. § 501.2(c).

Dr. Dawson found that appellant was in severe pain with slight webbing of the paraspinous musculature.

In a note dated March 17, 2015, Dr. Dawson diagnosed multilevel cervical disc and nerve impingement with motor and sensory involvement. He noted that appellant was experiencing pain, spasm, stiffness with numbness, tingling, burning, and weakness and having difficulty sleeping. Dr. Dawson determined that she was totally disabled. On April 7, 2015 he repeated his findings and diagnosed multiple cervical discopathies, cervical nerve impingement and impediment, and possible psychiatric issues related to the injury.

In a letter dated April 16, 2015, OWCP requested additional factual and medical evidence to substantiate appellant's claim for a recurrence on May 20, 2013. It afforded appellant 30 days for a response.

On April 16, 2015 OWCP requested that Dr. Dawson provide a permanent impairment rating. Dr. Dawson submitted a report dated April 24, 2015. He opined that appellant had reached maximum medical improvement as of that date. Dr. Dawson noted that MRI scans showed new disc ruptures both superior and inferior to the three fusion levels including the C2-3 level. He noted, "The reason for this is not because of new injury, but because of the phenomenon of ascending disc phenomenon…. As the patient places any modest bit of stress to the area, because of the tendency for the disc immediately superior and inferior to the fusion levels to bear increased load, they will, without significant trauma, go on to develop degenerative changes, bulges[,] and even disc ruptures." Dr. Dawson explained that this could occur simply by turning in bed at night and that this was a worsening of appellant's condition, not a new injury. He diagnosed PTSD and recommended a psychiatric evaluation. Dr. Dawson provided work restrictions of no prolonged standing, and no bending, twisting, or stooping. He indicated that appellant had a five-pound lifting restriction and should have breaks as required. Dr. Dawson recommended an elevated keyboard or table as well as an orthopedic chair. He recommended additional diagnostic studies. On May 26, 2015 Dr. Dawson again requested electrodiagnostic studies.

In a decision dated July 9, 2015, OWCP denied appellant's claim for recurrence of disability for the period August 23, 2013 to April 28, 2014 finding that she had not established a change in the nature and extent of her accepted employment injury. It found no evidence that the accepted work condition had materially changed or worsened thereby causing total disability.

In a report dated July 10, 2015, Dr. Dawson noted that appellant was not working and that she had multiple cervical disc ruptures that were moderately unstable with nerve irritability and impingement.[6]

[6] On July 31, 2015 an OWCP medical adviser reviewed Dr. Dawson's April 24, 2015 report and found that he had not provided a right upper extremity permanent impairment rating. In an additional report dated August 27, 2015, he reviewed Dr. Dawson's January 7, 2015 report and recommended a second opinion evaluation to determine appellant's right upper extremity permanent impairment for schedule award purposes. As no final decision had been issued, the Board will also not address permanent impairment.

On September 23, 2015 appellant underwent a nerve conduction velocity (NCV) study which demonstrated bilateral mid-cervical radiculopathy at C5-7 with active and chronic changes worse on the right.

Dr. Dawson examined appellant on October 23, 2015 and found increased tone, spasm, and stiffness of the cervicodorsal musculature. He reported numbness, tingling, burning, and weakness. Dr. Dawson diagnosed cervical nerve impingement and PTSD. He found that appellant was totally disabled. He completed a narrative report on October 28, 2015 and reviewed appellant's MRI scan. Dr. Dawson noted that on the June 21, 2013 MRI scan new large disc protrusions superior to the level of surgery were identified. He opined, "This is objective documentation of significant worsening, including rupture of discs, where are severe structural entities." Dr. Dawson further noted that appellant had very poor motor innervations to the upper extremities as well as electrodiagnostic confirmation of involvement of the C5, C6, and C7 nerve roots. He found additional disc ruptures at C2-3 and C3-4 as demonstrated on an MRI scan. Dr. Dawson again diagnosed PTSD.

Appellant requested reconsideration on November 10, 2015. On January 6, 2016 Dr. Dawson examined appellant and found pain, spasm, and stiffness. He also reported increased numbness, tingling, burning, and weakness in the neck area.

By decision dated February 11, 2016, OWCP denied modification of the July 9, 2015 finding that appellant had not established that she stopped work due to her accepted employment injury of January 12, 2011. It found that, while Dr. Dawson had provided an argument that appellant's condition had worsened, he failed to explain how the worsening was related to the accepted condition or contributed to the new conditions with sufficient medical rationale or reasoning. OWCP further found that Dr. Dawson had suggested that stress was also a reason for appellant's inability to work.

LEGAL PRECEDENT

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.[7] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[8]

It is an accepted principle of workers' compensation law, and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the

[7] *Kevin J. McGrath*, 42 ECAB 109 (1990); *John E. Blount*, 30 ECAB 1374 (1974).

[8] *Frances B. Evans*, 32 ECAB 60 (1980).

employment, unless it is the result of an independent intervening cause.[9] As is noted by Professor Larson in his treatise: "[O]nce the work-connected character of any injury, has been established the subsequent progression of the condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause."[10]

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.[11] Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment activity or factors identified by the claimant.[12]

ANALYSIS

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

OWCP accepted appellant's claim for intervertebral disc disorder with myelopathy. It approved her March 10, 2011 anterior cervical discectomy and fusion at the C4-7 levels with a C6 corpectomy. Appellant did not return to work at the employing establishment as her appointment had expired on June 15, 2011. She worked in the private sector. Appellant filed a Form CA-2a alleging on May 20, 2013 additional disc herniations. She stopped work on August 23, 2013 and returned on April 28, 2014, but stopped working again in November 2014.

In support of her recurrence claim, appellant submitted a series of reports from Dr. Dawson. On June 26, 2013 Dr. Dawson reviewed her June 21, 2013 MRI scan and found two additional disc herniations at C2-3 and C3-4. He noted that these herniations were above appellant's spinal fusion. Dr. Dawson opined that these were "basically evolutionary" of appellant's accepted underlying condition. In his January 7, 2015 report, Dr. Dawson explained that appellant's surgical fusion had resulted in deterioration of the higher level discs at C2-3 and C3-4. He noted that appellant's accepted injury had evolved with the passage of time and that there were no intervening accidents or injuries. On April 24, 2015 Dr. Dawson explained that the additional herniated discs were due to "ascending disc phenomenon…." He noted, "As the patient places any modest bit of stress to the area, because of the tendency for the disc immediately superior and inferior to the fusion levels to bear increased load, they will, without significant trauma, go on to develop degenerative changes, bulges, or even disc ruptures." Dr. Dawson further noted that disc ruptures following the surgery could have occurred by simply

[9] Larson, *The Law of Workers' Compensation* § 13.00. *See also Stuart K. Stanton*, 40 ECAB 859 (1989); *Charles J. Jenkins*, 40 ECAB 362 (1988).

[10] *Id*. at § 13.11(a).

[11] *T.F.*, 58 ECAB 128 (2006).

[12] *A.D.*, 58 ECAB 149 (2006).

turning in bed at night. He opined that appellant's currently diagnosed condition was a worsening of her accepted employment injury and not a new injury.

Applying the principles noted above, the Board finds that Dr. Dawson has provided a clear opinion that appellant's current condition is causally related to her accepted employment injury. It has been accepted that once the work-connected character of any condition is established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.[13] The Board further notes that Dr. Dawson has provided an explanation of how appellant's additional herniated discs developed spontaneously due to the increased load caused by the surgery and that no additional activity or intervening injury was required.[14] While Dr. Dawson's reports are insufficient to meet appellant's burden of proof to establish that these additional disc herniations were a direct result of appellant's accepted work injury without any independent intervening cause, they are sufficiently supportive of a causal relationship with her accepted cervical condition and are therefore sufficient to require OWCP to further develop the medical evidence.[15]

It is well established that proceedings under FECA are not adversarial in nature and that while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has an obligation to see that justice is done.[16] On remand, OWCP should compile a statement of facts and refer appellant, together with the complete case record and questions to be answered, to an appropriate Board-certified specialist for a detailed opinion on the relationship of appellant's current condition to the accepted employment injury and any period of disability therefrom. After this and such other development as OWCP deems necessary, it should issue a *de novo* decision.

CONCLUSION

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

[13] *Foy E. Thomas*, Docket No. 01-0500 (issued May 17, 2002). *See also Dennis J. Lasanen*, 41 ECAB 933 (1990) (where the Board remanded the case for a determination of whether appellant's recurrence of disability was a further medical complication flowing from the employment injury or whether it was caused by an independent intervening cause).

[14] *Gary F. Voet*, Docket No. 98-1175 (issued May 23, 2000). *Compare C.W.*, Docket No. 07-1816 (issued January 16, 2009).

[15] *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *Virginia Richard (Lionel F. Richard)*, 53 ECAB 430 (2002); *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

[16] *John J. Carlone*, *id.*

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2016 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: July 13, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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