

on or about December 12, 2008. Prior to his April 30, 2010 voluntary retirement, he worked in his date-of-injury position.²

On October 10, 2012 appellant, through his representative, filed a claim for wage-loss compensation (Form CA-7) for the period May 1, 2010 through September 30, 2012. He reported receiving a monthly Civil Service Retirement System (CSRS) annuity as of May 1, 2010.

Appellant submitted a May 21, 2012 report, Dr. Erich J. Weidenbener, a Board-certified internist, who noted that he had treated appellant for his shoulder problems since February 15, 2012. Dr. Weidenbener listed a history that appellant had a left rotator cuff repair in 2005 and a right rotator cuff repair in 2007 and went back to his federal employment with rather extensive overhead work. He explained that appellant's job involved testing satellites weighing up to 800 pounds that were suspended from a hoist so that he would have to do overhead work either from a supine or standing position in order to loosen and unloosen bolts. Dr. Weidenbener stated that "going back to this exact same line of work resulted in new tears of his rotator cuff which were discovered in 2009." He examined appellant on April 24, 2012 and diagnosed chronic and recurrent bilateral rotator cuff tears. Dr. Weidenbener opined that appellant's condition was "an occupational disease/injury that happened very slowly over time with his described work activities of extensive day in and day out overhead work." He stated that his opinion was "supported by the fact that [appellant] had been in the same occupation for a long period of time and suffered bilateral rotator cuff tears which were repaired and then torn again as he continued to perform the same type of work which put him at extremely high risk for rotator cuff injuries and/or tears."

In an October 22, 2012 letter, OWCP notified appellant that it had received evidence indicating the possibility of a recurrence of disability in his case. It advised him that the record established that he was working regular duty without restrictions prior to his voluntary retirement effective April 30, 2010. OWCP afforded appellant 30 days to submit additional evidence in support of his claim for wage-loss compensation beginning May 1, 2010.

By decision dated February 12, 2013, OWCP denied appellant's claim. It found that the evidence was not sufficient to establish a recurrence of disability on or after April 30, 2010 due to a work stoppage caused by a spontaneous change in his accepted condition or a withdrawal of a light-duty assignment.

In a February 19, 2013 letter, Lori George, a human resources specialist, stated that appellant "worked through his retirement date of April 30, 2010" and "had no special pay in effect at that time." She submitted a copy of appellant's notification of personnel action (SF-50) for his retirement effective April 30, 2010, which noted that the reason for retirement was "to obtain retirement benefits."

² On February 6, 2013 appellant, through his representative, filed a claim for a schedule award. By decision dated April 23, 2013, OWCP denied the claim on the basis that the medical evidence was insufficient to establish permanent impairment to a scheduled member due to the accepted condition.

On March 1, 2013 appellant, through his representative, requested an oral hearing before an OWCP hearing representative.

A hearing was held on June 11, 2013. Appellant's representative argued that appellant's bilateral shoulder condition had worsened to the point where by April 30, 2010 he could no longer work and his only option was to retire. No additional medical evidence was received.

By decision dated September 9, 2013, OWCP's hearing representative affirmed the February 12, 2013 decision. He found that the medical evidence of record was not sufficient to establish that appellant's work stoppage on April 30, 2010 was causally related to his accepted bilateral shoulder condition

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³ 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.⁴

A claimant has the burden of establishing the essential elements of his or her claim, including that the medical condition for which compensation is claimed is causally related to the claimed employment injury.⁵ For wage-loss benefits, the claimant must submit medical evidence showing that the condition claimed is disabling.⁶ The evidence submitted must be reliable, probative and substantial.⁷

For purposes of computing compensation benefits, disability means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁸ When a claimant stops working at his or her employing establishment for reasons unrelated to the accepted injury, he or she has no disability within the meaning of FECA.⁹

³ 20 C.F.R. § 10.5(x). *See T.S.*, Docket No. 09-1256 (issued April 15, 2010).

⁴ *Id.*

⁵ 20 C.F.R. § 10.115(e); *see Tammy L. Medley*, 55 ECAB 182, 184 (2003).

⁶ *Id.* at § 10.115(f).

⁷ *Id.* at § 10.115.

⁸ *Id.* at § 10.5(f); *see Robert A. Flint*, 57 ECAB 369, 374 (2006).

⁹ *See M.S.*, Docket No. 08-1194 (issued October 22, 2008) (voluntary retirement); *Richard A. Neidert*, 57 ECAB 474, 482 (2006).

ANALYSIS

OWCP accepted appellant's claim for bilateral shoulder disorder of the bursae and tendons. Appellant returned to work following the acceptance of the employment injury in a regular-duty capacity. He retired as of April 30, 2010. Appellant subsequently filed a claim for wage-loss compensation for the period May 1, 2010 through September 30, 2012. OWCP denied his claim of a recurrence of disability in decisions dated February 12 and September 9, 2013.

The Board finds that the record does not support appellant's claim for wage-loss compensation beginning May 1, 2010. There is no probative medical evidence establishing either total or partial disability due to the employment-related bilateral shoulder condition. Appellant voluntarily retired effective April 30, 2010. Prior to his retirement, he worked in his regular-duty position without restrictions. Appellant continued to earn the wages he had previously received as a mechanical engineering technician. The medical evidence of record does not establish that his accepted bilateral shoulder condition precluded him from continuing to perform the mechanical engineering technician position he held prior to his April 30, 2010 retirement.

On May 21, 2012 Dr. Weidenbener explained that appellant's job involved testing satellites weighing up to 800 pounds that were suspended from a hoist. Appellant performed overhead work either from a supine or standing position in order to loosen and unloosen bolts. He stated that "going back to this exact same line of work resulted in new tears of his rotator cuff which were discovered in 2009." When Dr. Weidenbener last examined appellant on April 24, 2012, he diagnosed chronic and recurrent bilateral rotator cuff tears. He opined that appellant's condition was "an occupational disease/injury that happened very slowly over time with his described work activities of extensive day in and day out overhead work." Dr. Weidenbener indicated that his opinion was "supported by the fact that [appellant] had been in the same occupation for a long period of time and suffered bilateral rotator cuff tears which were repaired and then torn again as he continued to the same type of work which put him at extremely high risk for rotator cuff injuries and/or tears." The Board notes that Dr. Weidenbener did not address appellant's disability for work commencing April 30, 2010. Dr. Weidenbener did not provide an opinion on appellant's alleged recurrence of disability on or after April 30, 2010. His report suggests that appellant was capable of performing his regular-duty position, contradicting appellant's assertion that he became totally disabled from performing such work. Dr. Weidenbener failed to provide sufficient medical rationale explaining how appellant's accepted bilateral shoulder condition resulted in any disability beginning on or after April 30, 2010. Therefore, the Board finds that appellant has not met his burden of proof.¹⁰

The medical evidence of record does not establish that appellant was disabled on or after April 30, 2010 as a result of his employment-related condition. As noted, appellant retired on April 30, 2010. The record does not demonstrate that his accepted bilateral shoulder condition precluded him from continuing to perform the regular-duty mechanical engineering technician position he held prior to his retirement.

¹⁰ See *Rufus C. Woodward, Sr.*, Docket No. 92-2033 (issued September 10, 1993).

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 met his burden of proof to establish a recurrence of total disability on or after April 30, 2010 causally related to his employment-related bilateral shoulder condition.

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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