

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

J.G., Appellant and U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION, Chicago, IL, Employer)))))))))))	Docket No. 11-593 Issued: December 16, 2011
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
 RICHARD J. DASCHBACH, Chief Judge
 COLLEEN DUFFY KIKO, Judge
 MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 10, 2011 appellant filed a timely appeal of the December 7, 2010 merit decision of the Office of Workers’ Compensation Programs (OWCP), which denied her claim for a recurrence of disability. 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 met her burden of proof to establish that she sustained a recurrence of her medical condition beginning August 15, 2010, causally related to her accepted work injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² In a decision dated July 11, 2005, the Board found that appellant did not have more than a 26 percent permanent impairment of her left arm for which she received a schedule award. The Board also found that OWCP properly refused to reopen her claim for a review of the merits. The facts of the case, as set forth in the prior decision, are incorporated by reference.

OWCP accepted appellant's claim for work-related internal derangement of the left shoulder with rotator cuff repair on August 26, 1997. It expanded her claim to include depression, during the period of withdrawal of medication as a result of the work-related physical condition, which ceased on February 1, 2000.³

In a letter dated September 22, 2010, OWCP acknowledged a telephone call from appellant requesting a claim for a recurrence of disability. Appellant was advised to complete an enclosed (Form CA-2a) for each claimed recurrence through her employing establishment. OWCP also informed her of the evidence needed to support her claim and requested that she submit additional evidence within 30 days.

On October 8, 2010 appellant filed a CA-2a form alleging that she sustained a recurrence of her accepted medical condition on August 15, 2010. She did not stop work and advised that she was seeking medical treatment only. Appellant noted that her condition had worsened since her prior surgery in 2002 and she had not sought additional treatment. She indicated that she had not done anything out of the ordinary and that her pain became worse.

In an October 6, 2010 report, Dr. Ronald L. Silver, a Board-certified orthopedic surgeon and treating physician, advised that appellant had a recurrence of her rotator cuff impingement syndrome in the left shoulder. He advised that her pain returned approximately two months prior and she had a limited range of motion, with 90 degrees of forward flexion and lateral abduction, positive impingement, Hawkins and drop arm test. Dr. Silver noted that x-rays showed her previous decompression. Appellant received a subacromial cortisone injection. Dr. Silver recommended physical therapy and prescribed medication.

In an October 8, 2010 statement, appellant noted that, approximately one to two months earlier, she began to experience severe pain in her left shoulder. She noted that she "did not do anything strenuous that caused the pain." Appellant explained that, in the middle of September, she was waking up out of her sleep. She tried over-the-counter medication to alleviate the pain but there was no relief. In March 2004, a fourth surgery had been recommended; but appellant declined. Appellant was informed that her condition would worsen.

² Docket No. 04-1984 (issued July 11, 2005).

³ OWCP modified a prior decision dated May 21, 2001 to reflect that the case was accepted for depression ceasing on February 1, 2000.

In a November 10, 2010 report, Dr. Silver opined that appellant had not improved with the subacromial cortisone injections, despite temporary relief with anti-inflammatory medications and physical therapy. He recommended a magnetic resonance imaging (MRI) scan.

By decision dated December 7, 2010, OWCP denied appellant's claim on the grounds that the factual and medical evidence was insufficient to establish that she sustained a recurrence of disability causally related to the accepted employment injury.

LEGAL PRECEDENT

A recurrence of a medical condition is defined as a documented need for further medical treatment after release from treatment for the accepted condition or injury.⁴ Continuous treatment for the original condition or injury is not considered a recurrence of a medical treatment nor is an examination without treatment.⁵ As distinguished from a recurrence of disability, a recurrence of a medical condition does not involve an accompanying work stoppage.⁶ It is the employee's burden to establish that the claimed recurrence is causally related to the original injury.⁷ Causal relationship is a medical issue that can generally be resolved only by rationalized medical opinion evidence.⁸

ANALYSIS

Appellant provided two reports from Dr. Silver. In a March 10, 2004 report, Dr. Silver advised OWCP that appellant's left shoulder had worsened and she was disabled with regard to her arm. He also noted that additional surgery might improve appellant's condition. The Board notes that Dr. Silver was initially utilized as a second opinion physician and that, thereafter, she began treating with him. In the October 6, 2010 report, Dr. Silver opined generally that appellant had a recurrence of her rotator cuff impingement syndrome on the left shoulder. He listed findings and results of testing that supported his opinion. Dr. Silver noted that x-rays showed appellant's previous decompression that was performed as a result of her previous work injury. In a November 10, 2010 report, he noted that appellant had not improved with a cortisone injection and recommended an MRI scan. The reports from Dr. Silver while supportive of a work-related condition are insufficient to establish that appellant sustained a recurrence of her accepted medical condition. He provided insufficient medical rationale to explain how her symptoms beginning on or about August 15, 2010 were causally related to the 1997 work injury. For this reason, the Board finds that appellant did not meet her burden of proof.

⁴ 20 C.F.R. § 10.5(y).

⁵ *Id.*

⁶ *Id.* at § 10.5(x).

⁷ *Id.* at § 10.104; *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

⁸ *See Jennifer Atkerson*, 55 ECAB 317 (2004).

Appellant 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 her accepted medical condition.

ORDER

IT IS HEREBY ORDERED THAT the December 7, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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