



## **FACTUAL HISTORY**

On March 27, 2012 appellant then a 57-year-old nursing assistant, filed a traumatic injury claim alleging that on March 22, 2012 he tripped and fell over a wheelchair footrest injuring his right shoulder and hip. He stopped work on that date. On March 27, 2012 Dr. Mark Chong Chin, a Board-certified family practitioner, examined appellant due to a fall on the job. He diagnosed low back pain, impingement syndrome of the shoulder and stated that the cause of the injury was a fall. Appellant submitted a March 27, 2012 note from Dr. Chin indicating that appellant was totally disabled from March 27 through May 6, 2012.

In a note dated April 4, 2012, Dr. Scott W. Sproles, a Board-certified family practitioner, diagnosed strain of the lumbar region and low back pain. He stated that appellant had workers' compensation injuries and personal injuries.

On April 11, 2012 Dr. John Carmel Norton, a physician Board-certified in physical medicine, noted appellant's history of tripping and falling over a patient's wheelchair footrest injuring his right shoulder. Appellant stated that he had an old left shoulder injury from 2000. He stated that in 2000 the employing establishment was under renovation and his right foot went into a hole in the floor and caused pain in his left shoulder. Dr. Norton diagnosed low back pain, shoulder impingement syndrome. He noted that appellant's 2000 injury was not accepted. Dr. Norton released appellant to return to modified work on April 11, 2012. He stated that appellant became agitated and angry when he was informed that he would be returned to light-duty work. Dr. Norton called the security team.

On April 12, 2012 appellant's treatment facility telephoned OWCP and stated that he became threatening when he was released to return to work. Kaiser Permanente refused appellant further treatment. The employing establishment offered him a temporary limited-duty position on April 12, 2012 effective April 16, 2012.

In a note dated April 26, 2012, Dr. John Jairo Londono, a Board-certified internist, diagnosed back pain and stated that appellant was totally disabled from April 26 through May 16, 2012.

Appellant filed a claim for a recurrence of disability on May 13, 2012 alleging that on March 27, 2012 he sustained a recurrence of his May 2000 employment injury. On May 23, 2012 Dr. Londono diagnosed low back pain and stated that appellant was totally disabled from April 26 through May 3, 2012 but could return to full duty on May 4, 2012.

On July 6, 2012 OWCP accepted appellant's claim for traumatic injury on March 22, 2012 for the condition of temporary aggravation of impingement syndrome of the right shoulder.

In a separate letter dated July 6, 2012, OWCP requested that appellant submit additional factual and medical evidence in support of his claim for back pain. On August 7, 2012 Dr. Anne E. Mastasi, a physician Board-certified in physical medicine and rehabilitation, noted that appellant alleged that he injured his left shoulder and low back in 2000 when the employing establishment was being remodeled. Appellant stepped with his right foot into a hole in the floor and reached out with his left hand for support. He stated that his right low back and left shoulder

had been painful since this incident. Appellant's left shoulder magnetic resonance imaging (MRI) scan on August 6, 2012 demonstrated moderate acromioclavicular osteoarthritis with no rotator cuff tear. His lumbar spine MRI scan demonstrated chronic degenerative changes.

By decision dated August 23, 2012, OWCP denied appellant's claim for recurrence of disability. It noted that he had not submitted the necessary factual information to establish his claim. On September 5, 2012 counsel requested an oral hearing before an OWCP hearing representative regarding the August 23, 2012 decision.

In a decision dated August 31, 2012, OWCP denied appellant's claim for the additional conditions of left shoulder, hip, low back and cervical injuries. On September 11, 2012 counsel requested an oral hearing regarding the August 31, 2012 decision.

Appellant submitted medical records beginning in 2002 addressing his left shoulder condition. On September 4, 2003 he sought treatment for his right shoulder due to an increased patient load. Appellant reported low back pain on September 6, 2005.

On December 10, 2012 appellant testified at the oral hearing regarding his August 31, 2012 denial. He noted that he had returned to work. Appellant stated that he was in pain from his first fall in 2000 which was denied. He noted that he had a private personal injury claim for injury to his cervical spine in 2009. Appellant underwent cervical surgery and returned to work in January 2012.

In a second oral hearing on December 13, 2012, counsel appeared regarding the recurrence claim and requested that the hearing representative hold his decision until a final decision was issued in the expansion claim.

In a decision dated February 20, 2013, the hearing representative addressed the issue of whether appellant sustained injury to his left shoulder, hip, low back or cervical spine as a result of his March 22, 2012 employment injury. He determined that appellant failed to submit the necessary medical evidence to establish the additional conditions alleged. The hearing representative noted that appellant had shoulder and cervical conditions as early as 2003 and experienced low back pain in 2005.

By decision dated February 27, 2013, the hearing representative found that there was no rationalized medical evidence to support appellant's claim that his disability on or after May 13, 2012 was due to his March 22, 2012 employment injury.

### **LEGAL PRECEDENT -- ISSUE 1**

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. 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 or when the physical requirements of such an

assignment are altered so that they exceed his or her established physical limitations.<sup>2</sup> Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing April 2012 and his accepted employment injury.<sup>3</sup> 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.<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant's March 22, 2012 employment incident resulted in the condition of temporary aggravation of impingement syndrome of the right shoulder. Appellant filed a recurrence of disability on May 13, 2012 alleging that on March 27, 2012 he sustained a recurrence of his May 2000 employment injury.

The record currently before the Board does not support that appellant's alleged employment injury in May 2000 was accepted for any condition. At his oral hearing, appellant stated that his claim for an injury in 2000 was denied. As OWCP has not accepted an employment-related incident or injury in 2000, he cannot establish an employment-related recurrence of disability due to the alleged employment incident in May 2000.

To the extent that appellant is alleging that his March 22, 2012 employment injury resulted in a recurrence of disability on or after March 27, 2012, the Board finds that appellant has not submitted the necessary medical opinion evidence. Appellant has submitted medical evidence from a variety of physicians. Dr. Sproles completed a report on April 4, 2012 and diagnosed lumbar strain. He did not attribute this condition to appellant's accepted 2012 employment injury noting that appellant had workers' compensation injuries and personal injuries. As this report does not provide a clear opinion on the causal relationship between appellant's diagnosed condition and his accepted employment injury, it cannot meet appellant's burden of proof.

Dr. Norton completed a report on April 11, 2012 and diagnosed low back pain as well as shoulder impingement syndrome. He noted that appellant's 2000 injury was not accepted. Dr. Norton released appellant to return to work. This report does not offer the necessary medical opinion that appellant's shoulder impingement syndrome rendered him totally disabled after April 11, 2012 and is insufficient to establish a recurrence of disability as he had not yet returned to work following his March 2012 employment injury.

Dr. Londono diagnosed back pain and stated that appellant was totally disabled from April 26 through May 16, 2012. The Board has held that the mere diagnosis of "pain" does not constitute the basis for payment of compensation.<sup>5</sup> Furthermore, OWCP did not accept a back

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<sup>2</sup> 20 C.F.R. § 10.5(x).

<sup>3</sup> *Dominic M. Descaled*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-9 (1982).

<sup>4</sup> *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>5</sup> *Robert Broome*, 55 ECAB 339 (2004).

condition as resulting from appellant's March 2012 employment injury. As Dr. Londono did not provide a clear diagnosis and did not attribute appellant's disability to his March 2012 employment injury, this report does not establish a recurrence of disability.

Dr. Mastasi described appellant's alleged employment injury in 2000 and noted that appellant reported pain in his right low back and left shoulder since this incident. As previously noted, OWCP has not accepted that appellant sustained an employment injury in 2000. As appellant does not have an employment-related condition arising in 2000, he cannot establish a recurrence of disability due to such a condition.

The Board finds that appellant has not established a recurrence of disability due to his March 22, 2012 employment 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.

### **LEGAL PRECEDENT -- ISSUE 2**

An employee seeking benefits under FECA<sup>6</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>7</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>8</sup>

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."<sup>9</sup> To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First the employee must submit sufficient evidence to establish that he and she actually experienced the employment incident at the time, place and in the manner alleged.<sup>10</sup> Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the

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<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

<sup>8</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> 20 C.F.R. § 10.5(ee).

<sup>10</sup> *John J. Carlone*, 41 ECAB 354 (1989).

employment incident caused a personal injury.<sup>11</sup> A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.<sup>12</sup> Medical rationale includes a physician's detailed and well-reasoned opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment activity or factors identified by the claimant.<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

In addition to the accepted condition of aggravation of right shoulder impingement syndrome, appellant has alleged that his March 22, 2012 employment injury resulted in left shoulder, hip, low back and cervical spine conditions.

OWCP accepted appellant's right shoulder impingement syndrome based on the March 27, 2012 report from Dr. Chin who provided a history of a fall on the job, examined appellant and diagnosed low back pain, impingement syndrome of the shoulder and stated that cause of the injury was a fall. As previously noted, back pain is not a diagnosed condition. OWCP properly accepted only the diagnosed condition of aggravation of impingement syndrome of the right shoulder.

The remainder of the medical reports in the record does not provide an accurate history of injury, either mentioning the alleged employment incident in 2000 or failing to provide an accurate history of work injury. Appellant has submitted no detailed medical opinion evidence explaining how his March 22, 2012 employment-related fall caused or contributed to a hip, left shoulder, cervical or lumbar condition. Without medical evidence diagnosing specific conditions, describing the fall over the footrest of the wheelchair in 2012 and explaining how this employment injury resulted in any additional conditions, appellant has failed to meet his burden of proof.

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 submitted the necessary medical evidence to establish a recurrence of disability due to his March 22, 2012 employment injury. The Board further finds that appellant has not submitted the necessary detailed and rationalized medical

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<sup>11</sup> *J.Z.*, 58 ECAB 529 (2007).

<sup>12</sup> *T.F.*, 58 ECAB 128 (2006).

<sup>13</sup> *A.D.*, 58 ECAB 149 (2006).

evidence to establish that any additional condition resulted from his March 22, 2012 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** decisions of the Office of Workers' Compensation Programs dated February 27 and 20, 2013 are affirmed.

Issued: September 18, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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