

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

C.L., Appellant)

and)

DEPARTMENT OF HEALTH & HUMAN)
SERVICES, FOOD & DRUG)
ADMINISTRATION, Rockville, MD, Employer)

**Docket No. 10-1204
Issued: February 8, 2011**

Appearances:
Appellant, pro se
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 18, 2010 appellant filed a timely appeal of a January 14, 2010 merit decision of the Office of Workers' Compensation Program which affirmed the denial of his recurrence of a medical condition claim. 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 sustained a recurrence of his accepted employment-related condition on or after September 23, 2008.

FACTUAL HISTORY

On September 12, 2006 appellant, then a 48-year-old medical officer, filed an occupational disease claim alleging that on September 7, 2006 he first became aware of a shoulder condition as a result of overuse of a computer keyboard and mouse. He first received

medical care on September 7, 2006. Appellant did not stop work. On January 11, 2007 the Office accepted his claim for a right shoulder sprain and due to overuse.

By letter dated June 10, 2008, the employing establishment informed the Office that appellant had not submitted any bills for his accepted occupational disease claim. The employing establishment questioned whether his claim should be closed.

On September 23, 2008 appellant filed a claim for recurrence of medical treatment. He explained that he experienced pain in his neck, right shoulder and arm between 2006 and 2008. It became worse during the workday as a result of using his computer and keyboard. Appellant noted the date of his original injury as September 7, 2006 and the date of occurrence as September 23, 2008. The employing establishment provided him with new ergonomic furniture and dragon speak software. Appellant did not stop work.

Appellant submitted handwritten progress notes dated September 7, 2006 to October 7, 2008 from an unknown health care provider with illegible signature. He was seen on November 8, 2006 and then not again until September 24, 2008.

On December 3, 2008 the Office advised appellant that the evidence submitted was insufficient to establish that his recurrence was causally related to his September 7, 2006 injury. It requested that he submit a statement explaining how his current condition was related to the original work injury, any hobbies or sports activities, and new injuries, if any, sustained since he last worked. The Office also requested copies of any treatment records since November 8, 2006 regarding his right shoulder sprain and a narrative medical report from a physician which included a history of the original injury, clinical examination findings, a firm diagnosis, course of treatment and an opinion establishing a causal relationship between the recurrence and the accepted work-related conditions.

On December 16, 2008 appellant stated that his occupational disease claim affected his neck, right shoulder and arm for which he was treated. He described his pain as continuous and no longer improved with rest on the weekends. During the day, appellant experienced stiffening in his neck and pain in his right shoulder radiating down the outside muscles, with deep seated pain in his elbow. He returned to his physician and related that his pain worsened when he worked at his computer for extended periods of time. Appellant's condition had improved since following the rehabilitation exercises but was still subject to aggravation on the job with heavy computer and keyboard use.

Regarding his employment duties, appellant explained that he used his computer to access paperless records, perform research and type papers for mostly eight hours a day. He then explained that he attempted to have ergonomic furniture provided by his employer and provided copies of email correspondence regarding ergonomic assessment of his work space. Appellant reported that his department did not have the appropriate funds to provide him with ergonomic furniture, except for a surplus side desk. He also stated that the majority of his time was spent at the Nicholson Lane Research Center office, which had no lunch or break rooms nearby to use on his floor.

In a November 21, 2008 report, Dr. Nicholas Patronas, a Board-certified diagnostic radiologist, noted a focal disc protrusion at C6-7 that was lateralized toward the right side compromising the right lateral recess of the spinal canal. He also observed mild nonfocal posterior disc bulges at C4-5 and C5-6 with the height in the signal intensity of the discs at C5-6 and C6-7 decreased, but with no abnormalities in the cervical cord. The study also revealed disc generation at C5-6 and C6-7 manifested by narrowing of the disc spaces. Dr. Patronas ultimately assessed that appellant had a small disc herniation at C6-7 lateralized towards the right side.¹

In a decision dated January 6, 2009, the Office denied appellant's recurrence claim findings insufficient evidence to establish that his current medical condition was causally related to the accepted right shoulder and upper arm sprain.

On January 16, 2009 appellant requested an oral hearing before the Branch of Hearings and Review. In a January 12, 2009 report, Dr. James M. Schmitt, Board-certified in occupational medicine, stated that appellant's claim was improperly classified and accepted for a shoulder and upper arm sprain when the condition should have been for a cervical disease. He initially evaluated him on September 8, 2006 for a two-year history of right arm pain that began as pain in his neck and shoulder, which became aggravated by use of his computer mouse at work. On physical examination, appellant was unable to fully tilt his neck to either side and his right bicep was slightly less strong than his left. Dr. Schmitt listed an initial assessment of impingement of appellant's cervical spine. He questioned why appellant's claim was accepted for a shoulder injury. Dr. Schmitt reevaluated him on September 24, October 24, November 28 2008 and January 12, 2009 and observed that his symptoms persisted and were aggravated by using his computer at work. Appellant reported that his symptoms interfered with his routine life activities such as sleeping, driving and exercising. Dr. Schmitt explained that appellant's symptoms appeared to lessen only with rest and decreased use of a computer at work. He concluded that there was a medical basis for appellant's claim as the degenerative cervical disc disease and herniated cervical disc were aggravated by conditions of his employment.

On October 26, 2009 a telephone hearing was held. Appellant stated that he was terminated from his employment on October 22, 2009, which he felt might be a result of his medical conditions. He had requested ergonomic accommodation at his employment, but was not provided any accommodations due to a lack of funding. Appellant described his injury and explained that he had trouble using a computer and keyboard or performing other activities of daily life. He contented that he never fully recovered from his original injury, which recurred with use of the computer and keyboards for prolonged periods of time without ergonomic accommodation or assessment.

By decision dated January 14, 2010, an Office hearing representative affirmed the January 6, 2009 decision denying appellant's claim for recurrence. The hearing representative found that the medical evidence was insufficient to establish that appellant sustained a recurrence of an accepted work-related condition on or after September 23, 2008. Appellant received treatment based upon the diagnoses of degenerative cervical disc disease and herniated cervical disc, but neither condition was accepted by the Office as employment related.

¹ Appellant also submitted handwritten progress notes dated November 8, 2006 and November 28, 2008 from an unknown provider with an illegible signature.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence.³ In a claim for recurrence, this burden of proof requires that a claimant establish the causal relationship of the claimed recurrence to the previously accepted injury.⁴ A recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment."⁵

For recurrences of medical conditions, the claimant must provide medical evidence from a 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 that conclusion with sound medical reasoning.⁶ Where no such rationale is present, the medical evidence is of limited probative value.⁷ The claimant must also furnish medical evidence of bridging symptoms between the present condition and the accepted injury which support the physician's conclusion of a causal relationship.⁸

ANALYSIS

The Board finds that appellant did not establish a recurrence of his accepted medical condition. The Office accepted that he sustained a sprain of the right shoulder and upper arm as a result of overuse of a computer. On September 23, 2008 appellant submitted a Form CA-2a alleging that he sustained a recurrence of his shoulder and arm condition due to his computer keyboard and mouse use. The Board finds that he failed to submit sufficient medical evidence to establish a recurrence of a medical condition causally related to his accepted injury.

The Board notes that appellant did not allege that he stopped work due to his accepted condition and the record does not substantiate medical treatment between November 2006 and September 2008, therefore this is a claim for recurrence of medical condition.⁹

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ Federal (FECA) Procedural Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (September 2010).

⁵ 20 C.F.R. § 10.5(y) (2010).

⁶ *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁷ *Mary A. Ceglia*, 55 ECAB 626 (2004); *Albert C. Brown*, 52 ECAB 152 (2000).

⁸ *C.W.*, 60 ECAB __ (Docket No. 07-1816, issued January 16, 2009); *Ricky S. Storms*, 52 ECAB 349 (2001).

⁹ *See supra* note 4.

Appellant submitted a January 12, 2009 report from Dr. Schmitt, who noted that appellant's claim was accepted for sprain of the shoulder and upper arm but should have been accepted for cervical disc disease. The Board notes that the Office did not accept cervical disc disease as a condition arising from the September 7, 2006 injury. Dr. Schmitt did not provide sufficient new objective findings or explanation in support of his opinion that cervical disc disease was related to the work activities in 2006.

Regarding appellant's condition as of September 2008, Dr. Schmitt recalled his initial evaluation of appellant on September 8, 2006 and his complaints of right arm pain. He explained his observations based on physical examination, physical therapy, and a November 2008 magnetic resonance imaging (MRI) scan. Dr. Schmitt stated that appellant's symptoms improved with rest and less intense use of a computer at work. He concluded that appellant had degenerative cervical disc disease and a herniated cervical disc aggravated by conditions of his employment. Dr. Schmitt, however, did not provide adequate medical rationale to support his opinion on the causal relationship between appellant's current cervical condition in 2008 and the previously accepted sprain of the shoulder and upper arm. He did not address how appellant's condition was caused or contributed by the work activities in 2006 or since that time. To be considered rationalized medical opinion evidence, a physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the claimant's employment factors.¹⁰ Dr. Schmitt failed to provide a fully rationalized opinion in this case.

Appellant also submitted a November 21, 2008 radiological report, which did not contain any opinion regarding the cause of his condition. As these reports do not contain a physician's opinion regarding causal relationship, they are of limited probative value and are insufficient to establish his claim.¹¹

Appellant submitted handwritten progress notes dated November 8, 2006 to October 7, 2008 from an unknown provider with an illegible signature. As this evidence lacks proper identification and the author cannot be identified as a physician, it has no probative value and is insufficient to support his claim.¹²

It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for recurrence of medical condition.¹³ The record does not contain a medical report providing a reasoned medical opinion that he sustained a recurrence beginning September 23, 2008 causally related to the accepted right shoulder and upper arm sprain. The Board

¹⁰ *T.M.*, 60 ECAB ____ (Docket No. 08-975, issued February 6, 2009); *S.D.*, 58 ECAB 713 (2007).

¹¹ *A.D.*, 58 ECAB 149 (2006); *Michael E. Smith*, 50 ECAB 313 (1999).

¹² *Ricky S. Storms*, *supra* note 8; *Samuel Theriault*, 45 ECAB 586 (1994); *Merton J. Sills*, 39 ECAB 572 (1988).

¹³ *See supra* note 4 at Chapter 2.1500.5(b) (September 2010).

accordingly finds that appellant did not meet his burden of proof and the Office properly denied the claim.¹⁴

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of medical condition causally related to his accepted claim for sprain of right shoulder and upper arm.

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2010 and January 6, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 8, 2011
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 If appellant's claim is that his cervical disc disease resulted from continuing employment factors, he may file a new claim with sufficient supporting evidence.