

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

B.B., Appellant

and

**DEPARTMENT OF THE INTERIOR,
SEQUOIA NATIONAL PARK SERVICES,
Three Rivers, CA, Employer**

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**Docket No. 11-824
Issued: January 3, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 15, 2011 appellant filed a timely appeal from a January 25, 2011 decision of the Office of Workers' Compensation Programs (OWCP) denying his recurrence claim. 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 established that he sustained a recurrence of disability on February 20, 2007 causally related to his accepted September 10, 2003 employment injury.

FACTUAL HISTORY

On September 18, 2003 appellant, then a 32-year-old forestry technician, filed a traumatic injury claim alleging that on September 10, 2003 he sustained bronchitis as a result of

¹ 5 U.S.C. § 8101 *et seq.*

smoke and ash inhalation. OWCP accepted the claim for simple chronic bronchitis, resolved, aggravation of bronchitis due to vapors and fumes, resolved and pneumonitis. Appellant was released to regular work duties effective September 18, 2003.

On December 15, 2009 appellant filed a claim for a recurrence of disability beginning February 20, 2007.

In a January 26, 2010 letter, OWCP provided appellant with the definition of a recurrence and asked that he submit additional evidence to support his claim.

Appellant submitted reports from his treating physician, Dr. Peter Stubenrauch, a Board-certified internist and pulmonologist. On September 29, 2009 Dr. Stubenrauch provided a history of the illness and physical findings. He related that appellant was initially exposed to smoke while fighting a forest fire in 2003 and he has ongoing shortness of breath and occasional cough with exposure to irritation or exertion. Dr. Stubenrauch related that appellant never recovered from the 2003 employment injury. Based on the objective testing, he diagnosed bronchiolitis obliterans or reactive airways dysfunction syndrome, which could have been precipitated by the smoke inhalation history. On January 19, 2010 Dr. Stubenrauch stated that appellant's bronchitis appeared stable.

On March 23, 2010 OWCP received additional evidence including diagnostic tests and medical reports. In a July 1, 2008 report, Dr. Maryam Zamanian, an examining physician Board-certified in critical care medicine, pulmonary disease and internal medicine, reported that appellant was seen for a progressive cough and dyspnea over the past two years. She noted that he was a firefighter who had significant fire, smoke, welding fumes and solvents exposure. A March 28, 2008 pulmonary function tests revealed moderately severe restrictive lung disease with normal diffusion capacity while an April 2008 computerized tomography (CT) scan contained findings suggestive of bronchiolitis.

On April 6, 2010 OWCP received a January 16, 2010 report from Dr. Sean B. Dow, an examining physician Board-certified in critical care medicine, pulmonary diseases and internal medicine, diagnosed dyspnea with restrictive pattern based on spirometry tests. Dr. Dow related that appellant's problems began about five years prior during exposure to heavy smoke and ash. He continued with firefighter work and that he became short of breath following his work fighting fires.

By decision dated April 28, 2010, OWCP denied appellant's recurrence claim. It found that he failed to submit any medical evidence establishing a recurrence of disability on February 20, 2007 due to his accepted September 10, 2003 employment injury. OWCP also noted that appellant was released to regular duty on September 18, 2003.

On May 4, 2010 appellant requested an oral hearing before an OWCP hearing representative, which was held on November 3, 2010.

In a November 11, 2010 report, Dr. Stubenrauch diagnosed bronchiolitis obliterans which he attributed to appellant's smoke inhalation from fighting forest fires. He noted that the original injury occurred in 2003 and continued for several years with his firefighting work.

By decision dated January 25, 2011, OWCP's hearing representative affirmed the denial of appellant's recurrence claim.² She advised him that appellant should consider filing an occupational disease claim as it appeared his condition was a result of multiple exposures to dust and smoke.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

ANALYSIS

OWCP accepted that appellant sustained simple chronic bronchitis, resolved, aggravation of bronchitis due to vapors and fumes, resolved and pneumonitis on September 10, 2003 due to his exposure to smoke and fumes while fighting a forest fire. The issue is whether he established that he sustained a recurrence of disability on February 20, 2007 causally related to the September 10, 2003 employment injury. The Board finds that appellant has not met his burden of proof in establishing his claim.

Appellant submitted medical evidence from his treating physicians, Dr. Dow, Dr. Stubenrauch and Dr. Zamanian diagnosing a pulmonary condition due to his firefighting work. Dr. Zamanian, in a July 1, 2008 report, diagnosed progressive cough and progressive dyspnea over the past two years and noted that appellant had significant fire, smoke, welding fumes and solvents exposure due to his firefighting duties. In a January 16, 2010 report, Dr. Dow diagnosed dyspnea with restrictive pattern and notes appellant was exposed to heavy smoke and ash some five years ago and noted that appellant was a firefighter. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.⁶ As neither

² The Board notes that, following the January 25, 2011 hearing representative's 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); *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); *M.B.*, Docket No. 09-176 (issued September 23, 2009).

³ A review of the record reveals that appellant filed an occupational disease claim for his bronchiolitis obliterans on February 8, 2010. This claim is pending before OWCP.

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 Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB 631 (2003).

⁶ *J.M.*, 58 ECAB 303 (2007); *Ellen L. Noble*, 55 ECAB 530 (2004).

Dr. Dow nor Dr. Zamanian offered any opinion as to the cause of appellant's disability, their opinions are of diminished probative value and insufficient to support appellant's burden that his recurrence of disability on and after February 20, 2007 are causally related to his accepted September 10, 2003 injury.

In reports dated September 29, 2009 and November 11, 2010, Dr. Stubenrauch diagnosed bronchiolitis obliterans which he attributed to appellant's smoke inhalation from fighting forest fires beginning in 2003. He indicated in his September 29, 2009 report that appellant never recovered from the initial 2003 employment injury. In his November 11, 2010 report, Dr. Stubenrauch attributed appellant's condition to the 2003 initial exposure and to subsequent exposure to smoke and fumes due to his firefighting duties. A recurrence is defined as a spontaneous change in a medical condition resulting from a previous injury without an intervening injury or new exposure to the work environment that caused the illness.⁷ Here, Dr. Stubenrauch attributed appellant's bronchiolitis obliterans to new employment factors of continued exposure to smoke and fumes as a result of his firefighting duties, thereby, implicating a new injury rather than a spontaneous recurrence of disability. The Board finds that appellant's current injury does not meet the definition of a recurrence of disability because the evidence shows that his condition was due to exposure to new work factors and not to the accepted September 10, 2003 employment injury.

The Board finds that appellant did not demonstrate, with rationalized medical evidence, that he experienced a spontaneous change in her medical condition resulting from the September 10, 2003 employment injury; therefore, he has not established a recurrence of disability causally related to his accepted employment injury.

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 his burden of proof to establish a recurrence of disability commencing February 20, 2007.

⁷ *J.F.*, 58 ECAB 124 (2006); *Theresa L. Andrews*, 55 ECAB 719 (2004); *K.S.*, Docket No. 08-2105 (issued February 11, 2009).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 25, 2011 is affirmed.

Issued: January 3, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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