

FACTUAL HISTORY

On December 3, 2012 appellant, then a 48-year-old transportation security officer, filed an occupational disease claim alleging that he sustained injuries to his lower back and right shoulder and arm as a result of repetitively screening and lifting heavy bags.³ He first became aware of his condition and realized it resulted from his employment on November 23, 2012. Appellant worked modified duty. OWCP accepted his claim for sprains of the back, right shoulder and upper arm.

On April 19, 2013 appellant underwent right shoulder surgery. He stopped work and received wage-loss compensation. Appellant returned to full-time modified duty on May 27, 2013.

In July 2 and 15, 2013 reports, Dr. Norman Kane, a Board-certified orthopedic surgeon, related that appellant continued to have right shoulder pain and discomfort and chronic back problems dating back to his November 2012 employment injury. He noted that it had been two months since appellant underwent right shoulder surgery. Upon examination, Dr. Kane observed range of motion of the shoulder at 170 degrees of flexion and abduction. He noted that appellant's spinal flexibility was such that his fingertips reached halfway down his tibias with his knees extended. Dr. Kane reported that an x-ray of the lumbosacral spine demonstrated some narrowing of the intervertebral disc spaces of lower lumbar vertebrae and no evidence of spondylolisthesis. He diagnosed status post right shoulder arthroscopic subacromial decompression and lower back pain as a result of a November 22, 2012 industrial injury. Dr. Kane stated that appellant's symptoms had worsened and noted that he was having radicular symptoms. He recommended physical therapy and a magnetic resonance imaging scan of appellant's lumbosacral spine to rule out a herniated nucleus pulposus. Dr. Kane noted that appellant was working light duty and could continue working with a 10-pound lifting limitation.

In an August 13, 2013 disability note, Dr. Kane indicated that appellant was temporarily partially disabled from August 13 to September 3, 2013. He limited appellant to a five-hour workday with restrictions of lifting up to 10 pounds and no working at or above the shoulders.

On August 28, 2013 appellant filed a claim for disability compensation for reduced hours beginning August 14 to 28, 2013. Attached CA-7a forms demonstrated that he began working five hours a day and claiming three hours of wage-loss compensation beginning August 14, 2013.

By letter dated September 10, 2013, OWCP advised appellant that he was claiming a recurrence of disability and that he had submitted insufficient evidence to support his claim. It requested additional evidence to establish that he sustained a recurrence of disability beginning August 14, 2013.

In September 3 and 24, 2013 disability notes, Dr. Kane indicated that appellant was temporarily partially disabled from September 3 to October 7, 2013. He restricted appellant to

³ The record reveals that he previously filed an occupational disease claim on June 13, 2006 (File No. xxxxxx858) and a traumatic injury on March 27, 2008. (File No. xxxxxx872).

no reaching at or above the shoulders, gripping, grasping, pushing or pulling. Dr. Kane also limited appellant to lifting up to 10 pounds and working five hours per day.

In a September 15, 2013 statement, appellant explained that on August 13, 2013 his work restrictions changed and Dr. Kane limited him to a five-hour workday.

Appellant submitted various physical therapy treatment notes beginning August 3, 2013.

In a September 24, 2013 questionnaire form, appellant explained that when he went to the physician on August 13, 2013 he complained about swollen ankles and lower back tenderness and soreness. He stated that since returning to work he was on light duty and that his back was very tight and sore from prolonged standing. Appellant believed that his disability was due to his original injury because he continued to have lower back pain and swollen ankles when standing throughout an eight-hour shift. He noted that since working five-hour shifts his swollen ankles had decreased and his lower back flared up only periodically.

By decision dated October 18, 2013, OWCP denied appellant's recurrence claim finding insufficient medical evidence to establish that he was unable to work full time beginning August 14, 2013 as a result of his accepted back and right shoulder conditions.

LEGAL PRECEDENT

The term disability as used in FECA means the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴ This term also means an inability to work 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.⁵

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁶ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the disabling condition is causally related to the employment injury. The medical evidence

⁴ 20 C.F.R. § 10.5(x).

⁵ *Id.*

⁶ *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 the specific employment factors identified by the employee.⁹

OWCP's procedures require that in cases where recurrent disability for work is claimed within 90 days or less from the first return to duty, the attending physician should describe the duties which the employee cannot perform and the demonstrated objective medical findings that form the basis for the renewed disability for work.¹⁰

ANALYSIS

OWCP accepted appellant's December 3, 2012 occupational disease claim for a back, right shoulder and upper arm sprain. On April 19, 2013 appellant underwent authorized right shoulder surgery and stopped work. He returned to full-time modified duty on May 27, 2013. On August 14, 2013 appellant stopped working full time and began working five hours per day. He subsequently claimed wage-loss compensation for these reduced hours beginning August 14, 2013. Appellant explained that his work restrictions changed and his physician limited him to work five hours per day. By decision dated October 18, 2013, OWCP denied that he suffered a recurrence of disability beginning August 14, 2013 when he stopped working full-time modified duty. The Board finds that appellant did not meet his burden of proof to establish a recurrence of disability and was unable to work full time beginning August 14, 2013.

In support of his claim, appellant provided several reports from Dr. Kane. In July 2 and 15, 2013 reports, Dr. Kane related appellant's complaints of continued right shoulder pain, discomfort and chronic back problems. He noted that appellant underwent right shoulder surgery two months ago and provided findings on examination. Dr. Kane diagnosed status post right shoulder arthroscopic subacromial decompression and lower back pain. He stated that appellant's symptoms had worsened but recommended that he continue working light duty with a 10-pound lifting limitation. The Board notes that while Dr. Kane opined that appellant's condition had worsened he did not explain whether appellant's conditions had worsened to the extent that required a change in his work restrictions and his ability to perform his modified duties full time.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (January 2013).

⁸ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹⁰ *See supra* note 7 at *Recurrences*, Chapter 2.1500.5 (June 2013).

In disability notes dated from August 13 to September 24, 2013, Dr. Kane indicated that appellant was partially disabled beginning August 13, 2013 and limited him to work five hours per day. Although he addressed the period of disability commencing August 13, 2013 he did not address any particular examination findings that established the need for his order for a reduction in his work hours. Dr. Kane did not provide any findings or rationale to support any objective worsening of appellant's accepted conditions and what specific duties of the full-time, modified-duty position he could no longer perform. Medical evidence that states a conclusion but does not offer any rationalized medical explanation is of limited probative value.¹¹ Accordingly, Dr. Kane's reports are insufficient to establish that appellant's claimed disability beginning August 14, 2013 is causally related to his accepted conditions.¹²

On appeal, appellant related that his injuries continued and that his modified schedule was decided by his orthopedic surgeon. As previously noted, however, Dr. Kane's reports are insufficient to establish that appellant was no longer able to work full time, modified duty as it did not contain any findings or medical rationale to support his recurrence of disability for work. Appellant did not submit any other medical evidence supporting a worsening of his accepted condition, which substantiated work-related disability during the claimed period. He did not meet his burden of proof in establishing his claim for a recurrence of disability. Any medical opinion evidence appellant may submit to support his claim for compensation benefits should reflect a correct history and should offer a medically sound explanation by the physician of how the specific employment duties of a transportation security officer physiologically caused or aggravated a recurrence of his accepted back and right shoulder conditions.

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 disability beginning August 14, 2013 causally related to his accepted employment conditions.

¹¹ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹² *See P.T.*, Docket No. 12-1439 (issued January 23, 2013).

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2013 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 8, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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