



## **FACTUAL HISTORY**

On March 23, 2010 appellant, then a 29-year-old border patrol agent trainee, filed a claim alleging that on October 31, 1988 he sustained an aggravation of a previously dislocated right shoulder condition in the performance of duty. In October 1991, he advised OWCP that he had partially dislocated his shoulder and required surgery. On November 20, 1991 OWCP accepted a temporary aggravation of a right shoulder dislocation. It subsequently accepted a closed dislocation of the right shoulder and joint derangement and, in January 1992, authorized surgery to repair right shoulder instability.

On March 23, 2010 appellant filed a notice of recurrence of a medical condition on July 1, 2009 due to the 1991 employment incident. He related that following his original injury he had a mild problem with range of motion. Appellant began experiencing pain and numbness of the arm and shoulder and a physician in South Africa told him that he needed surgery due to the original injury.

On August 2, 2010 OWCP requested additional factual and medical information regarding the alleged recurrence of disability, including a comprehensive medical report addressing the causal relationship between his current condition and his original work injury.

In an undated response received on September 13, 2010, appellant related:

“I have not suffered any injury which caused me to miss work or be placed on limited duty. Over the past year or so I have had clicking and a sensation of looseness in my right arm. More recently, I experienced sensitivity and numbness in the arm which prompted me to see an Orthopedic Doctor. The doctor’s diagnosis is that the shoulder through normal everyday movement has deteriorated to the point that I now need replacement surgery.”<sup>2</sup>

By decision dated December 9, 2010, OWCP denied appellant’s claim. It found that he was alleging an occupational disease rather than a recurrence of disability. OWCP determined that appellant had not submitted sufficient supporting factual or medical evidence to meet his burden of proof.

On appeal, appellant noted that he experienced delays in obtaining medical evidence and requested that his case be reopened.

## **LEGAL PRECEDENT**

OWCP regulations define a recurrence of a medical condition as the documented need for further medical treatment after release from treatment of the accepted condition when there is no

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<sup>2</sup> On October 27, 2010 appellant requested that OWCP defer a decision on his case until he returned to the United States in February 2011.

work stoppage. Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment.<sup>3</sup>

OWCP's procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instructions to return as needed 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.<sup>4</sup>

### ANALYSIS

OWCP accepted that appellant sustained an employment-related aggravation of a right shoulder dislocation, a closed right shoulder dislocation and joint derangement. Appellant filed a notice of recurrence of a medical condition on July 1, 2009 causally related to his employment injury. OWCP found that he was claiming an occupational disease rather than a recurrence of a medical condition. It appears from appellant's statement, however, that he is alleging that his original medical condition worsened such that he requires additional medical treatment without exposure to new work factors or a work stoppage. Consequently, he is alleging a recurrence of a medical condition rather than an occupational disease.<sup>5</sup>

As the record contains no medical evidence since the 1990s, in order to establish a recurrence of a medical condition appellant must submit a rationalized medical report explaining the relationship between his current condition and his work injury.<sup>6</sup> On August 2, 2010 OWCP informed him of the type of evidence required to establish a recurrence; however, he did not submit any medical evidence substantiating that he required medical treatment beginning July 1, 2009 due to the accepted work injury. Appellant has the burden of furnishing medical evidence from a physician who, on the basis of a complete and accurate medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound rationale.<sup>7</sup> He did not submit the evidence required and thus failed to establish a recurrence of a medical condition.

On appeal, appellant requested that his case be reopened and submitted additional evidence. The Board has no jurisdiction to review new evidence on appeal.<sup>8</sup> 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 and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>3</sup> 20 C.F.R. § 10.5(y).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003).

<sup>5</sup> An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>6</sup> See *supra* note 4; *J.F.*, 58 ECAB 124 (2006).

<sup>7</sup> See *Mary A. Ceglia*, 55 ECAB 656 (2004).

<sup>8</sup> See 20 C.F.R. § 501.2(c).

**CONCLUSION**

The Board finds that appellant has not established that he sustained a recurrence of a medical condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 9, 2010 decision of the Office of Workers' Compensation Programs is affirmed as modified to reflect that appellant has not established a recurrence of a medical condition.

Issued: January 5, 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