

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

M.M., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, West Los Angeles, CA, Employer**

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**Docket No. 08-1042
Issued: April 20, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 25, 2008 appellant filed a timely appeal from the February 13, 2008 merit decision of the Office of Workers' Compensation Programs, which denied his recurrence claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant sustained a recurrence of total disability after May 9, 2005 causally related to his March 5, 2000 employment injury.

FACTUAL HISTORY

On March 5, 2000 appellant, then a 60-year-old housekeeping aid, sustained an injury in the performance of duty while cleaning a laboratory room: "I rolled the rubber mat about 20 or 25 feet long and about 60 or more lbs. in weight and carried it outside the room. That's when my back started hurting." He and a coworker unrolled the mat and shook it out, which caused

“undue pain” in both shoulders. After working two more days, appellant’s shoulders and lower back were in such pain, he went to the emergency room. He stopped work on March 9, 2000. The Office accepted his claim for lumbar strain and bilateral shoulder strain. Appellant received compensation for temporary total disability on the periodic rolls.¹

On May 9, 2005 appellant returned to work five hours a day as a hospitality aid. He stopped work on September 19, 2005 and claimed compensation for total disability.²

Dr. Pad S. Krishna, an orthopedic surgeon, reported that appellant was totally disabled for periods of time beginning May 26, 2005. On June 13, 2005 he diagnosed severe low back pain secondary to spinal stenosis and degenerative joint disease. On September 12, 2005 Dr. Krishna completed a disability certificate indicating that appellant was totally disabled for work from September 14 to December 15, 2005: “Reoccurring injury to bilateral shoulder and low back pain.” He diagnosed a complete tear of the right shoulder supraspinatus tendon and chronic low back pain.

On October 19, 2005 the Office wrote Dr. Krishna and asked for an explanation of appellant’s total disability. It reviewed the March 5, 2000 employment injury and appellant’s return to limited duty on May 9, 2005. The Office noted that appellant had no evidence of a right shoulder tear after his March 5, 2000 injury. It asked Dr. Krishna whether the March 5, 2000 accepted strains had resolved in view of appellant’s prolonged absence from federal employment, whether the 2005 limited-duty assignment had aggravated the accepted conditions on an objective basis or whether appellant’s condition was merely the natural progression of normally occurring degenerative changes.

On November 10, 2005 Dr. Krishna responded that magnetic resonance imaging (MRI) scans of the low back and shoulders were consistent with appellant’s complaints of pain. Appellant was still having daily chronic pain in his shoulders and was not able to lift his arms above the shoulder or drive to work. “The constant pains in [appellant’s] shoulder and low back will always be there,” Dr. Krishna stated. He reported that appellant would not be able to continue his limited-duty assignment due to his low back and shoulder pains.

In a decision dated December 6, 2005, the Office denied appellant’s recurrence claim. It found that Dr. Krishna did not address why the relatively minor accepted conditions had not yet resolved or how other conditions were related to appellant’s employment injuries or why the changes were not the normal progression of a degenerative process.

On April 10, 2006 the Office reviewed the merits of appellant’s case and denied modification of its prior decision. It noted that appellant submitted two statements and no medical evidence.

¹ Appellant previously sustained a lumbar strain in 1989, OWCP File No. xxxxxx840, a left shoulder strain in 1990, OWCP File No. xxxxxx688 and a shoulder/arm strain in 1991, OWCP File No. xxxxxx889.

² Beginning June 23, 2005 appellant stopped work and covered his absence with leave. He returned to work five hours a day beginning August 15, 2005.

On May 24, 2006 Dr. Curtis W. Spencer III, an orthopedic surgeon, reported that the fairly significant retracted tear in appellant's right shoulder was a natural progression of his injury in 2000, "where he had a tear that has progressed." He stated that appellant's left shoulder condition was a natural progression from chronic tendinitis with impingement.

On November 16, 2006 the Office again reviewed the merits of appellant's case and denied modification of its prior decision. It noted that appellant provided progress notes, a few narrative reports that did not adequately address causal relationship, diagnostic testing, requests for surgery authorization and supplemental statements under his hand and by his wife on his behalf.

On February 13, 2008 the Office once again reviewed the merits of appellant's case and denied modification of its prior decision. It noted that appellant submitted medical reports that shed no light on his claim that he sustained a recurrence of total disability in 2005 causally related to his March 5, 2000 employment injury.

LEGAL PRECEDENT

The Federal Employees' Compensation Act pays compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ Disability means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.⁴

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.⁵

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁶

ANALYSIS

After returning to limited duty on May 9, 2005, appellant stopped work and claimed compensation for total disability. He therefore has the burden to show a change in the nature and

³ 5 U.S.C. § 8102(a).

⁴ 20 C.F.R. § 10.5(f) (1999).

⁵ *Id.* at § 10.5(x).

⁶ *Terry R. Hedman*, 38 ECAB 222 (1986).

extent of his injury-related condition or a change in the nature and extent of his limited-duty job requirements. Appellant does not contend that he could no longer work five hours a day in his limited-duty position because the requirements of that position changed such that it was no longer medically suitable to his injury-related limitations. His claim, therefore, rests on establishing a change in his injury-related condition.

The Office accepted appellant's March 5, 2000 employment injury for lumbar strain and bilateral shoulder strain. Appellant has submitted very little medical evidence addressing whether his total disability after May 9, 2005 was a result of a change in those accepted medical conditions. Dr. Krishna, appellant's orthopedic surgeon, completed disability certificates, but he did not explain how appellant's inability to perform his limited-duty assignment was a result of the strains he sustained carrying a rubber mat out of a room on March 5, 2000 or shaking it out with a coworker. He diagnosed severe low back pain secondary to spinal stenosis and degenerative joint disease, conditions that are not established to be related to the March 5, 2000 employment injury. Dr. Krishna also diagnosed a complete tear of the right shoulder supraspinatus tendon, which is also not established to be related to the March 5, 2000 employment injury.

The Office asked Dr. Krishna to address some fundamental questions, such as why such a relatively minor condition as a low back or shoulder strain had not resolved since March 2000, given appellant's prolonged absence from federal employment. It also asked Dr. Krishna to explain whether appellant's condition should be considered the natural progression of normally occurring degenerative changes. But Dr. Krishna's November 10, 2005 report was nonresponsive. He made no attempt to connect appellant's total disability for work after May 9, 2005 to the low back and shoulder strains he sustained on or about March 5, 2000.

Dr. Spencer, another orthopedic physician, made such a connection on May 24, 2006. He stated that the fairly significant retracted tear in appellant's right shoulder was a natural progression of his injury in 2000, "where he had a tear that has progressed." But the Office accepted only shoulder strain, not a torn rotator cuff. Dr. Spencer did not discuss the nature of a strain and did not explain how a shoulder strain in 2000 could naturally progress into a fairly significant retracted tear without intervening injury or further exposure. Such an explanation is particularly important where appellant did not return to federal employment for a prolonged period of time following his March 5, 2000 injury. Although Dr. Spencer attempted to connect appellant's current condition to the accepted employment injury, his opinion lacks medical reasoning and therefore carries little probative or evidentiary value.⁷

The Board has reviewed all the medical evidence submitted after appellant's May 9, 2005 return to limited duty but can find no medical opinion soundly discussing how appellant's alleged recurrence of total disability was causally related to the strains he sustained on or about March 5, 2000. Because the evidence does not show a change in the nature and extent of his accepted low back or shoulder strains, appellant has not met his burden to prove. The Board will affirm the Office's February 13, 2008 decision denying compensation for total disability after May 9, 2005.

⁷ The Board has held that medical conclusions unsupported by rationale are of little probative value. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

CONCLUSION

The Board finds that the medical evidence fails to establish a recurrence of total disability after May 9, 2005 causally related to appellant's December 16, 1990 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 13, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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