

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

C.K., Appellant)	
)	
and)	Docket No. 14-849
)	Issued: August 27, 2014
DEPARTMENT OF THE ARMY, FORT)	
LEONARD WOOD, MO, Employer)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 28, 2014 appellant, through her attorney, filed a timely appeal from a January 13, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

ISSUE

The issue is whether appellant has established a recurrence of disability commencing January 5, 2012 causally related to her employment injury.

FACTUAL HISTORY

On March 3, 2005 appellant, then a 35-year-old fabric worker, filed a traumatic injury claim (Form CA-1) alleging a right shoulder injury in the performance of duty on February 10, 2005. She alleged that she lifted a box over her head and hurt her right shoulder. A magnetic resonance imaging (MRI) scan report dated May 10, 2005, diagnosed rotator cuff

¹ 5 U.S.C. § 8101 *et seq.*

impingement secondary to acromioclavicular joint arthrosis with mild supraspinatous tendonopathy. The report stated that no rotator cuff tear was identified.

On June 22, 2005 OWCP accepted the claim for right shoulder impingement syndrome. Appellant worked in a light-duty position and returned to her regular job as of September 22, 2005.

On March 5, 2012 appellant submitted a claim for a recurrence of disability (Form CA-2a). She advised that she underwent right shoulder surgery on January 5, 2012 and returned to work January 30, 2012. Appellant noted that she had fallen from a ladder on September 5, 2011. In a statement, she noted that the fall from the ladder was at her house. Appellant stated that she felt her shoulder had never recovered from the original employment injury and she had no other injuries between 2005 and 2011.

In a brief report dated February 21, 2012, Dr. Jeff Mutchler, an osteopath, stated that appellant had undergone a rotator cuff debridement on January 5, 2012. He stated that the rotator cuff was found to be retracted back to and beyond the glenoid, which was consistent with injuries much older than three months. Dr. Mutchler stated that the rotator cuff was likely torn between 2005 and 2011.

OWCP prepared a statement of accepted facts and referred the case to an OWCP medical adviser. In a report dated May 23, 2012, Dr. Daniel D. Zimmerman, the medical adviser, stated that it was not acceptable to believe that the need for right shoulder surgery was required for anything other than symptoms generated after the fall from the ladder. He also noted that there was little evidence of record with respect to treatment following the September 2011 fall from the ladder.

On July 25, 2012 appellant submitted additional medical evidence, including an October 3, 2011 report from Dr. Daniel Schmidt, a Board-certified family practitioner. He listed a history that appellant fell from an eight or nine foot ladder onto concrete and her right shoulder and right elbow "hit full weight" on the concrete. He diagnosed right shoulder contusion injury, possible meniscal damage.

In a report dated August 14, 2012, Dr. Zimmerman noted the report from Dr. Schmidt. He found that the fall from the ladder did not cause the retracted tears of the rotator cuff tendon, but that appellant had been asymptomatic prior to the fall. There was no evidence to establish that her surgery on January 5, 2012 was causally related to the employment injury.

By decision dated September 14, 2012, OWCP denied appellant's claim for a recurrence of disability. It found that the medical evidence was insufficient to establish causal relation.

Appellant requested a hearing before an OWCP hearing representative, which was held on February 6, 2013. By decision dated April 25, 2013, the hearing representative affirmed the September 14, 2012 decision. She found that the medical evidence was insufficient to establish that appellant's disability for the period claimed was due to the February 10, 2005 injury.

On September 19, 2013 appellant requested reconsideration and submitted a February 20, 2013 report from Dr. Mutchler, who provided results on examination and diagnosed shoulder joint pain, status post shoulder surgery. Dr. Mutchler stated that, while she had fallen from a

ladder three months prior to surgery, “at the time of the surgery the degree of retraction, fibrosis and scarring, which was found much better, correlated to a long term injury than three months.” He also stated that prior to the fall appellant had developed a strong and coordinated deltoid muscle and was able to function with a rotator cuff tear. Dr. Mutchler opined that her “injury did, in part at least, exist prior to the September 2011 fall and likely was made worse by the fall from the ladder.”

By decision dated January 13, 2014, OWCP reviewed the merits of the claim and denied modification of the April 25, 2005 decision. It found that the medical evidence was insufficient to establish causal relationship.

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”²

A person 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 disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³ With respect to surgical treatment, it is also appellant’s burden of proof to establish that the requested treatment is for the effects of an employment-related condition.⁴

ANALYSIS

OWCP accepted that appellant sustained a right shoulder impingement syndrome as a result of a February 10, 2005 lifting incident at work. Appellant underwent right shoulder surgery on January 5, 2012 and was off work through January 30, 2012. She filed a recurrence of disability claim for wage-loss compensation for the surgery and resulting disability. Appellant has the burden of proof to establish her claim. The Board has reviewed the evidence of record and finds that she did not meet her burden of proof.

Dr. Mutchler opined that while appellant sustained a fall from a ladder in September 2011, the evidence indicated that she had sustained a rotator cuff tear prior to the fall. But the issue is not simply whether there was evidence of a prior injury. The issue is whether the January 5, 2012 surgery and subsequent disability were causally related to the February 10, 2005 employment injury. Dr. Mutchler briefly stated that the rotator cuff was likely torn sometime between 2005 and 2011. OWCP has not accepted a rotator cuff tear. If Dr. Mutchler believes that the February 10, 2005 employment incident caused or contributed to a rotator cuff tear

² 20 C.F.R. § 10.5 (x).

³ *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁴ *Debra S. King*, 44 ECAB 203 (1992).

which contributed to the need for surgery, he failed to adequately discuss the employment incident and the relevant medical history. This is particularly important in the present case, as a May 10, 2005 MRI scan report stated no rotator cuff tear was identified. Therefore, his medical reasoning to causal relationship is of diminished probative value.

The Board notes that Dr. Zimmerman reviewed the record. He opined in a May 23, 2012 report that the surgery in 2012 was not casually related to the 2005 employment injury. The medical adviser found that the need for surgery was related to the fall from the ladder, not the employment injury.

The record does not contain a medical report, based on a complete background and with sound medical reasoning, establishing a recurrence of an employment-related disability as of January 5, 2012. It is appellant's burden of proof and based on the evidence of record she did not meet her burden in this case. She 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.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability as of January 5, 2012.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 13, 2014 is affirmed.

Issued: August 27, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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