

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

W.G., Appellant)
and) Docket No. 13-205
U.S. POSTAL SERVICE, POST OFFICE,) Issued: March 5, 2013
Jersey City, NJ, Employer)

)

Appearances:

Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 2, 2012 appellant, through his attorney, filed a timely appeal from a July 6, 2012 decision of the Office of Workers' Compensation Programs (OWCP) denying his recurrence 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 claim.

ISSUE

The issue is whether appellant established that he sustained a recurrence of disability on November 20, 2011 due to his accepted right shoulder injury.

FACTUAL HISTORY

On December 16, 2010 appellant, then a 59-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging a right shoulder condition as a result of repetitive employment duties. OWCP accepted the claim for right rotator cuff tear and authorized rotator

¹ 5 U.S.C. § 8101 *et seq.*

cuff repair surgery, which was performed on June 29, 2011 by Dr. Zafer Termanini, a Board-certified orthopedic surgeon.

Following appellant's June 2011 surgery, OWCP authorized physical therapy and the services of a field nurse.² In a report dated October 14, 2011, the field nurse stated that appellant's physician was hoping to transition him to full duty, but had released him to full duty as of November 7, 2011 if light duty was not available. On October 18, 2011 the field nurse reported that the physician of record released appellant to return to full duty on November 7, 2011. On November 16, 2011 the field nurse stated that appellant had returned to work but complained of severe right shoulder pain due to heavy lifting. The record does not contain copies of the medical reports to which the field nurse referred.

In a letter dated December 15, 2011, the employing establishment noted that there was no work currently available within the new restrictions provided by appellant's physician in a recent Form CA-17.³

On December 15, 2011 appellant submitted a notice of recurrence of total disability as of November 20, 2011, alleging that the employing establishment was unable to provide him with work within his restrictions.

By letter dated December 22, 2011, OWCP informed appellant that the evidence of record was insufficient to establish his claim. He was advised of the medical and factual evidence to submit within 30 days.

Appellant submitted a disability slip dated December 15, 2011 from Dr. Termanini indicating that he would be out of work until January 15, 2012 and could return to work on January 16, 2012 with no restrictions. He also submitted physical therapy notes dated August 12 to November 10, 2011.

In a letter dated January 5, 2012, the employing establishment confirmed that appellant had returned to full duty and worked without restrictions from November 7 through 16, 2011.

By decision dated January 24, 2012, OWCP denied appellant's recurrence claim on the grounds that the medical evidence was insufficient to establish that he was disabled from work due to a spontaneous change in his injury-related condition.

In a January 16, 2012 report, Dr. Termanini stated that appellant was originally treated in 2007 for a lumbar injury. Appellant reportedly sustained an on-the-job injury to his right shoulder while working on August 19, 2010. He continued to work with severe pain due to heavy lifting out of daily tasks. A magnetic resonance imaging (MRI) scan of the right shoulder revealed a tear of the rotator cuff, for which he underwent surgery on June 29, 2011. Dr. Termanini stated that appellant continued to have severely limited range of motion. He was placed on an active program of physical therapy and was followed up periodically. On

² On September 1, 2011 Dr. Termanini prescribed a six- to eight-week course of physical therapy.

³ The record does not contain a copy of the recent Form CA-17 to which the employing establishment referred.

October 4, 2011 appellant was advised to return to work on light duty for a period of three weeks and would be reevaluated. On November 17, 2011 he indicated that he had difficulty lifting heavy objects and that he was unable to return to work because of heavy lifting and long hours of standing. On his most recent visit the previous week, appellant remained very symptomatic lifting his arm against resistance. Dr. Termanini reviewed appellant's job description and opined that he was unable to perform the required tasks and was, therefore, totally disabled at that time.

On April 25, 2012 appellant, through his representative, requested reconsideration. Counsel noted that he was submitting additional medical evidence, including CA-17 forms dated November 21 and December 29, 2011, in which Dr. Termanini provided additional restrictions.⁴ He contended that appellant had sustained a recurrence of disability because the employing establishment had withdrawn appellant's light-duty job.

By decision dated July 6, 2012, OWCP denied modification of its January 24, 2012 decision.

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, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵ 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 (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁶

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.⁷ This burden includes the necessity of 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 employment factors and supports that conclusion with sound medical reasoning.⁸

⁴ The record does not contain either Form CA-17.

⁵ 20 C.F.R. § 10.5(x).

⁶ *Id.*

⁷ *Carmen Gould*, 50 ECAB 504 (1999).

⁸ *Mary A. Ceglia*, 55 ECAB 626 (2004).

ANALYSIS

The Board finds that the medical evidence of record fails to establish that appellant sustained a recurrence of disability.

Appellant did not allege or establish that he experienced a spontaneous change in his medical condition due to the accepted right shoulder injury. Following his June 29, 2011 surgery, he returned to full duty without restrictions. On December 15, 2011 appellant claimed a recurrence of disability as of November 20, 2011. He did not, however, attribute his disability to a spontaneous recurrence of his rotator cuff condition. Rather, appellant asserted that new work factors had aggravated the original injury. On November 16, 2011 he told the field nurse that he had returned to work, but had experienced severe right shoulder pain due to heavy lifting. On November 17, 2011 appellant told his physician that he had difficulty lifting heavy objects and that he was unable to return to work because of required heavy lifting and long hours of standing. These new work factors break the chain of causation stemming from the accepted injury. The Board finds that appellant's claim does not meet the definition of a recurrence of disability.⁹

The medical evidence of record is insufficient to establish that appellant sustained a recurrence of disability as of November 20, 2011. Appellant returned to work full duty on November 7, 2011. In a brief narrative report dated January 16, 2012, Dr. Termanini indicated that on October 4, 2011 he advised appellant to return to light-duty work for a period of three weeks, at which time he would be reevaluated. The record, however, does not contain any report documenting an October 4, 2011 examination by Dr. Termanini or any report that provided work restrictions. There is no evidence that appellant returned to a light-duty position. Dr. Termanini's report does not identify a spontaneous worsening of appellant's accepted condition. On the contrary, it indicates that new occupational exposures resulting from the duties of his job gave rise to his claimed disability. Dr. Termanini opined that appellant was unable to perform the duties of his job and was, therefore, totally disabled. He did not, however, discuss the specific job duties or explain how his current condition was causally related to the accepted injury. Dr. Termanini's report is of limited probative value and is insufficient to establish the claimed recurrence of disability commencing November 20, 2011.¹⁰ The remaining medical evidence of record, including disability slips and physical therapy notes that do not contain any opinion on the cause of appellant's condition are of limited probative value.¹¹

On appeal, counsel argues that appellant sustained a recurrence of disability by virtue of the employing establishment's withdrawal of his limited-duty job. As noted, the evidence establishes that appellant returned to full duty, without restrictions, on November 7, 2011. The employing establishment did not withdraw the position to which he returned. Rather, it was unable to accommodate work restrictions subsequently provided by appellant's physician, who

⁹ See *supra* note 5 and accompanying text.

¹⁰ Medical conclusions unsupported by rationale are of little probative value and are insufficient to establish causal relationship. *Willa M. Frazier*, 55 ECAB 379 (2004). See *Calvin E. King, Jr.*, 51 ECAB 394 (2000); see also *Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

¹¹ Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *Michael E. Smith*, 50 ECAB 313 (1999).

failed to address how the restrictions were due to the accepted injury. The Board finds that OWCP properly found that appellant submitted insufficient factual and medical evidence to meet his burden of proof to establish the claimed recurrence of disability.

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 meet his burden of proof to establish a recurrence of disability on or after November 17, 2011.

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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