United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 07-1384**
	)	**Issued: November 8, 2007**
DEPARTMENT OF THE NAVY, TRIDENT REFIT FACILITY, Bremerton, WA, Employer	)	

Appearances:
Debra Smith, 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 April 25, 2007 appellant filed a timely appeal from a March 26, 2007 decision of the Office of Workers' Compensation Programs, denying his request for reconsideration, a November 14, 2006 decision denying his request for a schedule award and an August 3, 2006 decision 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.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of disability in April 2005; (2) whether the Office properly denied his claim for a schedule award; and (3) whether the Office abused its discretion in denying appellant's request for reconsideration.

FACTUAL HISTORY

On November 21, 1986 appellant, then a 32-year-old rigger helper, sustained contusions of the ribs, left knee and left arm while in the performance of duty. On June 12, 2006 he filed a

claim for a recurrence of disability in April 2005. On October 24, 2006 appellant filed a claim for a schedule award.

In clinical notes dated April 14, 2005, a Dr. Danielle Frank stated that appellant had been experiencing left arm and shoulder pain for several months. Since his November 21, 1986 employment injury, appellant had experienced intermittent pain extending from his left shoulder to his fingers. There was no evidence of rotator cuff tendinitis and the physical examination of appellant's shoulder was negative except for some tenderness at insertion points of cuff tendons. No diagnosis was provided for his left shoulder pain.

On June 28, 2006 the Office asked appellant to provide additional information regarding his claimed recurrence of disability, including medical evidence containing a diagnosis and an explanation as to how the diagnosed condition was causally related to his November 21, 1986 employment injury.

By decision dated August 3, 2006, the Office denied appellant's claim for a recurrence of disability commencing in April 2005. On November 21, 2006 the Office denied appellant's claim for a schedule award on the grounds that his employment injury occurred in 1986 and there was no current medical evidence establishing any residuals from the 1986 injury which entitled him to a schedule award for permanent impairment of his left knee or left arm.

Appellant requested reconsideration and submitted additional evidence. In a February 26, 2007 report, a physician's assistant provided a history of his 1986 employment injury, noting that his left upper arm pain had persisted since the 1986 injury. He was currently on limited duty due to bilateral carpal tunnel syndrome. The physician's assistant provided findings on physical examination and diagnosed a sprain and strain of the left shoulder and upper arm and a sprain and strain of the ribs. The report was not signed by a physician.

By decision dated March 26, 2007, the Office denied appellant's reconsideration request.[1]

LEGAL PRECEDENT -- ISSUE 1

Appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as the result of an employment injury.[2] Monetary compensation benefits are payable to an employee who has sustained wage loss due to

[1] The Board notes that, while this appeal was pending, appellant filed a claim for a recurrence of disability on April 25, 2007. By decision dated June 18, 2007, the Office denied this recurrence of disability claim. On July 19, 2007 the Office rescinded the June 18, 2007 decision, finding that appellant's claim was for a new injury on April 25, 2007, not a recurrence of disability. The issue in the June 18 and July 19, 2007 decisions is a different issue than the issue on appeal to the Board. Because these decisions do not change the status of the decision on appeal, the March 26, 2007 decision denying appellant's claim for a recurrence of disability in April 2005, the decisions are not null and void. *See Douglas E. Billings*, 41 ECAB 880 (1990) (holding that the only decisions of the Office which are null and void, because they were issued while the case was on appeal to the Board, are those decisions that change the status of the decision on appeal).

[2] *David H. Goss*, 32 ECAB 24 (1980).

disability for employment resulting from the employment injury.[3] Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.[4]

Section 10.5(x) of the Office's regulations[5] states:

> "*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…."

In order to establish that a claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between the present condition and the accepted injury must support the physician's conclusion of causal relationship.[6]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained contusions of the ribs, left knee and left arm on November 21, 1986 while in the performance of duty.

Some 20 years later, Dr. Frank stated that appellant had been experiencing intermittent left arm and shoulder pain since his November 21, 1986 employment injury. Medical evidence of bridging symptoms since the accepted employment injury was not submitted to the record. Dr. Frank did note that the physical examination of appellant's left shoulder was negative except for some tenderness at insertion points of cuff tendons. She did not provide a specific diagnosis or medical rationale explaining how appellant's left upper extremity condition was causally related to the November 21, 1986 employment injury. For these reasons, Dr. Frank's report is not sufficient to establish that appellant sustained a recurrence of disability in April 2005 as a result of his November 21, 1986 employment injury.

LEGAL PRECEDENT -- ISSUE 2

The schedule award provision of the Federal Employees' Compensation Act[7] and its implementing regulations[8] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of

[3] *Debra A. Kirk-Littleton,* 41 ECAB 703 (1990).

[4] *Edward H. Horten,* 41 ECAB 301 (1989).

[5] 20 C.F.R. § 10.5(x).

[6] *Mary A. Ceglia,* 55 ECAB 626 (2004).

[7] 5 U.S.C. § 8107(a)-(c).

[8] 20 C.F.R. § 10.404.

the body. The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the accepted employment injury.[9]

ANALYSIS -- ISSUE 2

The medical evidence in this case does not establish that appellant had any residuals from his accepted November 21, 1986 employment injury. A schedule award is payable under the Act for permanent impairment of a scheduled member or function as a result of an employment injury.[10] It is appellant's burden to establish that he sustained permanent impairment as a result of his accepted injury. The reports of Dr. Frank do not address any permanent impairment related to the 1986 injury, accepted for contusions to the left knee and arm. Therefore, appellant is not entitled to a schedule award for his accepted left knee or left upper extremity contusions sustained in 1986.

LEGAL PRECEDENT -- ISSUE 3

Section 8128(a) of the Act[11] vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may--
>
> (1) end, decrease, or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.[12] When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.[13]

ANALYSIS -- ISSUE 3

In a February 26, 2007 report, a physician's assistant provided findings on physical examination and diagnosed a sprain and strain of the left shoulder and upper arm and a sprain

[9] *See Mark A Holloway*, 55 ECAB 321 (2004).

[10] *See* 5 U.S.C. § 8107, 20 C.F.R. § 10.404. *See also Tammy L. Meehan*, 53 ECAB 229 (2001).

[11] 5 U.S.C. § 8128(a).

[12] 20 C.F.R. § 10.606(b)(2).

[13] 20 C.F.R. § 10.608(b).

and strain of the ribs. The report was not signed by a physician. A physician's assistant is not "a physician" as defined under the Act. Registered nurses, licensed practical nurses and physician's assistants are not physicians as defined under the Act and their opinions are of no probative value.[14] Consequently, the report from a physician's assistant is of no probative value in this case. The report does not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or constitute relevant and pertinent evidence not considered previously by the Office. Therefore, the Office properly denied his request for reconsideration.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a recurrence of disability in April 2005 causally related to his November 21, 1986 employment injury. The Board finds that the Office properly denied his claim for a schedule award. The Board further finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 26, 2007 and November 14 and August 3, 2006 are affirmed.

Issued: November 8, 2007
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

[14] *See* 5 U.S.C. § 8101(2) which provides: "'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law"; *see also Roy L. Humphrey*, 57 ECAB ___ (Docket No. 05-1928, issued November 23, 2005).