

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

E.M., Appellant

and

**DEPARTMENT OF DEFENSE, DEFENSE
LOGISTICS AGENCY, New Cumberland, PA,
Employer**

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**Docket No. 13-249
Issued: March 27, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 13, 2012 appellant filed a timely appeal of a July 30, 2012 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of medical condition.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 8, 1997 appellant, then a 47-year-old truck inspector, sustained lower back pain after he dismounted a trailer. He was discharged to light duty effective November 19, 1997. OWCP accepted appellant's traumatic injury claim for lumbosacral strain.²

On February 6, 2011 appellant filed a notice of recurrence, alleging that his back condition worsened on October 8, 1997 and necessitated further medical treatment. He did not stop work.

In a June 25, 1997 report, Dr. Duc Kim Hoang, a physiatrist, remarked that appellant had a preexisting arthritic condition. A computerized tomography scan of the lumbar spine obtained on April 19, 1996 exhibited L5-S1 annular bulging while cervical and lumbar x-rays obtained on January 24 and 26, 1996 showed C5-C6 degenerative disc disease and L1-L2 anterior spurring.

Dr. Lance O. Yarus, an osteopath specializing in pain management, detailed in a February 29, 2012 report that appellant injured his lower back in 1994 and 1996 prior to the September 8, 1997 incident. On examination, he observed decreased lumbar lordosis, lumbosacral and posterior superior iliac edema and tenderness, limited range of motion, and external oblique, serratus posterior inferior, erector spinae, serratus anterior, latissimus dorsi- and paralumbar muscle spasms and trigger points. Dr. Yarus also noted diminished bilateral extensor hallucis longus, flexor hallucis longus, tibialis anterior, soleus, hamstring and quadriceps muscle strength, knee and ankle reflexes, and anterior thigh and foot sensation. He diagnosed degenerative lumbosacral intervertebral disc, lumbar intervertebral disc displacement without myelopathy, chronic pain syndrome, spinal nerve injury and gait abnormality. Dr. Yarus advised that appellant required a personal mobility vehicle and concluded that the September 8, 1997 industrial injury "is to be considered a substantial factor in the development, acceleration and/or precipitation of symptoms requiring the outlined medical care."

OWCP informed appellant in a June 29, 2012 letter that additional evidence was needed to establish his claim for recurrence of medical condition. It gave him 30 days to submit a medical report from a physician explaining the connection between his present condition and the accepted lumbosacral strain.

Appellant asserted in a July 15, 2012 statement that he remained symptomatic since September 8, 1997. He added that he needed a motorized scooter in order to perform his job duties.

By decision dated July 30, 2012, OWCP denied appellant's claim for recurrence of medical condition, finding the evidence insufficient to establish that his alleged need for further medical treatment was due to a worsening of his accepted lumbosacral strain.

² This information was incorporated into the June 29, 2012 statement of accepted facts.

LEGAL PRECEDENT

A recurrence of medical condition refers to a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original treatment or injury is not considered a “need for further medical treatment after release from treatment,” nor is an examination without treatment.³

An employee who claims a recurrence of medical condition has the burden of proof to establish causal relationship by the weight of substantial, reliable, and probative evidence. This burden 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 employee’s need for additional medical care is causally related to the accepted injury and supports that conclusion with sound medical reasoning.⁴

ANALYSIS

OWCP accepted that appellant sustained lumbosacral strain while in the performance of duty on September 8, 1997. He was released to light duty effective November 19, 1997. Appellant subsequently filed a claim for recurrence of medical condition on February 6, 2011 and submitted medical evidence.

Medical evidence of bridging symptoms must demonstrate that the claimed recurrence was causally related to the accepted injury.⁵ In a February 29, 2012 report, Dr. Yarus evaluated appellant, diagnosed degenerative lumbosacral intervertebral disc, lumbar intervertebral disc displacement without myelopathy, chronic pain syndrome, spinal nerve injury and gait abnormality. He opined that the need for additional medical care, namely a personal mobility vehicle, was due to the September 8, 1997 industrial injury. The Board finds that Dr. Yarus did explain with sound medical reasoning how appellant’s present condition was causally related to his accepted lumbosacral strain.⁶ Medical reports consisting solely of conclusory statements without supporting rationale are of diminished probative value.⁷

³ 20 C.F.R. § 10.5(y). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (May 2003) (after 90 days of release from medical care the claimant is responsible for submitting an attending physician’s report which contains a description of the objective findings and supports causal relationship between the claimant’s current condition and the accepted condition).

⁴ *E.O.*, Docket No. 11-1099 (issued February 24, 2012); *J.B.*, Docket No. 11-1410 (issued January 5, 2012).

⁵ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁶ The Board notes that Dr. Yarus diagnosed conditions that have yet to be accepted by OWCP as employment related. *See A.K.*, Docket No. 12-742 (issued October 18, 2012).

⁷ *William C. Thomas*, 45 ECAB 591 (1994).

Dr. Hoang's June 25, 1997 report is not relevant to appellant's claim in 2011. Therefore, his opinion was of limited probative value on the matter.⁸ In the absence of rationalized medical opinion evidence, appellant did not meet his burden of proof. Appellant submitted new evidence on appeal. The Board, however, lacks jurisdiction to review evidence for the first time on appeal.⁹

Appellant may submit new evidence or argument as part of a formal 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 that he sustained a recurrence of medical condition.

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2012 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 27, 2013
Washington, DC

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

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

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

⁸ *O.W.*, Docket No. 09-2268 (issued June 9, 2010).

⁹ 20 C.F.R. § 501.2(c).