

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

_____)
D.W., Appellant)

and)

U.S. POSTAL SERVICE, PROCESSING &)
DISTRIBUTION CENTER, Cleveland, OH,)
Employer)
_____)

Docket No. 13-1875
Issued: March 5, 2014

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 8, 2013 appellant filed an appeal before the Board. She identified the dates of the Office of Workers' Compensation Programs' (OWCP) decisions as May 15 and 30 and June 3, 2013. The record does contain a June 3, 2013 merit decision with respect to a recurrence of a medical condition, and 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 June 3, 2013 decision.²

_____)
¹ 5 U.S.C. § 8101 *et seq.*

² OWCP issued a final decision regarding an overpayment of compensation on January 4, 2013. A notice of appeal must be filed within 180 days from the issuance date of OWCP's final decision. 20 C.F.R. § 501.3(e). The Board does not have jurisdiction over the January 4, 2013 decision as the appeal was filed more than 180 days after this decision. The record contains a letter dated May 15, 2013 from OWCP regarding a remaining balance owed from the overpayment, but this is an informational letter and not a final adverse decision with appeal rights. There is no evidence in the record regarding a document dated May 30, 2013.

ISSUE

The issue is whether appellant established a recurrence of a medical condition.

FACTUAL HISTORY

On January 31, 2012 appellant, then a 42-year-old mail processing machine operator, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries in a slip and fall incident on January 28, 2012. On March 15, 2012 OWCP accepted the claim for left forearm contusion and left supraspinatus muscle tear.³ Appellant underwent surgery on April 25, 2012 to repair a partial left rotator cuff tear. She received compensation for wage loss from April 22 to October 20, 2012. An October 2, 2012 letter from the employing establishment stated that appellant had returned to work full time on October 1, 2012.⁴

In a report dated November 8, 2012, Dr. Louis Keppler, a Board-certified orthopedic surgeon, indicated that appellant was doing well. He indicated that she should continue the “somewhat light-duty” work and avoid heavy lifting.

In an emergency room report dated February 17, 2013, Dr. Oscar Nicholson indicated that x-rays of the right shoulder and right wrist were negative. He diagnosed right shoulder sprain/strain. By report dated February 18, 2013, Dr. W. Kent Soderstrum, a Board-certified internist, provided a history and results on examination. In his history Dr. Soderstrum noted a left shoulder injury on January 28, 2012 and then reported that appellant had changed jobs in mid-January 2013 and the new job required picking up trays weighing 16 to 28 pounds. Dr. Soderstrum discussed other new job duties and stated that appellant reported experiencing right shoulder and wrist pain, as well as increased left shoulder discomfort. He indicated that appellant had no identifiable injury but merely the onset of symptoms due to preexisting degenerative conditions.

In a note dated February 25, 2013, Dr. Keppler indicated that appellant was seen for a “new problem.” He stated that appellant had been moved to a different work unit that required heavy overhead reaching outside of work restrictions. According to Dr. Keppler, appellant had possibly reinjured her left shoulder as well as injured her right shoulder and wrist. The physical examination findings were reported as positive impingement findings to the right shoulder as well as pain with range of motion to the right wrist. The record indicates that on February 26, 2013 appellant accepted a new limited-duty job offer.

³ It appears that OWCP incorrectly reported the ICD-9 (International Classification of Diseases, 9th revision) code for the supraspinatus tear as 840.6, which is the code for a supraspinatus sprain. The June 3, 2013 OWCP decision reports the accepted condition as a left shoulder and upper arm sprain. An MRI scan dated February 29, 2012 showed a full-thickness tear of the supraspinatus and the March 15, 2012 letter states that a left supraspinatus tear was accepted. On return of the case record, OWCP should properly code the accepted condition.

⁴ The January 4, 2013 OWCP decision found an overpayment of compensation resulting from continued payment of wage-loss compensation through October 20, 2012. As noted, that decision is not before the Board on this appeal.

On March 4, 2013 appellant filed a CA-2a form (notice of recurrence) and checked a box “medical treatment only.” The date of the recurrence was reported as both January 12 and February 17, 2013.

By report dated March 11, 2013, Dr. Harry Hoyen, a Board-certified orthopedic surgeon, diagnosed right wrist sprain and stated “recent overuse Feb[ruary] 2013.” In a report dated April 18, 2013, Dr. Keppler stated that appellant’s condition was unchanged. He stated that the “change in work significantly aggravated not only [appellant’s] left shoulder but also a new injury to the right shoulder.” As to the right shoulder, Dr. Keppler noted impingement and possible rotator cuff tear.

By decision dated June 3, 2013, OWCP denied the claim for a recurrence of a medical condition. It found the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

A recurrence of a medical condition is described in OWCP 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.”⁵ Appellant has the burden of proof to establish a recurrence of a medical condition.⁶ This burden includes the necessity of submitting medical evidence from a physician providing an opinion that is based on a complete and accurate history and supported by sound medical rationale.⁷

ANALYSIS

In the present case, OWCP accepted a left forearm contusion and left supraspinatus tear while in the performance of duty on January 28, 2012. Appellant filed a claim for a recurrence of a medical condition, which she indicated occurred on January 12 and February 17, 2013. The significance of January 12, 2013 is not clear from the record, although February 17, 2013 was the date appellant received emergency room treatment for the right shoulder and wrist.

It is appellant’s burden of proof and it is incumbent on her to submit medical evidence showing the need for medical treatment for an accepted condition. It appears from the evidence of record that appellant was claiming that her limited-duty job that she performed in January and February 2013 had caused both new injuries to her right shoulder and wrist, as well as an aggravation of her left shoulder. The medical evidence of record from Dr. Keppler, Dr. Soderstrum and Dr. Hoyen all refer to new employment incidents and new injuries that include primarily the right shoulder and wrist, and also note increased left shoulder pain. In his February 18, 2013 report, Dr. Soderstrum refers to a job change in January 2013 and discusses the new job duties. Dr. Keppler notes in his February 25, 2013 report that appellant had a new job that required heavy overhead reaching, and he states in his April 18, 2013 report that the

⁵ 20 C.F.R. § 10.5(y).

⁶ *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

⁷ *Id.*

change in work caused new injury to the right shoulder and aggravated the left shoulder, and Dr. Hoyen refers to “overuse” in February 2013 in his March 11, 2013 report.

If appellant is claiming new employment factors caused injury, even if the same area of the body as a prior claim is involved, this is a new claim for injury and an appropriate claim should be filed.⁸ It is not a recurrence of a medical condition, or a consequential injury.⁹ As a new claim, OWCP may properly develop the factual and medical evidence. The evidence of record does not establish a recurrence of an accepted medical condition, but refers to a new occupational claim based on duties perform in a limited-duty job. The Board finds that OWCP properly denied the claim for a recurrence of an accepted medical condition based on the evidence of record in this case.

On appeal, appellant discusses issues regarding an overpayment of compensation. As noted above, the Board does not have jurisdiction over an overpayment of compensation on this appeal as the only decision before the Board is the June 3, 2013 decision. With respect to the recurrence of a medical condition issue, 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 established a recurrence of an accepted medical condition.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(c)(5) (June 2013).

⁹ A consequential injury is an injury that is the direct and natural result of a compensable primary injury, without an intervening cause. *See Kathy A. Kelley*, 55 ECAB 206 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 3, 2013 is affirmed.

Issued: March 5, 2014
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