

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

G.A., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Oklahoma City, OK, Employer)

**Docket No. 12-529
Issued: July 13, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 21, 2011 appellant filed a timely appeal from a June 29, 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.

ISSUE

The issue is whether appellant has established a recurrence of disability commencing October 25, 2008.

FACTUAL HISTORY

On July 2, 2007 appellant, then a 50-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that he strained his back and groin on June 23, 2007 when he

¹ 5 U.S.C. § 8101 *et seq.*

was picking up trays and pushing carts. In a narrative statement, he indicated that he had been involved in motor vehicle accidents on March 29 and April 29, 2007.² Appellant also noted a prior compensation claim in November 2003 involving his back. By decision dated August 16, 2007, OWCP denied the claim for compensation.

In a report dated May 7, 2008, Dr. J. Arden Blough, a Board-certified family practitioner, provided results on examination. He indicated that appellant had work restrictions that included 45 minutes intermittent bending and stooping and one hour of lifting, squatting and climbing.

In a decision dated May 29, 2008, an OWCP hearing representative remanded the case for further development. The hearing representative stated that appellant had been working full duty for approximately a month before the June 23, 2007 incident. According to the hearing representative, there was sufficient evidence from the attending physician, Dr. Blough, to require further development.

Appellant was referred to Dr. Christopher Jordan, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated July 12, 2008, Dr. Jordan provided a history and results on examination. He stated that appellant's history was consistent with a muscle injury, but the physical examination was normal.

In a report dated October 29, 2008, Dr. Blough stated that appellant had pain in his neck and back, radiating into the right buttock and leg, more severe over the past five days. He reported that an October 14, 2008 magnetic resonance imaging scan revealed severe degenerative cervical spondylosis, with multilevel central canal and foraminal stenosis, secondary to degenerative joint disease. Dr. Blough provided results on examination and indicated that appellant had work restrictions that included 25-pound lifting and no repetitive bending, stooping or squatting.

By decision dated November 3, 2008, OWCP denied the claim for compensation. On November 7, 2008 appellant requested a hearing before an OWCP hearing representative. The record contains a letter dated November 26, 2008 from him stating that his requests for light duty since June 23, 2007 had been ignored by his supervisors.

In a report dated January 16, 2009, Dr. Glenn Smith, an osteopath, stated that appellant was seen for a work-related injury on June 23, 2007. He stated that appellant's job duties included repetitive pushing and pulling of carts. Dr. Smith also stated that appellant reported reinjuring his right shoulder, neck and back "doing his same job routine" around October 2007.³ He indicated that there were no restrictions and then stated: "I feel this is a direct result" from the injury sustained on June 23, 2007.

By decision dated March 20, 2009, the hearing representative remanded the case for an additional report from Dr. Jordan. In a report dated November 14, 2009, Dr. Jordan reiterated

² Appellant did not report the year but apparently the accidents occurred in 2007.

³ In a February 23, 2010 report, Dr. Smith stated that appellant had reported an injury in October 2008, not October 2007.

that the physical examination was normal. He indicated that the most likely cause of appellant's symptoms would have been a muscle strain in the trapezius or triceps area, but it had resolved as of the examination.

On November 23, 2009 OWCP stated that the claim was accepted for resolved right shoulder sprain.

In a statement dated February 24, 2010, appellant indicated that, although Dr. Smith had referred to an October 2007 injury, the injury was October 25, 2008 and a claim for a new injury had been filed. He stated that he was not working light duty at the time of his dismissal and that the employing establishment did not accommodate the work restrictions of Dr. Blough. Appellant also stated that he did not stop work due to a worsening of his condition.

On September 1, 2010 appellant submitted a recurrence of disability claim (Form CA-2a) commencing October 25, 2008. He stated that he had continuing work restrictions, stopped working on October 25, 2008 and his employment was terminated in July 2010. Appellant asserted that he could no longer work due to pain in his back as of October 25, 2008.

With respect to medical evidence, appellant submitted a November 26, 2008 report from Dr. William Beringer, an osteopath, who stated that appellant reported that he initially sustained a neck and back injury at work on June 23, 2007 from pulling and pushing carts. He diagnosed a herniated L1-2 disc. In a report dated February 22, 2010, Dr. M. Stephen Wilson, a family practitioner and associate of Dr. Blough, stated that appellant had been treated since June 25, 2007 for work-related injuries to his cervical, thoracic and lumbar spine, as well as right shoulder. He stated that appellant's employing establishment was unable to find a light-duty job and appellant should be considered totally disabled.

Appellant also submitted reports from Dr. Shelly Jacobs, a specialist in occupational medicine, commencing May 4, 2010. In the May 4, 2010 report, Dr. Jacobs indicated that he reported pushing carts of food. She provided results on examination and diagnosed cervical neck strain with mild-to-severe foraminal stenosis, lumbar back strain with disc protrusion at L1-2, L4-5 and L3-4 and right shoulder strain. In addition, Dr. Jacobs opined that appellant "injured his lower back, neck and right shoulder as a result of his duties pushing heavy trays through hallways for long periods of time." In a report dated May 25, 2010, she indicated that the date of injury was October 25, 2008.

By decision dated November 9, 2010, OWCP denied the claim for a recurrence of disability. It stated that the claim had been accepted for "sprain of shoulder and upper arm, rotator cuff, right," neck sprain and thoracic sprain.

On May 17, 2011 appellant requested reconsideration. He submitted additional reports from Dr. Jacobs providing results on examination. In reports commencing June 8, 2010, the date October 25, 2008 was crossed out and a handwritten date of June 23, 2007 was inserted.⁴ In a report dated April 22, 2011, Dr. Don Barney, an osteopath, provided a history of appellant having pain on June 23, 2007 from pushing carts and he reported another injury in late 2008. He

⁴ There is also a copy of the June 8, 2010 report containing a date of injury as October 25, 2008.

provided results on examination and stated that appellant should be referred for stress and anxiety resulting from his work-related injury.

By decision dated June 29, 2011, OWCP reviewed the case on its merits and denied modification.

LEGAL PRECEDENT

OWCP's regulations define the term recurrence of disability as follows:

“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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.”⁵

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.⁶

ANALYSIS

The issue in this case is a claim for a recurrence of disability, commencing October 25, 2008, causally related to a June 23, 2007 employment injury. The record indicates that OWCP had initially accepted the claim, on November 23, 2009, for a “resolved” right shoulder sprain. The November 9, 2010 OWCP decision, however, states that the accepted conditions were a right rotator cuff sprain, as well as neck and thoracic sprains.

The evidence in the record is not entirely clear on appellant's work history. It appeared from his statements on November 26, 2008 and February 24, 2010 that he was working regular duty prior to October 25, 2008 and he felt he could not continue working due to his medical condition. Appellant asserted that the employing establishment would not provide him with light-duty work. With respect to a claim for a recurrence of disability, it is his burden of proof to establish disability as of October 25, 2008 causally related to his accepted employment injuries.

⁵ 20 C.F.R. § 10.5(x).

⁶ *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

Appellant apparently filed a claim for a new injury on October 25, 2008 but that issue is not before the Board on this appeal.

On the CA-2a form appellant indicated that he felt he could not continue to work the position due to back pain. He submitted an October 29, 2008 report from Dr. Blough noting increased pain for approximately five days and new work restrictions.

The Board finds no probative medical evidence establishing a recurrence of disability as of October 25, 2008. In the October 29, 2008 report, Dr. Blough referred to neck and back pain radiating into the leg, without discussing causal relationship with employment. He did not provide a complete history noting, for example, the motor vehicle accidents in 2007 or specifically discuss the cause of a recent increase in pain.

While the medical record contains many medical reports regarding continuing treatment after October 25, 2008, none of these reports provide a rationalized medical opinion, based on a complete and accurate background, on the recurrence of disability issue. Dr. Smith did not explain in his January 16, 2009 report specifically what he felt was the “direct result” of a June 23, 2007 injury, as he noted no restrictions. He also referred to appellant working his “same routine” and a reinjury in October 2008, without further explanation. A new injury resulting from performance of job duties over a period of time would be a claim for an occupational injury that is not before the Board. A recurrence of disability is, as noted in the legal precedent above, a spontaneous change in the employment-related condition without an intervening injury or new work exposure.

The reports from Dr. Wilson do not discuss the relevant medical issue. Dr. Wilson does not discuss appellant’s condition on October 25, 2008 or explain how it represented a recurrence of disability causally related to the employment injury. The evidence from Dr. Jacobs is also of diminished probative value. She initially referred to pushing carts of food in a May 4, 2010 report, without providing a specific date of injury. Later reports noted a date of injury of October 25, 2008, that was changed from June 23, 2007 without explanation. In addition, Dr. Jacobs indicated that she felt appellant’s condition was due to long-term performance of his job duties. That issue, as noted above, is a separate claim that is not before the Board.

The Board accordingly finds that appellant has not met his burden of proof to establish a recurrence of disability commencing October 25, 2008. On appeal, appellant has resubmitted evidence of record. The Board has considered the evidence before OWCP at the time of its June 29, 2011 decision and for the reasons indicated that appellant did not meet his burden of proof in this case.

CONCLUSION

The Board finds that appellant has not established a recurrence of disability as of October 25, 2008.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 29, 2011 is affirmed.

Issued: July 13, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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