

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

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B.M., Appellant)	
)	
and)	Docket No. 13-973
)	Issued: August 15, 2013
)	
U.S. POSTAL SERVICE, MANAGER)	
COLUMBUS PROCESSING & DISTRIBUTION)	
CENTER, Columbus, OH, Employer)	
_____)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Appellant, pro se</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 18, 2013 appellant filed a timely appeal from a December 4, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his recurrence of disability 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 sustained a recurrence of disability commencing January 10, 2012 causally related to his April 19, 2011 employment-related injuries.

On appeal, appellant contends that no intervening injury occurred and he continues to suffer from residuals of his April 19, 2011 employment injuries.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on April 19, 2011 appellant, then a 58-year-old mail clerk, sustained a lumbosacral and cervical strain and a contusion of the right shoulder as a result of being hit on his right side by two all-purpose containers (APC) while casing mail at work. On October 26, 2011 Dr. Eric Schaub, an attending Board-certified internist and occupational medicine physician, released him to return to full-time regular work.

Appellant filed claims for leave without pay (Form CA-7) from January 10 to April 21, 2012. He related that his physician placed him off work during this period due to his work-related injuries.

By letter dated March 13, 2012, OWCP advised appellant that no evidence was received to support his claim. It requested that he submit a complete and comprehensive narrative report, which included a history of his injury and a thorough explanation with objective findings on how his condition worsened such that he could no longer perform the duties of his position when he stopped work on January 10, 2012.

In a January 18, 2012 attending physician's report (Form CA-20), Dr. Schaub advised that appellant had a strain and aggravation of degenerative disc disease of the lumbar and cervical spine. He indicated with an affirmative mark that the diagnosed conditions were caused by the April 19, 2011 employment injuries. Dr. Schaub advised that appellant was totally disabled from January 8 through February 1, 2012. In a March 21, 2012 duty status report (Form CA-17), he advised that appellant had a lumbar sacroiliac (SI) joint strain. Appellant was totally disabled for work. In a Form CA-20 dated March 21, 2012, Dr. Schaub advised that appellant's cervical strain had resolving aggravation of cervical degenerative disc disease. He indicated with an affirmative mark that the diagnosed condition was caused by the April 19, 2011 employment injuries. Appellant was totally disabled from March 17 to April 30, 2012.

An unsigned progress note dated February 29, 2012 contained the typed name of Kristina Eberly, a certified nurse practitioner, and stated that appellant had a lumbosacral strain with significant aggravation of degenerative disc disease and cervical neck strain with some improvement.

Unsigned progress notes dated March 16 and 26, 2012 contained the typed name of Dr. Steven A. Severyn, a Board-certified anesthesiologist and internist, and stated that appellant had a lumbosacral sprain of the ligament joint.

In an April 27, 2012 decision, OWCP denied appellant's claim, finding that he failed to submit rationalized medical evidence establishing that he was totally disabled commencing January 10, 2012 due to his accepted April 19, 2011 employment injuries.

On May 7 and 21, 2012 appellant again filed CA-7 forms for leave without pay from April 24 to May 19, 2012. He was again placed off work by his physician due to the accepted employment injuries.

On May 20, 2012 appellant requested a telephone hearing with an OWCP hearing representative. In letters dated May 18, 2012, he described the January 9, 2012 incident. A take-

away belt carrying trays of mail stopped working and the mail on the reject belt kept moving. When this occurred, trays had to be stacked on belts, the floor, in an APC and anywhere else until the take-away belt started again. Appellant rushed to help an employee perform this task within less than one hour. Trays of mail were everywhere. Appellant was bending and lifting. He reached over his head to unload two APCs filled with mail that was mostly not in a sleeve. Appellant had to cut plastic straps from the mail before it could be placed on line. He handled over 100 trays of mail with severe problems while experiencing back and neck pain. Appellant underwent physical therapy, took various medications and received injections to treat his symptoms. He was disabled for work from January 10 to May 9, 2012. Appellant contended that the injuries he sustained on January 9, 2012 and his resultant disability commencing January 10, 2012 were work related. He requested authorization for further medical treatment. Appellant submitted photographs of equipment related to the January 9, 2012 incident.

In an April 16, 2012 progress note, Dr. A. Raja Swain, a Board-certified anesthesiologist, stated that appellant had a SI joint injection under fluoroscopy. In a May 14, 2012 progress note, he advised that appellant was doing well with minimal pain and addressed his treatment plan. In a September 20, 2012 progress note, Dr. Swain advised that appellant had SI joint pain.

In CA-20 and CA-17 forms, narrative reports and progress notes dated March 21 through June 20, 2012, Dr. Schaub reiterated his prior lumbar, cervical and SI joint diagnoses and opinion that the diagnosed conditions were caused by the April 19, 2011 employment injuries. He advised that appellant was either partially or totally disabled on intermittent dates from April 25 to June 30, 2012.

During a September 18, 2012 telephone hearing, an OWCP hearing representative informed appellant about the definition of a new injury. Appellant was advised that it appeared he had sustained a new injury on January 9, 2012 based on his testimony for which he should file a new traumatic injury claim. He stated that he continued to suffer from his April 19, 2011 employment injuries and was unable to work for four months. Appellant's physician released him to return to work. Appellant was waiting for approval for medical treatment. He was advised about the type of medical evidence he needed to submit to establish his new injury claim.

Appellant submitted additional reports from Dr. Schaub, including a Form CA-20 and narrative report dated September 26, 2012. In the CA-20 form, Dr. Schaub provided a date of injury as January 9, 2012. He provided a history of injury that a belt spilled mail onto the floor and appellant had to physically load an APC. Dr. Schaub advised that appellant had a lumbosacral strain and left sacroilitis. He indicated with a checkmark that the diagnosed conditions were caused or aggravated by an employment activity. In the narrative report, Dr. Schaub provided a history that appellant was injured on April 19, 2011. However, on January 9, 2012 appellant was working in a mail sorting facility when a conveyor belt malfunctioned, which caused all the mail on the conveyor belt to spill down onto the floor into an overload relief chute. He picked up all the mail from the floor, including packages and reloaded them into an APC. Following this activity, appellant had a significant aggravation of his low back pain. He was advised to report his injury as a separate injury and an aggravation of his April 19, 2011 injury, which caused the worsening of his symptoms. Dr. Schaub noted that

appellant was currently performing his regular job. He listed findings on physical examination and diagnosed lumbosacral strain with left SI joint strain.

In a December 4, 2012 decision, an OWCP hearing representative affirmed the April 27, 2012 decision, finding that the medical evidence was insufficient to establish that appellant's disability was causally related to his accepted April 19, 2011 employment-related injuries. She found that working on an APC on January 9, 2012 represented an intervening incident which resulted in his total disability commencing that date and would constitute the basis for a new traumatic injury claim.

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.² 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.³

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 claims compensation is causally related to the accepted injury. This burden of proof requires that an employee 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 Where no such rationale is present, medical evidence is of diminished probative value.⁵

ANALYSIS

OWCP accepted that appellant sustained a lumbar and cervical strain and a right shoulder contusion as a result of his April 19, 2011 employment injuries. Appellant returned to his regular duties as of October 26, 2011. He claimed a recurrence of disability commencing January 10, 2012 due to his accepted injuries and stopped work on that date. The Board finds that appellant failed to submit sufficient medical evidence to establish that his disability commencing January 10, 2012 is attributable to his accepted conditions.

² 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).

³ Federal (FECA) Procedure Manual, *id.* at Chapter 2.1500.3 (May 1997), *Donald T. Pippin*, 54 ECAB 631 (2003).

⁴ *I.J.*, 59 ECAB 408 (2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁵ *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

Appellant alleged that he reinjured his back and cervical spine at work on January 9, 2012. A conveyor belt carrying trays of mail stopped working and all the trays fell onto the floor. He stacked over 100 trays of mail onto other belts, the floor and into an APC. Appellant alleged that his current conditions are related to a new work incident rather than a spontaneous change in his work-related conditions.⁶ That he sustained a new injury is supported by Dr. Schaub's September 26, 2012 reports. In these reports, Dr. Schaub provided a history of the January 9, 2012 incident and opined that appellant's lumbosacral strain and left sacroilitis were caused by this incident. As he attributed appellant's current conditions to a new injury or intervening cause rather than a spontaneous change of the prior work-related injuries of April 19, 2011, the Board finds that his claim does not meet the definition of a recurrence of disability.⁷ For this reason, appellant has not met his burden of proof to establish a recurrence of disability.⁸

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 established that he sustained a recurrence of disability commencing January 10, 2012 causally related to his April 19, 2011 employment-related injuries.⁹

⁶ See *Cecelia M. Corely*, 56 ECAB 662 (2005).

⁷ See *Bryant F. Blackmon*, 56 ECAB 752 (2005).

⁸ *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁹ As suggested by the hearing representative, appellant may file a new claim for the alleged January 9, 2012 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 4, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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