

duties. He stated that, when he attempted to lift a bag of relay mail with both hands to put into the relay box, his left hand slipped off the mailbag which shifted the weight to the right side and jerked his arms causing pain in his right shoulder. OWCP accepted the claim for an aggravation of sprain right rotator cuff and right rotator cuff tear and paid appropriate benefits. Appellant did not stop work after the injury; however, he began missing days in November 2006.

Appellant has a prior approved claim under File No. xxxxxx301 for an accepted right rotator cuff tear due to a January 13, 2003 injury. He underwent an authorized right shoulder arthroscopy and rotator cuff repair on April 10, 2003 and returned to full-time light-duty work on May 19, 2003.

On June 7, 2011 appellant filed a claim for a recurrence of disability beginning June 2, 2011. He indicated that, while performing his regular duties, which included continuous reaching with his right hand and arm, his range of motion and pain got progressively worse during the day and he suffered moderate swelling. Appellant stopped work on June 3, 2011.

In support of his recurrence claim, appellant submitted a June 7, 2011 note from the employee's health unit noting a right shoulder injury and that injections were given. The note, signed by a physician with an illegible signature, stated that appellant would be fit for restricted duty on June 13, 2011. Also submitted were a June 7, 2011 duty status report diagnosing a right rotator cuff tear and noting that appellant could work two hours a day with restrictions and a June 7, 2011 referral note.

In a June 13, 2011 letter, OWCP advised appellant that additional factual and medical information was needed to support his recurrence claim. Appellant was accorded 30 days in which to submit the additional evidence.

OWCP received progress notes dated February 1 and June 7, 2011 from the Roxborough Diagnostic and Pain Center. In a June 7, 2011 duty status report, Dr. Jeffrey C. Bado, an osteopath, released appellant to part-time work of two hours a day.

Appellant also submitted a Form 3956 from an employing establishment physician showing that appellant was to be off work from June 7 to 12, 2011 for shoulder injections. None of the other medical reports and diagnostic testing discussed the June 2, 2011 claim for entitlement to compensation for disability from work.

By decision dated July 14, 2011, OWCP denied the claimed recurrence on the basis that the medical evidence failed to establish a causal relationship between appellant's claimed recurrence and the September 12, 2005 work injury by proximate causation, precipitation, acceleration or aggravation.²

On June 26, 2012 appellant, through his attorney, requested reconsideration. In support of the request, he submitted a December 15, 2011 report from Dr. Bado. In the December 15,

² OWCP noted that if a new incident at work caused a condition to recur, a new claim should be filed by a Form CA-1 or if work activities or factors occurring over more than one day caused a condition to recur, a new occupational disease claim should be filed by Form CA-2.

2011 report, Dr. Bado stated that he has been treating appellant since October 28, 2005 for a right shoulder strain and that appellant had not recovered from his right shoulder injuries. He stated that, after he learned about the January 2003 original injury, he diagnosed appellant with thoracic outlet compression syndrome, brachial plexopathy and cervical radiculopathy. Dr. Bado explained that this occurred as a whiplash injury when appellant fell and hit his shoulder and was aggravated with the recurrence fall on September 12, 2005. He opined that all of the subsequent flare ups were directly related to the original injury of 2003 and the 2005 recurrence. Dr. Bado further noted that appellant's current diagnoses are: repaired right rotator cuff tear; right shoulder tendinitis; cervical degenerative disc disease; cervical degenerative joint disease; cervical herniated disc; thoracic outlet syndrome; right brachial plexopathy and cervical radiculopathy.

By decision dated September 25, 2012, OWCP modified the July 14, 2011 decision to approve the need for medical treatment of the right shoulder beginning June 2, 2011. It found that the evidence supports work-related disability from June 7 to 12, 2011, but denied entitlement to wage-loss compensation from June 2 to 6, 2011.

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.³ 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.⁴

The Board will not require OWCP to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁵

ANALYSIS

OWCP accepted appellant's claim for recurrence of disability for the time period June 7 to 12, 2011. In its September 25, 2012 decision, it denied his claim for disability compensation for the period June 2 to 6, 2011. The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of total disability for the period June 2 to 6, 2011.

OWCP accepted appellant's claim right rotator cuff tear in the present case as well as in case File No. xxxxxx301. In the current case, appellant worked full time subject to medical

³ 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).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB 631 (2003).

⁵ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

restrictions. The record reflects, however, that he stopped work on June 3, 2011 after an alleged June 2, 2011 recurrence. The medical evidence of record indicates that appellant first sought medical treatment for this alleged recurrence on June 7, 2011, from the employing establishment health unit, as well as Dr. Bado. The employing establishment's note indicates that he was treated for a right shoulder injury and would be fit for duty as of June 13, 2011. However this note contains no further information as to why appellant was disabled as of June 3, 2013 and offers no opinion as to whether he sustained a recurrence of disability.

Dr. Bado's medical reports support that appellant had increasing periods of disability and symptomology due to the original work injury. While he reported in his June 7, 2011 duty status report that appellant was released to limited duty June 7, 2011, no indication is made of any prior period of total disability. The medical evidence of record does not include a rationalized report from a physician supporting appellant's claim that he was totally disabled for the period June 2 to 6, 2011 due to residuals of his accepted injury.

Physician reports and reports of diagnostic tests that do not contain an opinion regarding appellant's disability during the claimed period are of diminished probative value and are insufficient to establish his claim.⁶ To the degree that they do not address the period in question, they are also irrelevant. As noted, the Board will not require OWCP to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought.⁷

Appellant did not submit any medical reports from a physician who, on the basis of a complete and accurate factual and medical history, concluded that he was totally disabled from June 2 to 6, 2011 due to residuals of his accepted injury or that he was unable to perform the duties of his position. He has provided no evidence that his accepted condition worsened to the degree that he was unable to perform the duties of the position.

On appeal, counsel argued that the decision is contrary to fact and law. However, for the reasons stated, the Board finds that appellant has failed to meet his burden of proof to establish his claim.

Appellant has failed to establish by the weight of the reliable, probative and substantial evidence, a change in the nature and extent of the injury-related condition resulting in his inability to perform the duties of his employment. He has failed to provide rationalized opinion evidence establishing that he was totally disabled from June 2 to 6, 2011 due to residuals of his accepted injury.

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.

⁶ Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value. *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Fereidoon Kharabi*, *supra* note 5.

CONCLUSION

The Board finds that appellant has not established a recurrence of disability for the period June 2 to 6, 2011 causally related to his accepted September 12, 2005 employment injury

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated September 25, 2012 is affirmed.

Issued: September 10, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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