

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

H.B., Appellant)
)
and) **Docket No. 12-452**
) **Issued: July 17, 2012**
U.S. POSTAL SERVICE, POST OFFICE,)
Augusta, GA, Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 21, 2011 appellant filed a timely appeal from a June 28, 2011 merit decision of the Office of Workers’ Compensation Programs (OWCP). 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.

ISSUES

The issues are: (1) whether appellant has established a recurrence of disability as of July 16, 2009; and (2) whether OWCP properly denied authorization for left shoulder surgery.

FACTUAL HISTORY

On May 3, 2007 appellant, then a 57-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a left shoulder injury on April 27, 2007 when a tray handle broke while he was lifting a tray. OWCP accepted the claim for left shoulder and neck

¹ 5 U.S.C. § 8101 *et seq.*

sprain on June 13, 2007. On October 9, 2007 appellant underwent left shoulder surgery involving arthroscopic subacromial decompression and superior labral tear from anterior to posterior lesion repair. The claim was also accepted for complete rotator cuff rupture.

On February 5, 2009 appellant filed a Form CA-1 alleging that on January 28, 2009 he injured his left shoulder. OWCP accepted this claim for a left shoulder strain on April 20, 2009.² Appellant received compensation for intermittent wage loss from March to May 2009. On July 28, 2009 he filed a claim for a recurrence of disability on July 16, 2009, with April 27, 2007 reported as the date of the original injury. Appellant indicated that he felt shoulder pain on July 16, 2009 while picking up a tray of mail.

In a report dated July 16, 2009, Dr. Gregory Etchason, a Board-certified internist, indicated that appellant reported increased pain in the left shoulder and found it impossible to perform job duties. He diagnosed left shoulder internal derangement with pain and immobility and indicated that appellant was scheduled for acromial decompression on August 6, 2009. In a report dated August 3, 2009, Dr. Timothy Young, an osteopath, stated that appellant was scheduled for shoulder arthroscopy and possible rotator cuff tear surgery on August 6, 2009. In a report dated September 9, 2009, he indicated that the surgery had been cancelled. Dr. Young indicated that appellant reported that his shoulder pain was aggravated by job duties such as lifting.

In a report dated August 27, 2010, Dr. David Hunter, a Board-certified orthopedic surgeon, indicated that appellant was treated for left shoulder pain. He reported that appellant stated that he had ongoing symptoms that he related back to a work injury. Dr. Hunter provided results on examination and diagnosed left shoulder pain, probable rotator cuff tear. He stated that appellant should refrain from working given his limited strength and motion.

In a report dated September 9, 2010, Dr. John Hinson, an orthopedic surgeon, provided a history and results on examination. He stated that appellant had injured his shoulder at work in August 2007 and reinjured his shoulder in January 2009. Dr. Hinson indicated that a magnetic resonance imaging (MRI) scan had shown a full thickness rotator cuff tear,³ and he diagnosed left rotator cuff tear, left shoulder impingement syndrome and degenerative labral tear. He stated that appellant's rotator cuff tear was a surgical problem as it would not heal without intervention.

On September 27, 2010 appellant submitted a claim for compensation (Form CA-7) from August 27 to September 20, 2010. He also submitted a CA-7 form claiming compensation from August 27 to October 19, 2010.

By decision dated November 30, 2010, OWCP denied a claim for a recurrence of disability (Form CA-2a) as of July 16, 2009. In a second decision dated November 30, 2010, it

² The claims have been administratively combined, with the April 27, 2007 claim as the master file.

³ The record contains a July 8, 2010 MRI scan report from Richard J.R. Byrne, M.D., stating that a small complete tear of the rotator cuff, with labral tears anterior and posterior. There is also a February 23, 2009 MRI scan report from Hunter Nelson, Jr., M.D., diagnosing mild impingement, with no rotator cuff perforation or tendon gap seen.

denied the claim for compensation from August 27 to October 19, 2010. In a third decision dated November 30, 2010, OWCP denied authorization for left shoulder surgery.

In a letter dated December 9, 2010, appellant requested a hearing before an OWCP hearing representative, which was held on April 12, 2011. By decision dated June 28, 2011, the hearing representative affirmed the November 30, 2010 decisions with respect to a recurrence of disability as of July 16, 2009 and denial of authorization for left shoulder surgery. The hearing representative made no findings as to the period August 27 to October 18, 2010.

LEGAL PRECEDENT -- ISSUE 1

A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”⁵

ANALYSIS -- ISSUE 1

In this case, appellant claimed a recurrence of disability commencing July 16, 2009. He indicated that he felt shoulder pain while lifting a tray of mail. A recurrence of disability is, as noted above, a spontaneous change in an employment-related condition resulting in disability.

A review of the medical evidence does not establish a recurrence of disability commencing July 16, 2009. Appellant received treatment on July 16, 2009 from Dr. Etchason, who reported increased left shoulder pain. He did not provide a history of the employment injuries or a complete factual and medical background. Dr. Etchason did not discuss causal relationship between a diagnosed impingement syndrome and the employment injuries. The Board notes that impingement syndrome was not an accepted employment-related condition. Moreover, Dr. Etchason did not provide an opinion as to disability for work. He noted only that appellant reported that he could not work.

Dr. Young treated appellant on September 2, 2009 but did not provide a rationalized medical opinion on the issue. He only referred to the rotator cuff surgery and did not reference a July 16, 2009 recurrence. There was no probative evidence of record establishing a recurrence of disability commencing July 16, 2009. It is appellant’s burden of proof to establish a

⁴ *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁵ 20 C.F.R. § 10.5(x).

recurrence of disability and the Board finds that appellant did not meet his burden of proof in this case.

The Board notes that there was a November 30, 2010 OWCP decision with respect to claims for compensation from August 27 to September 30 and from August 27 to October 19, 2010. Since there were no findings by the hearing representative on these claims, they are not before the Board.⁶ On return of the case record, OWCP should issue a proper decision with respect to the claims for compensation.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA provides for the furnishing of services, appliances and supplies prescribed or recommended by a qualified physician that OWCP, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.⁷ In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.⁸ OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP's authority is that of reasonableness.⁹

While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.¹⁰ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.¹¹ Therefore, in order to prove that the surgical procedure is warranted, appellant must submit evidence to show that the procedure was for a condition causally related to the employment injury and that the surgery was medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.¹²

ANALYSIS -- ISSUE 2

In a September 9, 2010 report, Dr. Hinson noted that a recent MRI scan revealed rotator cuff and labral tears and he recommended surgery. Not only must a proposed surgery be

⁶ The hearing representative initially stated that the issue was a recurrence of disability commencing August 27, 2010, but the findings were limited to a recurrence of disability on July 16, 2009.

⁷ 5 U.S.C. § 8103(a).

⁸ *Dale E. Jones*, 48 ECAB 648, 649 (1997).

⁹ *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or administrative actions which are contrary to both logic and probable deductions from established facts).

¹⁰ *See Debra S. King*, 44 ECAB 203, 209 (1992).

¹¹ *Id.*; *see also Bertha L. Arnold*, 38 ECAB 282 (1986).

¹² *See Cathy B. Millin*, 51 ECAB 331, 333 (2000).

medically warranted, it must also be established that the procedure was for a condition causally related to the employment injuries. Dr. Hinson did not provide an opinion that the rotator cuff tears revealed by a July 18, 2010 MRI scan were causally related to the employment injuries. He did not discuss, for example, the February 23, 2009 MRI scan results. There is no probative medical evidence discussing the issue of causal relationship between the proposed surgery and appellant's federal employment. In the absence of rationalized medical evidence based on a complete factual and medical background, OWCP properly denied authorization for the proposed surgery.

On appeal, appellant indicated that he disagreed with the hearing representative's review of the evidence. He stated that the need for surgery was established in August 2009. While appellant was apparently scheduled for surgery in August 2009, the medical evidence from Dr. Young did not discuss causal relationship with employment. The surgery proposed by Dr. Hinson was based on a July 18, 2010 MRI scan and, as noted above, there is no probative evidence on causal relationship between the proposed surgery and the April 27, 2007 or January 28, 2009 employment injuries.¹³

Appellant also resubmitted evidence of record, as well as evidence that appeared to represent new evidence. The Board may review only evidence that was before OWCP at the time of its final decision.¹⁴ In this case, the Board has reviewed all the relevant evidence of record. 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 establish a recurrence of disability commencing July 16, 2009. The Board further finds that OWCP properly denied authorization for left shoulder surgery. On return of the case record, OWCP should issue an appropriate decision with respect to the claims for compensation from August 27 to September 30 and from August 27 to October 19, 2010.

¹³ Appellant stated that the hearing representative referred to only the January 28, 2009 injury, but there was no medical evidence relating the need for surgery to either the April 27, 2007 or January 28, 2009 employment injuries.

¹⁴ 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 28, 2011 is affirmed.

IT IS FURTHER ORDERED THAT the Office of Workers' Compensation Programs should issue an appropriate decision on the outstanding wage-loss claims.

Issued: July 17, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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