

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

B.W., Appellant

and

**DEPARTMENT OF THE AIR FORCE,
San Antonio, TX, Employer**

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**Docket No. 12-359
Issued: July 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 December 6, 2011 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) merit decision dated November 18, 2011 which denied a recurrence of disability. 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability causally related to his May 6, 1987 accepted employment injury.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On June 23, 1987 appellant, then a 35-year-old mail clerk, filed a traumatic injury claim alleging that on May 6, 1987 he was bending down to a low door slot and pulled a muscle on his lower right side. He worked intermittently and retired on July 10, 1992.²

On June 19, 2010 appellant requested reconsideration of his claim. In a letter dated October 14, 2010, OWCP advised appellant that his original case file was destroyed and an attempt to reconstruct the case file was undertaken in 2001. It indicated that no formal decision with appeal rights was included in the reconstructed case record and therefore the nature of his reconsideration request was unclear. OWCP attached the reconstructed case file and requested that he submit any additional records.

The reconstructed file included May 6, 1987 work restrictions from Dr. J. William Hollis, an employing establishment physician, noting appellant could return to work eight hours daily within restrictions.³ A February 4, 1988 magnetic resonance imaging (MRI) scan of the lumbar spine revealed joint space narrowing at L5-S1 with degenerative disc disease. An August 8, 1989 computerized tomography scan of L1-5 revealed probable disc herniation at L5-S1 and degenerative disc disease. Appellant was treated by Dr. Steven Mathews, a Board-certified rheumatologist, from February 4, 1991 to March 13, 1995 for degenerative disc disease, polyarticular arthritis consistent with osteoarthritis, trigger point tenderness of the right anterior/superior iliac crest of unknown etiology and status post trauma to the right hand. Dr. Mathews opined that appellant was unable to return to his job as loss of motion of the right wrist would prevent appellant from sorting mail. He noted that appellant's original hand and hip injury occurred while in the Air Force and his subsequent injuries aggravated his condition. On March 13, 1995 Dr. Mathews noted treating appellant since December 27, 1990 for osteoarthritis, degenerative disc disease and neuropathy. Based on appellant's history, his back injury and resultant leg pain were exacerbated, if not caused, by a work-related injury and noted that much of his right leg pain was secondary to the nerve damage to the spine.

Appellant was treated by Dr. Jacob Green, a Board-certified neurologist, from March 28 to April 8, 1991, for right hip pain that stemmed from a 1972 hip graft. Dr. Green noted that appellant sustained a work injury in 1985, 1988 and three other injuries from 1988 to 1991. Appellant reported right low back pain radiating into the leg which was aggravated by standing. Dr. Green diagnosed possible radiculopathy and definite neuropathic changes on the right side. An April 5, 1991 lumbar spine MRI scan showed degenerative changes throughout the lumbar spine without disc herniation. On February 25, 1992 appellant was treated by Dr. Alfonso

² Appellant has filed other claims: claim number xxxxxx717, date of injury of February 4, 1988; claim number xxxxxx746, date of injury of May 12, 1989; claim number xxxxxx550, date of injury of February 12, 1990; claim number xxxxxx426, date of injury of May 14, 1990; claim number xxxxxx427, date of injury of September 4, 1990; claim number xxxxxx386, date of injury of March 4, 1991. These matters are not presently before the Board.

³ The restrictions included: sedentary and light lifting up to 20 pounds, partial restriction on moderate lifting from 20 to 50 pounds, no heavy lifting over 50 pounds, light carrying under 15 pounds, partial restriction on moderate carrying from 15 to 44 pounds, no heavy carrying over 45 pounds, partial restriction on pulling and pushing, no restriction on reaching above the shoulder, use of fingers, hands and legs, walking, standing, sitting, partial restriction on stooping, no repeated bending and no restriction on operating a motor vehicle.

Bremer, a Board-certified neurologist, for low back and right hip pain radiating into the right leg which began on March 4, 1991. He reported injuring his back on July 24, 1985 and sustaining several subsequent injuries. Appellant diagnosed painful syndrome, chronic in nature in multiple sites related to work and to prior military service. Dr. Bremer recommended a functional capacity evaluation and advised that appellant could return to light duty. In a May 12, 1992 fitness-for-duty evaluation, Dr. Hollis noted appellant was seen by Dr. Eduardo A. Sanchez, a psychiatrist, for a fitness-for-duty examination on April 28, 1992. He opined that appellant was not mentally ill but had depressive symptoms from growing up in a segregated society.

On June 21, 2001 appellant filed a CA-2a, notice of recurrence of disability, alleging that on May 6, 1987 he experienced back, foot and ankle pain and nerve damage to the right foot causally related to his July 24, 1985 work injury. He stated that he worked limited duty intermittently until he was terminated and then received retirement on July 10, 1992. Appellant reported feeling a pop in his spine on May 6, 1987 as he did on July 24, 1985 and subsequently had right leg, foot and ankle pain. On February 4, 2008 he saw Dr. Richard J. Boehme, a Board-certified neurologist, for right hip pain. Appellant reported sustaining a work injury to his right hand in 1972 and having a bone graft from the right hip. Dr. Boehme diagnosed hip pathology, no low back pain, no radiculopathy and recommended an electromyogram (EMG). A February 25, 2008 EMG revealed old or chronic L5-S1 radiculopathy with symptoms of meralgia paresthetica.

In a decision dated November 18, 2011, OWCP denied appellant's claim for a recurrence of disability due to his medical condition on or after May 6, 1987. It accepted that appellant sustained a low back strain secondary to the May 6, 1987 work incident, but found that he failed to submit evidence to establish that he sustained a recurrence of a medical condition causally related to the May 6, 1987 injury.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁴

Recurrence of a 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

⁴ *Terry R. Hedman*, 38 ECAB 222 (1986). See 20 C.F.R. § 10.5(x) for the definition of a recurrence of disability.

⁵ 20 C.F.R. § 10.5(y).

It is the employee's burden to establish that the claimed recurrence is causally related to the original injury.⁶ Causal relationship is a medical issue that can generally be resolved only by rationalized medical opinion evidence.⁷

ANALYSIS

OWCP accepted appellant's claim for a low back strain secondary to the May 6, 1987 work incident. Appellant worked limited duty intermittently until his retirement on July 10, 1992. He has not submitted sufficient evidence to support a change in the nature and extent of the injury-related condition or a change in the nature and extent of any light-duty requirements necessitated by the May 6, 1987 injury. Appellant also has not established a recurrence of a medical condition.

Appellant was treated by Dr. Mathews from February 4, 1991 to March 13, 1995 for degenerative disc disease, osteoarthritis, trigger point tenderness of the right anterior/superior iliac crest of unknown etiology and status post trauma to the right hand. Dr. Mathews opined that appellant was unable to return to his letter carrier position because of the loss of motion of the right wrist which would prevent appellant from sorting mail. He noted that appellant's original hand and hip injury was during appellant's tour of duty in the Air Force and his subsequent injuries aggravated this condition. However, Dr. Mathews did not specifically relate his disability for his light-duty job to the May 6, 1987 accepted low back strain. He also diagnosed conditions such as degenerative disc disease and polyarticular arthritis, which had not been accepted by OWCP as being employment related.⁸ Similarly, in a March 13, 1995 report, Dr. Mathews noted treating appellant since December 27, 1990 for osteoarthritis, degenerative disc disease and neuropathy. He opined that based on appellant's history his back injury and resultant leg pain were exacerbated, if not caused, by a work-related injury and noted that much of his right leg pain was secondary to the nerve damage to the spine. However, Dr. Mathews did not identify the May 6, 1987 accepted low back strain and provide a rationalized opinion explaining the reasons why any recurrent condition or disability was due to the accepted work injury.⁹

Appellant submitted reports from Dr. Green from March 28 to April 8, 1991, who treated him for right hip pain which stemmed from a hip graft in 1972. Dr. Green noted that appellant sustained work injuries in 1985, 1988 and 1991. Similarly, on February 25, 1992 Dr. Bremer treated appellant for low back and right hip pain radiating into the right leg which began on March 4, 1991. Appellant reported having his first back injury on July 24, 1985 and several subsequent injuries. He diagnosed pain syndrome, chronic in nature in multiple sites which were

⁶ *Id.* at § 10.104. See also *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

⁷ See *Jennifer Atkerson*, 55 ECAB 317 (2004).

⁸ Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury. *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

work related and related to prior military service. Dr. Bremer advised that appellant could work light duty. Likewise, on February 4, 2008 Dr. Boehme treated appellant for right hip pain which began after a 1972 right hand injury and subsequent bone graft from the right hip. However, these physicians did not specifically identify the May 6, 1987 injury or provide medical rationale to explain why appellant had any disability or continuing need for medical treatment causally related to the May 6, 1987 injury. These physicians did not note a specific date of a recurrence of disability nor did they note a particular change in the nature of appellant's physical condition, arising from the work injury, which prevented appellant from performing his light-duty position.

Other medical evidence also did not specifically address whether appellant had a recurrence of disability or a recurrence of his medical condition causally related to his May 6, 1987 work injury. The Board also finds that there is no credible evidence which substantiates that appellant experienced a change in the nature and extent of the light-duty requirements or was required to perform duties which exceeded any medical restrictions imposed because of the May 6, 1987 work injury.

Appellant has not met his burden of proof in establishing that he sustained a recurrence of disability or a recurrence of his medical condition.

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 not met his burden of proof in establishing that he sustained a recurrence of disability or of a medical condition.

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 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