

certified orthopedic surgeon, performed a Bankhart repair of his left shoulder. Appellant resumed light-duty employment on March 12, 1992.

In a report dated August 24, 1993, Dr. Strite noted that appellant reported pain to his shoulder with activity and opined that he had a 20 percent loss of function. He stated that he would recheck appellant PRN (as needed). The most recent medical report of record, dated May 5, 1994, is from Dr. John D. Ashby, a Board-certified orthopedic surgeon, who diagnosed status post arthroplasty of the left shoulder and found that appellant had reached maximum medical improvement. He opined that appellant should perform no lifting above the shoulder.¹

The record indicates that appellant was charged with attempted homicide for shooting his wife in the face in December 1993.

By letter dated February 17, 2005, the Office informed appellant that it had received his September 7, 2004 notice of recurrence of disability requesting additional medical care.² The Office requested that he submit a statement describing why he believed his current disability or need for medical care was due to his employment injury and to provide copies of medical reports documenting any treatment of his left shoulder since 1995. The Office further notified him that he should obtain a narrative report from his attending physician addressing his need for continuing medical treatment, the extent of any disability and its relationship to his accepted employment injury. The Office provided appellant 30 days to submit the requested information. He did not, however, respond within the allotted time.

By decision dated May 11, 2005, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained a recurrence of disability or recurrence of medical condition due to his accepted employment injury. The Office informed him that no further medical treatment was authorized and any prior authorization was terminated.

LEGAL PRECEDENT

The Office's regulation defines the term recurrence of disability as follows:

“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. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of

¹ On July 21, 1994 the Office granted appellant a schedule award for a 33 percent impairment of the left shoulder. The period of the award ran from May 4, 1994 to February 19, 1996.

² Appellant's notice of recurrence of disability dated September 7, 2004 is not contained in the case record prior to the Office's May 11, 2005 decision.

such an assignment are altered so that they exceed his or her established physical limitations.”³

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she 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 or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁴

The Office’s procedure manual defines a recurrence of medical condition as follows:

“This term is defined as the documented need for further medical treatment after release from treatment of the accepted condition when there is no work stoppage. Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment.”⁵

The Office’s procedure manual further provides:

After 90 days of Release from Medical Care (Again, this should be based on the physician’s statement or instruction to return PRN, or computed by the [claims examiner] from the date of last examination.) The 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.”⁶

ANALYSIS

The Office accepted appellant’s claim for tendinitis of the left rotator cuff and authorized a Bankhart repair of the left shoulder, which was performed on November 25, 1991. Following the surgery, appellant returned to limited-duty employment. He has not alleged that he stopped work due to a withdrawal or change in his light-duty position. Appellant further has not submitted any medical evidence showing that he was disabled from his light-duty position as of the date that he ceased working for the employing establishment or that he has a continuing employment-related condition for which he required continuing medical treatment.

The Office informed appellant of the type of evidence necessary to establish his claim by letter dated February 17, 2005; however, he did not submit any evidence in response to the

³ 20 C.F.R. § 10.5(x).

⁴ *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(a) (January 1998).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003).

Office's request. Consequently, he has not established a recurrence of disability or of a medical condition and the Office properly denied his claim.

On appeal, appellant's counsel argues that the Office improperly terminated his authorization for medical treatment. The Office's procedure manual indicates that the date of release from medical care is calculated by a physician's statement, instructions to return PRN, or the date of the last examination.⁷ His attending physician, Dr. Strite, released him in a report dated August 24, 1993 with instructions to return PRN. The last medical report of record is dated May 5, 1994. As appellant is more than 90 days of release from medical care, it is his responsibility to submit "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."⁸ He did not submit such evidence and thus failed to establish a need for continuing medical treatment.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of disability on or around September 7, 2004 causally related to his August 8, 1991 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 11, 2005 is affirmed.

Issued: October 17, 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

⁷ *Id.*

⁸ *Id.*