

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

---

A.C., Appellant )  
and ) Docket No. 06-1003  
DEPARTMENT OF AGRICULTURE, PLANT )  
PROTECTION QUARANTINE OFFICE, ) Issued: December 12, 2006  
Jamaica, NY, Employer )  
\_\_\_\_\_  
)

---

*Appearances:*

*Thomas S. Harkins, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 27, 2006 appellant, through his attorney, filed a timely appeal from a December 30, 2005 merit decision of the Office of Workers' Compensation Programs denying his claim for a recurrence of disability. Pursuant to 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 that he sustained a recurrence of disability for intermittent dates from December 30, 2002 through April 7, 2003 due to his accepted employment injury.

**FACTUAL HISTORY**

This case is before the Board for the third time. In the first appeal, the Board affirmed a February 19, 2002 decision finding that appellant was not entitled to a schedule award because he had not reached maximum medical improvement. The Board further found that he had not

established a loss of wage-earning capacity.<sup>1</sup> On appeal for the second time, the Board set aside an October 13, 2004 Office decision finding that appellant had not established a recurrence of disability for intermittent dates from December 30, 2002 through April 7, 2003 because he had a surplus from a third-party recovery.<sup>2</sup> The Board noted that the Office had not reviewed the medical evidence or made a specific finding regarding appellant's entitlement to compensation. The Board remanded the case for the Office to render the appropriate findings. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

In a decision dated December 30, 2005, the Office denied appellant's claim for a recurrence of disability for intermittent dates from December 30, 2002 through April 7, 2003. The Office determined that he failed to establish a recurrence of disability for the relevant dates because he had not submitted the factual information requested in its March 31, 2003 development letter. The Office indicated that it was unable to evaluate the medical evidence because of the lack of factual information from appellant regarding his alleged recurrence of disability.

### **LEGAL PRECEDENT**

When an appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. 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 this conclusion with sound medical reasoning.<sup>3</sup>

Section 10.5(x) of the Office's regulations provides in pertinent part:

“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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”<sup>4</sup>

Section 10.104(b) of the Office's regulations provides, “The employee must include a detailed factual statement as described on Form CA-2a. The employer may submit comments concerning the employee's statement.”<sup>5</sup>

---

<sup>1</sup> *Angel E. Cordero*, Docket No. 02-1118 (issued November 7, 2002).

<sup>2</sup> *Angel E. Cordero*, Docket No. 05-524 (issued December 5, 2005).

<sup>3</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> 20 C.F.R. § 10.104(b)(1).

In situations where an employee has returned to his regular employment, the Office's procedure manual states:

(1) *Burden of Proof.* It is the employee's burden to submit factual and medical evidence in support of the claimed recurrence. It is not assumed that any subsequent incapacity involving the injured part of the body is the result of the original injury solely because the original injury was accepted.<sup>6</sup>

(a) Factual evidence includes the items requested on Form CA-2a, *i.e.*, a description of the condition and any changes in duties during the intervening period, and a description of any intervening injuries and medical treatment for them.”<sup>7</sup>

### ANALYSIS

The Office accepted that appellant sustained multiple lacerations of the arms, legs and torso and post-traumatic stress disorder due to an attack by three pit bulls while in the performance of duty on May 2, 2000. Appellant stopped work on the date of injury. He returned to modified employment on September 18, 2000 and to his regular full-time employment on November 18, 2001.<sup>8</sup> The Office paid appellant compensation for time lost from work due to medical appointments and temporary total disability resulting from subsequent surgeries.

On February 20, 2003 appellant filed a claim for compensation (Form CA-7) requesting compensation for intermittent dates from December 30, 2002 through April 7, 2003. The employing establishment noted on the claim form that he had returned to his usual full-time employment. In an accompanying time analysis form, appellant maintained that he missed work beginning December 30, 2002 due to “extreme stress.”

The Office, in its December 30, 2005 decision, found that appellant failed to establish a recurrence of disability for intermittent dates from December 30, 2002 through April 7, 2003.<sup>9</sup>

---

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.7.b.1 (May 1997).

<sup>7</sup> *Id.* at Chapter 2.1500.7.b.1(a) (July 2000).

<sup>8</sup> See *Angel E. Cordero*, *supra* note 1.

<sup>9</sup> By decision dated July 24, 2003, the Office found that appellant had not established a recurrence of disability for intermittent periods from December 30, 2002 through April 7, 2003. The Office determined that he had not provided the factual information requested in the March 31, 2003 development letter or submitted sufficient medical evidence to support disability from employment. The Office found that he was performing light duty at the time of his recurrence of disability; however, this is not supported by the February 20, 2003 Form CA-7. By decision dated October 13, 2004, the Office denied modification of its finding that appellant did not establish a recurrence of disability after determining that he had a surplus of \$94,546.60 from a third-party recovery. The Office also expanded his accepted conditions to include major depressive disorder, PTSD and bilateral carpal tunnel syndrome. On December 5, 2005 the Board set aside the October 13, 2004 decision after finding that the Office did not address the issue of whether appellant sustained a recurrence of disability from December 30, 2002 through April 7, 2003 such that the amount to which he was entitled would be credited against the surplus of compensation.

The Office determined that he had not responded to its request for additional factual information and thus had not met his burden of proof to show a recurrence of disability.

The Office's regulations provide that it is the employee's burden to submit factual evidence in support of his recurrence of disability as described on the Form CA-2a.<sup>10</sup> The Office's procedure manual also states that, when an employee has returned to his regular full-time employment, he has the burden to submit factual evidence in support of his claim, including "a description of the condition and any change in duties during the intervening period, and a description of any intervening injuries and medical treatment from them."<sup>11</sup> While appellant did not complete, as requested, a Form CA-2a, the Office notified him of the factual information he needed to submit to establish disability. In a letter dated March 31, 2003, the Office determined that he had alleged a recurrence of disability based on his filing of a Form CA-7 listing absences from work due to extreme stress beginning December 30, 2002. The Office requested that he submit factual and medical information in support of his recurrence of disability, including a detailed description of the events of December 30, 2002, an account of the progress of his condition and information about any other injuries sustained either before or after his employment injury.<sup>12</sup> Appellant generally maintained in his July 5, 2004 request for reconsideration that the medical evidence established disability but did not provide the requested factual information. He did not describe the circumstances surrounding his work stoppages on various dates due to emotional distress or provide information regarding any potential intervening injuries. As he failed to submit the necessary factual information, he did not meet his burden of proof.

On appeal, counsel argues that the Office should expand its acceptance of the employment-related conditions. He also contends that appellant has established a loss of wage-earning capacity. The Office did not address these issues in its December 30, 2005 decision and therefore they are not before the Board at this time.<sup>13</sup>

### **CONCLUSION**

The Board finds that appellant has not established that he sustained a recurrence of disability for intermittent dates from December 30, 2002 through April 7, 2003 due to his accepted employment injury.

---

<sup>10</sup> 20 C.F.R. § 10.104(b)(1).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.7.b.1 (May 1997).

<sup>12</sup> On April 14, 2003 the employing establishment informed the Office that appellant continued to require physical and emotional therapy due to his employment injury and had not alleged a recurrence of disability. Appellant, however, in his claim for compensation for this time period, did not attribute his disability to a need for medical treatment but instead to "emotional stress."

<sup>13</sup> See 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 30, 2005 is affirmed.

Issued: December 12, 2006  
Washington, DC

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

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

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