

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

P.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Omaha, NE, Employer**

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**Docket No. 12-1439
Issued: January 23, 2013**

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 22, 2012 appellant filed a timely appeal of a May 9, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) which affirmed a January 20, 2012 decision denying his claim for a recurrence. 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 met his burden of proof to establish a recurrence of disability beginning October 21 through November 1, 2011 causally related to his accepted condition.

FACTUAL HISTORY

On March 28, 2011 appellant, then a 46-year-old clerk, filed an occupational disease claim for a repetitive motion injury to the right shoulder and arm. He had engaged in repetitive motions for the past 24 years. Appellant became aware of his condition on February 1, 2011.

¹ 5 U.S.C. § 8101 *et seq.*

On July 15, 2011 OWCP accepted his claim for a right rotator cuff tear. On August 26, 2011 appellant underwent a right shoulder arthroscopy with acromioplasty and a right shoulder rotator cuff repair. He stopped working on that date, and was paid wage-loss compensation for temporary total disability from August 26 through October 9, 2011.

On October 7, 2011 Dr. Michael J. Morrison, a Board-certified orthopedic surgeon and treating physician, released appellant to return to work on October 10, 2011 with no use of his right arm to reach, lift or carry at or above shoulder level. Appellant returned to work for eight hours a day in a modified capacity on October 11, 2011.

In an October 20, 2011 report, Dr. Morrison advised that appellant was seven weeks postsurgery from his rotator cuff repair of the right shoulder. He provided examination findings and stated that appellant was “regaining range of motion on a progressive basis.” Appellant had regained almost full passive flexion and passive abduction to about 150 degrees. Dr. Morrison recommended a home overhead pulley system for passive stretching and home strengthening exercises. He placed appellant “at four hours a day with no use of his right arm to lift, squeeze or grip.” Dr. Morrison also completed a duty status report. He noted that appellant’s hours were reduced to four hours a day and prescribed medication.

On October 22, 2011 appellant filed a Form CA-7 claiming compensation for the period October 8 through 21, 2011. He explained that he returned to work on October 21, 2011 to light duty for four hours a day on the advice of his treating physician.

In a November 4, 2011 report, Dr. Morrison noted that appellant had regained excellent range of motion and his strength was returning nicely. He explained that appellant’s only limitation was internal rotation. Dr. Morrison released appellant to work effective November 4, 2011 for eight hours per day with no lifting greater than 25 pounds from ground level to waist level.

Appellant returned to light-duty work for eight hours a day with modifications on November 4, 2011.

On November 5, 2011 appellant filed a Form CA-7 claim for compensation for the period October 22 through November 4, 2011.

In a letter dated November 18, 2011, OWCP advised appellant that it received his claim for compensation for the periods October 8 to November 4, 2011. It noted that it processed payment for 16 hours of wage-loss compensation for the dates of October 8 and 9, 2011. OWCP also advised appellant that he would receive a payment for wage-loss compensation on November 4, 2011, for one hour for attendance at a medical appointment. Appellant was advised that OWCP was unable to pay compensation for four hours on October 21, 2011 or for 36 hours from October 22 through November 1, 2011. OWCP further advised him of the medical evidence needed to substantiate his claim for wage-loss compensation. It allotted appellant 30 days to submit evidence to substantiate his claim.

In a letter dated November 30, 2011, appellant disagreed with OWCP regarding his claimed compensation.

By decision dated January 20, 2012, OWCP denied appellant's claim for wage-loss compensation for the period October 21 through November 1, 2011.

On February 6, 2012 appellant requested a review of the written record. In a February 6, 2012 report, Dr. Morrison noted that appellant was requesting disability compensation for four hours on October 21, 2011 and for 36 hours from October 22 to November 1, 2011. He explained that appellant required increased pain medication which had the potential to alter his mental status, therefore, he believed it was safer for appellant to only work four hours per day versus full time. In a treatment note of the same date, Dr. Morrison indicated that appellant was doing well. He stated that appellant had full extension and abductions, and some slight cuff weakness, but was pleased with the overall result of his surgery and wished to return to gainful employment without restriction. Dr. Morrison opined that appellant reached maximum medical improvement. OWCP received additional treatment notes from Dr. Morrison dated November 30, 2011 and April 8, 2012.

By decision dated May 9, 2012, an OWCP hearing representative affirmed the January 20, 2012 decision, finding that appellant had not established that he sustained a recurrence of disability for the period October 21 through November 1, 2011.

LEGAL PRECEDENT

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 resulting from a previous injury or illness without an intervening cause or a new exposure to the work environment that caused the illness. It can also mean 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.²

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing 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 who supports that conclusion with sound medical reasoning.³

OWCP's procedures require that in cases where recurrent disability for work is claimed within 90 days or less from the first return to duty, the attending physician should describe the duties which the employee cannot perform and the demonstrated objective medical findings that form the basis for the renewed disability for work.⁴

² *J.F.*, 58 ECAB 124 (2006); 20 C.F.R. § 10.5(x).

³ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6(a) and (b) (September 2003).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁵

ANALYSIS

In the instant case, appellant returned to light-duty work for eight hours per day on October 11, 2011. He subsequently claimed wage-loss compensation for these reduced hours for the period October 21 through November 1, 2011. Thus, appellant claimed that he suffered a recurrence of disability beginning October 21, 2011, when he stopped working the full-time, modified-duty position within 90 days of his first return to duty. There is no evidence that the nature of the light-duty work provided by the employer changed or that it was no longer available.

Appellant provided several reports from Dr. Morrison. In his February 6, 2012 report, Dr. Morrison addressed the period beginning October 21 through November 1, 2011. He explained that appellant required "increased pain medication which had the potential of altering his mental status, therefore we felt it was safer for him to only work four hours per day versus full time." The Board notes, while Dr. Morrison addressed the period commencing October 21 through November 1, 2011 and noted the reason he reduced the number of hours that appellant could work, he did not address particular examination findings that supported the need for increased pain medication and reduced work hours. This is especially important as he previously noted in his October 7, 2011 report that appellant could work eight hours of modified work daily. Dr. Morrison did not provide any findings or rationale to support an objective worsening of his condition, and what specific duties of the full-time, modified-duty position the claimant could not perform on a full-time basis. Thus, this report is of limited probative value. In his October 20, 2011 report, Dr. Morrison provided examination findings and indicated that he would place appellant "at four hours a day with no use of his right arm to lift, squeeze or grip." He also completed a duty status report and noted that appellant's hours were reduced to four hours per day and prescribed medication. However, Dr. Morrison did not offer any explanation of the objective findings that necessitated the reduction of appellant's work hours.⁶ In his November 4, 2011 report, he released appellant to work eight hours per day within certain restrictions, but he did not address why appellant was unable to work full-time modified duties from October 21 through November 1, 2011. Consequently, the reports of Dr. Morrison contain insufficient explanation to establish that appellant's claimed disability from October 21 through November 1, 2011 is attributable to his accepted condition.

Appellant did not submit any other medical evidence supporting a worsening of his accepted condition which substantiated work-related disability during the claimed period. Consequently, he has not met his burden of proof in establishing his claim for a recurrence of disability.

⁵ *Walter D. Morehead*, 31 ECAB 188 (1986).

⁶ *See supra* note 4.

On appeal, appellant argues that his condition only began to improve after he worked half days. He also noted that other coworkers who had rotator cuff tears took longer than him to recover. As noted above, the medical evidence does not contain the information needed to support the period of disability as it did not contain demonstrated objective medical findings that form the basis for the renewed disability for work.

Appellant may submit evidence or argument with a written request for reconsideration 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 meet his burden of proof to establish a recurrence of disability beginning October 21 through November 1, 2011 causally related to his February 1, 2011 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board