United States Department of Labor
Employees' Compensation Appeals Board

T.Y., Appellant	)	
and	)	**Docket No. 12-393**
	)	**Issued: August 3, 2012**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Oberlin, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 14, 2011 appellant, through his representative, filed a timely appeal from the November 16, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his recurrence claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant established that he sustained a recurrence of disability or recurrence of a medical condition due to the accepted April 1, 2003 employment injury

[1] 5 U.S.C. § 8101 *et seq.*

[2] Prior claims include a November 6, 1993 emotional condition claim (xxxxxx091) (denied) and a July 30, 1998 emotional disease claim that was accepted for a stress-related condition (xxxxxx227).

FACTUAL HISTORY

On April 1, 2003 appellant, then a 52-year-old air traffic control specialist, sustained injuries to his neck and left arm when he fell down eight steps in the performance of duty. OWCP accepted his traumatic injury claim for cervical strain and aggravation of cervical stenosis with cervical disc surgery. Appellant made no claim for wage loss at the time of his surgery, which occurred on December 3, 2004.

Appellant was treated by Dr. Iain Kalfas, a Board-certified neurological surgeon. In January 13, 2005 progress notes, Dr. Kalfas diagnosed cervical spondylosis with myelopathy. He stated that appellant was doing well, though he still had some neck pain and numbness in his hands and feet. Left deltoid weakness was unchanged. X-rays appeared normal.

The record contains physical therapy notes dated February 3, 2005, signed by Shelly DeLamatre, a physical therapist. Notes reflected that shoulder range of motion was improved, but remained limited. Notes dated February 21, 2005 reflected that appellant was involved in a motor vehicle accident, resulting in soreness in the right cervical region.

On March 29, 2005 Dr. Kalfas stated that appellant was "doing well" until February 11, 2005 when he was involved in a motor vehicle accident in which he was hit from behind. A few days after the accident, appellant developed neck pain and increased numbness in his hands.

In a letter dated May 20, 2005, OWCP requested additional information and evidence from appellant regarding the February 11, 2005 motor vehicle accident referenced in Dr. Kalfas' March 29, 2005 report, which was the most recent medical report of record. It indicated that the requested information was necessary to determine whether appellant's current medical condition was due to his accepted 2003 injury or to an intervening event, namely the February 11, 2005 accident. Appellant was asked to submit a medical report containing a description of the effects of the February 11, 2005 incident and an opinion as to whether the conditions suffered as a result of the accident were distinct and separate from any conditions which preexisted that date, or if the accident further aggravated that which already existed.

Appellant submitted August 7, 2008 reports from Dr. Brendan Bauer, a Board-certified neurologist, who diagnosed multiple mechanical trauma, cervical spinal stenosis and cervical and lumbar radiculopathy. Dr. Bauer opined that appellant was capable of working with restrictions, including pushing, pulling and lifting a maximum of five pounds and kneeling, climbing, walking, standing and reaching a maximum of four hours a day.

Appellant filed an undated claim for compensation (Form CA-7) requesting wage-loss benefits effective "April 1."[3] In a letter dated August 15, 2008, appellant's representative requested that appellant be awarded a schedule award.

[3] The undated CA-7, which was received by OWCP on August 18, 2008, did not indicate the year for which compensation was claimed.

In an April 9, 2009 report, Dr. Jeffrey Wirebaugh, Board-certified in family medicine, opined that appellant had a 21 percent permanent impairment of his right lower extremity resulting from his accepted conditions of cervical strain, left arm contusion and aggravation of cervical stenosis.[4] He noted that appellant had sustained his injuries on April 1, 2003 when he fell down stairs at work. Immediately after the injury appellant began to experience severe neck with muscle spasm and motion loss. Over the next year or so, his symptoms progressed, resulting in diagnoses of disc herniations at two levels and severe spinal canal stenosis. Appellant reportedly developed right-sided weakness affecting his lower extremity, including a significant right foot drop. On examination there was some atrophy of the right calf musculature and marked weakness of resisted right ankle dorsiflexion. Examination of the cervical region revealed tenderness over the cervical paraspinous muscles with spasm on the right. Cervical range of motion was 25 degrees of flexion, 20 degrees of extension, 15 degrees of right lateral flexion, 20 degrees of left lateral flexion, 40 degrees of right rotation and 45 degrees of left rotation.

In an October 6, 2010 report, Dr. William N. Grant, a Board-certified internist, diagnosed neck sprain, contusions of the left arm and shoulder and aggravation of cervical spinal stenosis. He opined that appellant had a 43 percent permanent impairment of his right upper extremity and a 43 percent impairment of his left upper extremity under the sixth edition of the A.M.A., *Guide*s.

In a letter dated January 27, 2011, OWCP reiterated its request for information necessary to determine whether his current condition was causally related to his accepted 2003 injury. It informed him that it would not proceed to review his schedule award request until it received the requested factual and medical information.

In a letter dated April 14, 2011, appellant's representative contended that OWCP should obtain an expert medical opinion if it did not accept that appellant's current condition was work related.

By decision dated May 18, 2011, OWCP denied appellant's claim for a recurrence as of February 11, 2005, finding that he had failed to establish that he had a condition or disability that was causally related to the accepted April 1, 2003 injury. Noting that the evidence submitted was incomplete and suggested that appellant had experienced an intervening injury, the claims examiner denied appellant's claim for recurrence and all claims subsequent to February 11, 2005.

On May 24, 2011 appellant's representative requested a telephonic hearing. During the September 14, 2011 hearing, counsel stated that the February 11, 2005 motor vehicle accident was a minor event that resulted in no real change in appellant's condition. He informed the hearing representative that appellant would be submitting medical evidence to support his statement.

[4] Dr. Wirebaugh based his impairment rating on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

By decision dated November 16, 2011, an OWCP hearing representative affirmed the May 18, 2011 decision, noting that appellant had failed to submit the requested information to resolve the noted discrepancies in the record.[5]

LEGAL PRECEDENT

A 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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[6]

OWCP procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change, demonstrated by objective findings, in the medical condition that resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.[7]

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the evidence.[8] For each period of disability claimed, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.[9] Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.[10] The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.[11]

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[12] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship

[5] The hearing representative noted that appellant had not submitted a properly completed CA-7 requesting a schedule award and that the medical reports provided were inconsistent.

[6] 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008); *see* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997). *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

[8] *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

[9] *See Amelia S. Jefferson, supra* note 8; *see also David H. Goss*, 32 ECAB 24 (1980).

[10] *See Edward H. Horton*, 41 ECAB 301 (1989).

[11] *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[12] *See Viola Stanko, claiming as widow of Charles Stanko*, 56 ECAB 4362 (2005); *see also Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,[13] must be one of reasonable medical certainty,[14] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[15]

In order to establish a recurrence of a medical condition, a claimant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the claimed condition is causally related to the employment injury and supports that conclusion with sound medical rationale.[16] Where no such rationale is present, the medical evidence is of diminished probative value.[17]

OWCP regulations define a recurrence of medical condition 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.[18]

OWCP's procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return as needed (PRN), or computed by the claims examiner from the date of last examination), a 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.[19]

ANALYSIS

OWCP found that appellant sustained a traumatic injury on April 1, 2003 and accepted his claim for left arm contusion, cervical strain and aggravation of cervical stenosis. Appellant underwent cervical disc surgery on December 3, 2004, but did not make a claim for lost wages at the time of the surgery. He submitted a Form CA-7 seeking wage-loss compensation, which OWCP developed as a recurrence claim. The medical evidence of record, however, is insufficient to establish that he sustained either a recurrence of disability or a recurrence of a

[13] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[14] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[15] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[16] *Ronald A. Eldridge*, 53 ECAB 218 (2001).

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

[18] 20 C.F.R. § 10.5(y).

[19] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003). The procedure manual provides, with certain exceptions, that, within 90 days of release from medical care (as stated by the physician or computed from the date of last examination or the physician's instruction to return PRN), a claims examiner may accept the attending physician's statement supporting causal relationship between appellant's current condition and the accepted condition, even if the statement contains no rationale. *Id*. at Chapter 2.1500.5(a).

medical condition as a result of his accepted injury. Therefore, he has failed to meet his burden of proof.

The record reflects that appellant underwent approved surgery on December 3, 2004. January 13, 2005 progress notes from Dr. Kalfas reflected that he was doing well following his surgery, though he still had some neck pain and numbness in his hands and feet. The record contains a March 29, 2005 report from Dr. Kalfas which stated that appellant was "doing well" until February 11, 2005 when he was involved in a motor vehicle accident in which he was hit from behind. There is no evidence of record establishing that appellant received medical treatment for his accepted condition between March 29, 2005 and August 7, 2008, when he was examined by Dr. Bauer. As computed from the date of the last examination by Dr. Kalfas on March 29, 2005, the treatment on August 7, 2008 was rendered more than 90 days after appellant's release from medical care. Therefore, appellant was responsible for submitting an attending physician's report containing a description of the objective findings and supporting causal relationship between his current condition and the previously accepted work injury.[20] He had the burden of submitting sufficient medical evidence to document the need for further medical treatment.[21] Appellant did not submit the evidence required and thus failed to establish a need for continuing medical treatment.[22]

In an August 7, 2008 report, Dr. Bauer diagnosed multiple mechanical trauma, cervical spinal stenosis and cervical and lumbar radiculopathy and opined that appellant was capable of working with restrictions. He did not, however, provide an opinion that appellant's current condition was related to the original April 1, 2003 injury. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[23]

In an April 9, 2009 report, Dr. Wirebaugh provided examination findings and opined that appellant had a 21 percent permanent impairment of his right lower extremity resulting from his accepted conditions. He noted that appellant had sustained injuries on April 1, 2003 when he fell down stairs at work. Dr. Wirebaugh stated that after experiencing initial symptoms of neck pain, muscle spasm and motion loss, appellant developed right-sided weakness affecting his lower extremity, including a significant right foot drop, disc herniations at two levels and severe spinal canal stenosis. He did not, however, provide a definitive opinion, based upon a complete factual and medical background, that appellant's current diagnosed conditions were causally related to the accepted 2003 injury.[24] Moreover, he did not explain how the initial injury, which affected appellant's neck and right upper extremity, could have been competent to have caused

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

[21] 20 C.F.R. § 10.5(y).

[22] *See J.F.*, 58 ECAB 124 (2006).

[23] *Michael E. Smith*, 50 ECAB 313 (1999).

[24] The Board notes that Dr. Wirebaugh's report did not reflect his awareness that appellant was involved in a February 11, 2005 motor vehicle accident that may have aggravated his cervical condition.

appellant's current conditions, which included a right foot drop. A medical opinion that is not fortified by rationale is of diminished probative value.[25]

Dr. Grant's October 6, 2010 report contained diagnoses and an impairment rating. It did not, however, contain an opinion on the cause of appellant's diagnosed conditions. Therefore, it is of limited probative value and is insufficient to establish a recurrence of a medical condition.[26]

The evidence of record is also insufficient to establish a recurrence of disability. Appellant has not provided any medical evidence noting a spontaneous worsening of his cervical strain and aggravation of cervical stenosis. Rather, Dr. Kalfas' March 29, 2005 report reflected that appellant was "doing well" until February 11, 2005 when appellant was involved in a motor vehicle accident in which he was hit from behind, and that a few days after the accident, appellant developed neck pain and increased numbness in his hands. The February 11, 2005 accident constituted an intervening event, rather than a spontaneous worsening. The Board notes that, on repeated occasions, OWCP requested information and evidence regarding the intervening 2005 incident in order to determine whether appellant's current condition was causally related to his accepted injury. Appellant failed to provide a response to its requests.

Additionally, appellant did not allege or submit medical evidence establishing that he was totally disabled on any specific date due to residuals of his accepted injury. As noted, the Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.[27]

Appellant has failed to establish that he was unable to work due to a spontaneous change in his medical condition which resulted from his accepted injury, rather than from sustained a recurrence of disability due to his accepted employment injury, the Board finds that he has not met his burden of proof in that regard.

The Board notes that the November 16, 2011 decision did not constitute a formal denial of appellant's request for a schedule award. OWCP did not develop the medical evidence to determine whether appellant was entitled to a schedule award. The Board notes that the file was not routed to the district medical adviser, as required by OWCP procedures.[28] Additionally, neither the claims examiner nor the hearing representative analyzed the medical evidence under the appropriate edition of the A.M.A., *Guides*. The Board finds that the case is not in posture for a decision on the schedule award issue, as the matter is in an interlocutory state.

[25] *Cecilia M. Corley*, 56 ECAB 662 (2005).

[26] *Michael E. Smith, supra* note 23.

[27] *See supra* note 11.

[28] OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of any impairment in accordance with the A.M.A., *Guides*. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

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 failed to establish that he sustained a recurrence disability or a recurrence of medical condition due to his accepted April 1, 2003 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 3, 2012
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board