



claim for sprain of the right shoulder and upper arm, bilateral neck sprain/strain and aggravation of spinal stenosis in the cervical region.

Appellant sought treatment and was provided physical therapy and epidural steroid injections beginning May 19, 2005. He continued to work under physical limitations and received compensation for intermittent disability. On May 18, 2007 appellant underwent an approved right shoulder arthroscopy with rotator cuff repair, subacromial decompression and Mumford procedure. He was released to full duty on November 15, 2007 and returned to work as of November 24, 2007.

On January 13, 2009 OWCP accepted adhesive capsulitis of the right shoulder, right rotator cuff sprain and upper arm sprain.

On November 27, 2012 appellant filed a notice of recurrence seeking medical treatment as of November 5, 2012 due to his accepted injury. He related that he was fine postsurgery until November 5, 2012 when he experienced neck and arm pain from pulling and pushing equipment on and off the truck. Appellant did not stop work.

By letter dated December 5, 2012, OWCP informed appellant that the evidence of record was insufficient to support his claim. It noted that he did not submit supporting medical evidence with his claim. Appellant was advised that, in order to obtain additional medical treatment, he was to submit a physician's narrative report addressing how his current symptoms related to the accepted medical conditions. He was provided 30 days to submit additional evidence.

In a December 13, 2012 treatment note, Dr. Rosemary Olivo, Board-certified in internal medicine, reported that appellant sought treatment for pain on the left side of his neck radiating into his left shoulder and upper arm. She noted a history of prior anterior cervical discectomy and fusion in March 2009. Appellant reported no history of trauma and stated that his job entailed heavy lifting. Upon physical examination, Dr. Olivo noted no cervical spine tenderness, moderate left cervical muscle and trapezius tenderness, discomfort with flexion at the neck radiating into the left shoulder. She diagnosed cervical disc degeneration with cervical radiculopathy and recommended a magnetic resonance imaging (MRI) scan.

On December 27, 2012 appellant reported that approximately one month prior he had engaged in pushing and pulling mail onto a truck when he experienced the same symptoms from his neck to his shoulders. He reported that, approximately two years earlier, Dr. Parks, his treating physician, informed him that his screws were coming loose so he might experience problems.

By decision dated January 10, 2013, OWCP denied appellant's recurrence claim. It found that the medical evidence of record did not address how his medical condition or need for treatment commencing November 5, 2012 related to the accepted May 5, 2005 employment injury.

On March 18, 2013 appellant requested reconsideration. He submitted an orthopedic consultation report dated January 4, 2013 from Dr. Neven A. Popovic, a Board-certified orthopedic surgeon, who noted a history of appellant's prior medical treatment and surgery and

stated that x-rays obtained on November 6, 2012 revealed anterior surgical fusion of C5-7 with hardware being intact. Also noted were spacers with the cervical disc spaces and some narrowing of the lower two neural foramen, bilaterally. X-rays of the left shoulder revealed degenerative changes of the acromioclavicular joint and of the glenohumeral joint. Dr. Popovic recommended additional diagnostic studies to rule out pathology involving the rotator cuff structures.

In a January 22, 2013 report, Dr. Robert E. Morales, a Board-certified diagnostic radiologist, stated that a computerized tomography (CT) scan of the cervical spine revealed a prior anterior cervical fusion of C5-7 with hardware intact, ventral cord abutment without evidence of cord impingement at C4-5 and at the posterior aspect of the C7 vertebral body. There was also multilevel neuroforaminal stenosis and a nonspecific 1.4 centimeter left supraclavicular lymph node.

On January 31, 2013 Dr. Kenneth C. Wang, a Board-certified diagnostic radiologist, reported that a CT scan of the left shoulder revealed normal alignment with no clear evidence of rotator cuff tears. The image was suggestive of a focal tear at the posterosuperior labrum with acromial morphology which might predispose to subachromial impingement, which required clinical correlation.

By decision dated April 15, 2013, OWCP denied modification of the January 10, 2013 decision. It found that the medical evidence of record failed to establish a recurrence of appellant's medical condition due to the accepted May 5, 2005 injury.

### **LEGAL PRECEDENT**

A recurrence of a medical condition is defined under OWCP's implementing federal regulations as a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.<sup>2</sup> Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment.<sup>3</sup>

A claimant has the burden of establishing that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury.<sup>4</sup> To meet this burden, the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.<sup>5</sup>

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<sup>2</sup> 20 C.F.R. § 10.5(y).

<sup>3</sup> *Id.*

<sup>4</sup> *See S.S.*, Docket No. 14-211 (issued May 1, 2014).

<sup>5</sup> *See Ronald A. Eldridge*, 53 ECAB 218 (2001).

## ANALYSIS

OWCP accepted that appellant sustained on May 5, 2005. It accepted his claim for a sprain of the right shoulder and upper arm; bilateral neck sprain/strain; aggravation of spinal stenosis in the cervical region; right shoulder adhesive capsulitis with a rotator cuff and upper arm sprain. Appellant subsequently underwent surgery of the right shoulder consisting of arthroscopy with rotator cuff repair, subacromial decompression and a Mumford procedure. He was subsequently released and returned to full duty.

On November 27, 2012 appellant claimed a recurrence of his medication condition as of November 5, 2012 related to the accepted injury of May 5, 2005. The medical evidence submitted from Dr. Olivo, an internist, noted that he sought treatment for pain on the left side of his neck radiating into his left shoulder and upper arm. She addressed the history of appellant's cervical surgery and noted generally that his job required heavy lifting. Dr. Olivo diagnosed cervical disc degeneration with radiculopathy to the left shoulder. She did not, however, provide a narrative opinion explaining how appellant's treatment in 2012 related to the accepted injury in 2005. The Board notes that his prior medical care was for cervical radiculopathy and repair related to the cervical spine and right shoulder. Dr. Olivo did not address how appellant's medical treatment or left-sided radiculopathy was caused or contributed to by the accepted medical conditions or prior surgery.<sup>6</sup> For this reason, the Board finds that the December 13, 2012 report of Dr. Olivo is of reduced probative value and insufficient to establish that appellant's need for medical care on or after November 5, 2012 was related to the 2005 injury.

Dr. Popovic reviewed appellant's medical history and stated that x-rays obtained on November 6, 2012 revealed a cervical fusion at C5-7 with the hardware intact. X-rays of the left shoulder revealed degenerative changes of the acromioclavicular and glenohumeral joints. The Board notes that Dr. Popovic did not provide any medical opinion addressing how appellant's need for medical care on or after November 5, 2012 was caused or contributed to by the May 5, 2005 employment injury. Dr. Popovic provided findings on review of the x-ray studies and recommended additional testing, noting that it was unclear if appellant had pathology involving the rotator cuff structures. He did not provide a detailed history of appellant's May 5, 2005 injury or state any opinion regarding the cause of his current condition. Therefore, his report is of diminished probative value.<sup>7</sup>

Similarly, the radiology reports of Dr. Morales and Dr. Wang are not sufficient to establish appellant's claim as they are diagnostic studies and lack an opinion on causal relationship.<sup>8</sup>

The medical reports of record fail to establish that appellant sustained a recurrence of his medical condition causally related to the May 5, 2005 employment incident.<sup>9</sup> Appellant did not

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<sup>6</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>7</sup> *D.M.*, Docket No. 11-2086 (issued August 15, 2012).

<sup>8</sup> *S.S.*, Docket No. 07-579 (issued January 14, 2008).

<sup>9</sup> *Supra* note 4.

submit a medical opinion from a physician who, on the basis of a complete and accurate factual and medical history, concluded that his need for medical treatment as of November 5, 2012 was due to residuals of his accepted injury. Accordingly, he has failed meet his burden of proof.<sup>10</sup>

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 his medical condition on November 5, 2012 due to his accepted May 5, 2005 traumatic injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 15, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2014  
Washington, DC

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

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

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

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<sup>10</sup> See *supra* note 2 and accompanying text.