

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

<hr/>		
<b>J.F., Appellant</b>	)	
	)	
<b>and</b>	)	
	)	<b>Docket No. 12-1751</b>
	)	<b>Issued: February 5, 2013</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Tampa, FL, Employer</b>	)	
<hr/>		

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 13, 2012 appellant filed a timely appeal from a May 8, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant sustained a recurrence of disability for the period September 6 to October 7, 2011 causally related to his October 21, 2010 employment injury.

**FACTUAL HISTORY**

On October 21, 2010 appellant, then a 45-year-old laborer, filed a traumatic injury claim, alleging that he pulled on a rope to a garage door that day, which broke, causing him to fall on the cement floor. He stopped work that day and returned to work on November 7, 2010. OWCP

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

accepted appellant's claim for left ankle sprain, right lateral epicondylitis, right bicipital tendinitis and a right shoulder/upper arm supraspinatus sprain.

Dr. John K. Head, a Board-certified emergency medicine physician, treated appellant for his October 21, 2010 injury. In a report dated December 6, 2010, he released appellant to full duty.

In a report dated September 7, 2011, Dr. Head related appellant's medical history, which included two prior incidents: an injury in 1988 when he was struck by a car when employed at a Sears automobile repair shop and a 1999 injury which occurred in the course of his postal service employment. He indicated that in 1999 appellant's then treating physician, opined that appellant was unable to work for one month on account of the injuries to his right wrist, elbow and shoulder occurring due to his postal service employment. Dr. Head related that appellant had a history of ongoing pain in his neck, back, knee and calves. Appellant contemplated a disability retirement. He did not address appellant's disability for work.

On September 26, 2011 appellant filed a claim for wage loss for the period September 6 to October 7, 2011.

OWCP notified appellant in an October 3, 2011 letter that additional medical evidence was needed to substantiate his disability for the claimed period. It did not receive a response.

In a November 7, 2011 decision, OWCP denied appellant's recurrence claim on the grounds that he did not submit medical evidence to establish his disability for work during the claimed period.

Appellant disagreed with the decision and on November 21, 2011 requested an oral hearing. The hearing was held on March 5, 2012.

In a medical note dated September 12, 2011, received by OWCP on November 15, 2011, Dr. Head related that appellant's right wrist, right elbow and right shoulder injuries occurred at work. He diagnosed tendinitis and stated that appellant was unable to grip, lift trash cans, sweep or use the grabber. Therefore, he should remain off work for a period of a month.

Dr. Samy F. Bishai, a Board-certified orthopedic surgeon, reported on October 13, 2011 that appellant's medical history included a 1988 nonfederal injury, the accepted 1999 and October 21, 2010 injuries, as well as a separate September 5, 2011 work incident. He opined that the October 21, 2010 and September 5, 2011 incidents exacerbated conditions referable to the 1988 injury. Dr. Bishai also noted that a 2008 lumbar magnetic resonance imaging (MRI) scan disclosed a disc herniation. He diagnosed appellant with a work-related aggravation of lumbar disc herniation, cervical and lumbar sprains, cervical and lumbar disc syndrome, as well as bilateral lower extremity radiculopathy. Dr. Bishai concluded that appellant had been unable to work since September 5, 2011.

Dr. Gary K. Arthur, a Board-certified physician in psychiatry and neurology, submitted a report dated November 23, 2011. He listed appellant's nonfederal 1988 injury. Dr. Arthur diagnosed appellant with mood disorder, generalized anxiety disorder with panic attacks, as well as substance dependence.

In reports dated January 5 and February 6, 2012, Dr. Bishai presented a history of appellant's employment duties. He noted that appellant stopped work on September 5, 2011. Dr. Bishai reaffirmed his diagnosis of cervical and lumbar sprain, disc conditions, as well as radiculopathy. He stated that work activities such as lifting and bending aggravated appellant's back such that he had to stop work on September 5, 2011.

At the hearing, appellant testified that he returned to full duty on November 7, 2010 and stopped work on September 6, 2011. He stated that on September 5, 2011, the pain in his right arm and shoulder was aggravated as a result of performing work tasks such as sweeping, lifting and grabbing. Appellant asserted that his work tasks aggravated the conditions accepted in connection with the October 21, 2010 injury. Appellant's representative argued that Dr. Bishai's February 21, 2012 report supported disability for work during the period claimed.

In a February 21, 2012 report, Dr. Bishai noted appellant's 1988 nonfederal employment injury and the accepted October 21, 2010 work injury. He made findings of right shoulder diminished range of motion, as well as right elbow and wrist tenderness and diminished range of motion, and diagnosed appellant with right shoulder supraspinatus sprain, right bicipital tendinitis, right lateral epicondylitis, right wrist sprain and left ankle sprain. Dr. Bishai stated that appellant would undergo further MRI scan evaluations and then return for a follow up examination. He opined that appellant was unable to work as of September 6, 2011 and continuing due to these conditions.

In an April 25, 2012 report, Dr. Bishai explained that appellant had missed three weeks of work following his right shoulder, wrist, elbow and left ankle injuries of October 21, 2010. Appellant returned to work for nine months, but his conditions worsened until he was unable to use his arm and he had to stop working on September 5, 2011. Dr. Bishai stated that an MRI scan performed on March 13, 2012 showed that appellant's condition had objectively worsened and he had developed right shoulder impingement syndrome, mild AC joint arthropathy, rotator cuff tendinosis without tear, but with subchondral erosion of the humeral head, associated with impingement. Dr. Bishai concluded:

“These findings indicate that [appellant] had suffered aggravation of his existing condition of the injury that occurred on October 21, 2010 and that this aggravation of September 5, 2011 was caused by acceleration of [appellant's] symptoms to a point where [he] was simply unable to return to work because he could not use his right shoulder and arm. It also should be noted that the aggravation of the preexisting condition was caused by the patient performing his duties as a custodian ... which includes the movements of grasping, sweeping, lifting above his shoulder repetitively and months of this type of work has caused this aggravation of the preexisting condition and it is indeed a permanent aggravation of his existing injury.”

In a May 8, 2012 decision, the hearing representative denied appellant's claim finding that the medical evidence did not support disability commencing September 6, 2011 causally related to the accepted October 21, 2010 injury.

## 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 injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>2</sup> Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing that the recurrence of disability is causally related to the original injury.<sup>3</sup> This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.<sup>4</sup> The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>5</sup>

## ANALYSIS

In the May 8, 2012 decision, OWCP's hearing representative found that appellant failed to establish entitlement to wage-loss compensation for the period September 6 through October 7, 2011. Appellant contended that his accepted condition worsened such that he was unable to perform his work duties. The Board finds that the medical evidence of record, however, fails to establish that he sustained a recurrence of disability due to his accepted injury.

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 resulting from a previous injury or illness without a new or intervening injury.<sup>6</sup> Appellant did not submit sufficient medical evidence to establish that he became disabled commencing September 6, 2011 due to his accepted injury; he testified at the hearing and to his physicians that his pain was exacerbated by the activities required by his work duties.

Dr. Bishai's October 13, 2011 medical report noted that appellant's neck and back conditions resulted from "an accident" on September 5, 2011, and that his conditions were an aggravation of his preexisting conditions. He did not explain the nature of the incident of September 5, 2011. Dr. Bishai's February 21, 2012 medical report attributed the cause of appellant's diagnosed conditions to his continued employment duties, without further medical

---

<sup>2</sup> 20 C.F.R. § 10.5(x).

<sup>3</sup> 20 C.F.R. § 10.104(b); *Carmen Gould*, 50 ECAB 504 (1999); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992). OWCP's procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return PRN [as needed], or computed by the claims examiner from the date of last examination), a claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003).

<sup>4</sup> See *Helen K. Holt*, *supra* note 3.

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

<sup>6</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

rationale. In an April 25, 2012 report, Dr. Bishai explained that appellant's conditions had worsened, based upon MRI scans, but that the aggravation, which caused his disability, was due to his continued performance of his work duties. The Board notes that appellant testified that performance of tasks such as grabbing, lifting, and sweeping at work aggravated his right arm and shoulder conditions. As the hearing representative pointed out in the May 8, 2012 decision, appellant did not establish a recurrence of disability due to a spontaneous change, but addressed new exposures to work factors based on his full-duty employment between November 7, 2010 and September 5, 2011. As such, the Board finds that his claim does not meet the definition of a recurrence of disability.<sup>7</sup>

The medical evidence of record does not support a finding of a spontaneous recurrence of disability. Following the October 21, 2010 injury, Dr. Head released appellant to full duty on December 6, 2010. In a report dated September 7, 2011, he noted appellant's continuing complaints following injuries in 1988 and 1999 and related that appellant's ongoing pain in his neck, back, knee and calves made appellant contemplate disability retirement. Dr. Head did not address whether appellant had sustained a spontaneous return of disability caused by the accepted October 21, 2010 injury.

Dr. Arthur, a psychiatrist, diagnosed mood disorder, generalized anxiety disorder and substance dependence in a report dated November 23, 2011. He noted appellant's 1988 injury but offered no explanation as to how the diagnoses were consequential or causally related to the accepted employment injury of October 2010, rather than due to the other injuries.

On appeal, appellant argues that both Dr. Bishai's medical reports and his testimony establish his disability as causally related to his federal work duties. As noted, the medical evidence of record suggests that his condition was aggravated by new exposures to work factors after his return following his accepted October 21, 2010 injury.<sup>8</sup>

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish a recurrence of disability from September 6 through October 7, 2011.

---

<sup>7</sup> See *W.S.*, Docket No. 10-1103 (issued on February 22, 2011) (appellant developed lumbar and pelvic dysfunction as a result of her work activities after she returned to duty; the Board found that her claim did not constitute a recurrence of disability); see also *Bryant F. Blackmon*, 56 ECAB 752 (2005).

<sup>8</sup> In addition, Dr. Arthur's medical report lacks relevance to the present case because it attributed appellant's mental conditions solely to his 1988 nonfederal work injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 8, 2012 decision of the Office of Workers' Compensation Programs is affirmed.<sup>9</sup>

Issued: February 5, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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

---

<sup>9</sup> As noted in the hearing decision, appellant may elect to file a new claim for an occupational disease accruing as of September 6, 2011.