

FACTUAL HISTORY

On August 17, 1997 appellant, then a 45-year-old building equipment mechanic, filed a traumatic injury claim alleging injury to his throat and left leg when he slipped and fell after smelling fumes while changing a battery. OWCP accepted the claim for left leg and knee sprains and left medial meniscus tear.² Appellant returned to full duty on March 17, 2006.

On February 3 and 17, 2010 Dr. Ronnie D. Shade, a treating Board-certified orthopedic surgeon, diagnosed suspected meniscal tear, severe left degenerative joint disease and severe right hip arthritis. Appellant complained of pain, weakness, popping sensation, swelling, stiffness and his leg going out. A physical examination revealed a negative McMurray's test no swelling, locking or effusion, normal muscle mass, no patellar apprehension and medial joint line tenderness. Dr. Shade noted that appellant had been off work since an automobile accident of December 8, 2008.

In reports dated March 22 to April 14, 2010, Dr. Shade noted that appellant had difficulty walking and rated his pain level as 10. Diagnoses included suspected meniscal tear, severe left degenerative joint disease and severe right hip arthritis. On March 22, 2010 Dr. Shade stated that appellant had permanent work restrictions of no lifting more than 10 pounds and working more than four hours per day. On April 5, 2010 he stated that appellant was off work from April 5 to May 10, 2010 due to medical disability retirement.

In an April 5, 2010 letter, Dr. Shade requested OWCP to accept appellant's claim for the conditions of suspected meniscal tear, severe left degenerative joint disease and severe right hip arthritis as due to the August 17, 1997 employment injury. He stated that the conditions were directly caused by the employment injury.

On April 7, 2010 appellant filed a claim for a recurrence of disability beginning February 3, 2010. He noted the date he stopped work after the recurrence as December 17, 2009 with a return to work on March 29, 2010.

The employing establishment controverted the claim as appellant had not been at work from December 17, 2009 through March 28, 2010 and was involved in a nonemployment-related automobile accident on December 16, 2009. The automobile accident occurred when appellant drove his truck through a neighbor's house.

By letter dated May 4, 2010, OWCP informed appellant that the evidence was insufficient to support his claim. Appellant was advised as to the medical and factual evidence required to support his claim.

OWCP received additional medical and factual evidence. On May 3, 2010 Dr. Shade diagnosed suspected meniscal tear, severe left knee degenerative joint disease and severe right hip arthritis. He indicated that appellant had restrictions of no lifting more than 10 pounds or

² On May 24, 2004 OWCP granted appellant a schedule award for a four percent impairment of the left lower extremity.

working more than four hours per day. Dr. Shade stated that appellant was off work for the period May 3 to June 3, 2010 due to medical disability retirement.

On June 21, 2010 OWCP received a copy of a Texas police report for the December 16, 2009 motor vehicle accident. Appellant blacked out and crashed his truck into a residence.

OWCP also received reports dated April 14, July 12, September 7 and October 6, 2010 from Dr. Shade, who noted the accepted conditions of left leg and knee sprains and left knee dislocation. Diagnoses included suspected meniscal tear, severe left degenerative joint disease and severe right hip arthritis. Dr. Shade indicated that appellant had restrictions of no lifting more than 10 pounds or working more than four hours per day. He stated that appellant was off work for the period April 5 to November 7, 2010 due to medical disability retirement. Dr. Shade opined that appellant had progressive pain, which had been aggravated by his prior work duties. He further opined that appellant was incapable of returning to work and recommended medical disability retirement.

In a September 23, 2010 report, Dr. Shade provided physical findings and noted that appellant has been off work since February 2010. He advised that appellant injured his left knee and chest on August 17, 1997 when he was pinned between a wall and a battery. Dr. Shade diagnosed suspected meniscal tear, severe left knee degenerative joint disease and severe right hip arthritis.

In an October 4, 2010 attending physician's report (Form CA-20), Dr. Shade found that appellant was totally disabled beginning April 2, 2010 and continuing. Diagnoses included severe medial degenerative left knee joint disease, suspected meniscal tear and severe right hip arthritis. Dr. Shade checked "yes" to the question of whether the diagnosed conditions had been caused or aggravated by an employment activity.

In a November 2, 2010 CA-20 form, Dr. Shade diagnosed severe medial degenerative left knee joint disease, suspected meniscal tear and severe right hip arthritis and indicated that appellant was capable of returning to sedentary work effective October 13, 2010.

In reports dated November 3 and December 1, 2010, Dr. Shade diagnosed suspected meniscal tear, severe left degenerative joint disease and severe right hip arthritis. He noted that appellant had permanent restrictions of no lifting more than 10 pounds or working more than four hours per day. Appellant was currently off work due to his severe right hip arthritis and suspected meniscal tear.

By decision dated December 17, 2010, OWCP denied appellant's recurrence claim.

Following the decision, OWCP received additional medical evidence including a December 15, 2010 CA-20 form. In reports dated December 1, 2010 through June 24, 2011, Dr. Shade reiterated the prior diagnoses and findings and requested OWCP to expand the accepted conditions.

On April 23 and 28, 2011 appellant requested reconsideration. He contended that the medical evidence established that he was taken off work by his physician due to leg pain and not the December 16, 2009 automobile accident.

On August 1, 2011 Dr. Shade opined that appellant's accepted conditions should be expanded to include a suspected meniscal tear, left knee severe degenerative joint disease and consequential injuries to his right knee and depression. In support of his opinion that OWCP should expand the accepted conditions, he related that appellant's right knee condition was a consequential result of his bearing more weight on his right leg to decrease the pain in his left leg and his chronic pain from the August 17, 1997 employment injury caused his depression. In concluding, the conditions that Dr. Shade wanted OWCP to accept were severe left knee degenerative joint disease, depression and right hip osteonecrosis and severe secondary osteoarthritis.

By decision dated September 22, 2011, OWCP denied modification. On September 30, 2011 it amended the September 22, 2011 decision because it contained a typographical error and again denied modification.³

LEGAL PRECEDENT

OWCP's implementing regulations define a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴ If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken and an appropriate new claim should be filed.⁵

For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.⁶

ANALYSIS

OWCP accepted appellant's claim for left leg and knee sprains and left meniscus tear. Appellant claimed that he sustained a recurrence of disability beginning February 3, 2010 as a result of his accepted August 17, 1997 employment injury. The issue on appeal is whether he has submitted sufficient medical evidence to support a recurrence of disability beginning February 3, 2010 causally related to his accepted August 17, 1997 employment injury. The Board finds that appellant failed to meet his burden of proof.

³ The Board notes that, following the issuance of the September 30, 2011 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. See 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

⁴ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Phillip L. Barnes*, 55 ECAB 426 (2004).

⁵ *Id.* at Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB 631 (2003).

⁶ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

In order to establish his claim for recurrence, appellant is required to submit evidence from a qualified physician containing medical opinion establishing that his current disability is causally related to the accepted employment injury.⁷ He was informed of this requirement by OWCP in a May 4, 2010 letter.

In support of his claim for a recurrence of disability beginning February 3, 2010, appellant submitted the reports from Dr. Shade. The Board finds that none of the reports are sufficient to support a recurrence claim. In Dr. Shade's initial February 3 and 17, 2010 reports, he related that appellant had been off work due to an automobile accident and not to his accepted left leg and knee sprains or left meniscus tear. In subsequent reports, he concluded that appellant was totally disabled due to the August 17, 1997 employment injury. Dr. Shade's reports do not contain an adequate discussion of why appellant's disability was attributable to the August 17, 1997 employment injury or the reason he changed his opinion from the disability being due to the nonemployment-related automobile accident. His reports are devoid of sufficient rationale or explanation and are of limited probative value. The Board has held that opinions unsupported by rationale are entitled to diminished probative value.⁸ In addition, Dr. Shade diagnosed suspected meniscal tear, left knee severe degenerative joint disease, consequential injuries to appellant's right knee and depression, which he attributed to the accepted left leg and knee sprains and left meniscus tear. OWCP has not accepted meniscal tear, left knee severe degenerative joint disease, a consequential right knee injury or depression. For conditions not accepted by OWCP as employment related, appellant has the burden of proof to establish causal relationship.⁹ He has failed to do so. The issue here is a recurrence of accepted medical conditions not whether appellant's claim should be expanded to include additional conditions. Therefore, he failed to meet his burden of proof to establish his claim for a recurrence of disability beginning February 3, 1997.

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 has failed to establish that he sustained a recurrence of disability on and after February 3, 2010 causally related to his accepted August 17, 1997 employment injury.

⁷ See *B.B.*, Docket No. 09-1858 (issued April 16, 2010); *S.S.*, 59 ECAB 315 (January 14, 2008); *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁸ *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

⁹ See *Jaja K. Asaramo*, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 30, 2011 is affirmed.

Issued: August 7, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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