

United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, East Orange, NJ, Employer**

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Docket No. 14-1290
Issued: October 14, 2014

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 15, 2014 appellant timely appealed the April 25, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his recurrence claim. 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 merits of this case.²

ISSUE

The issue is whether appellant sustained a recurrence on October 18, 2013 causally related to his September 30, 2003 employment injury.

¹ 5 U.S.C. §§ 8101-8193 (2006).

² The record on appeal contains evidence received after OWCP issued its April 25, 2014 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP rendered its final decision. 20 C.F.R. § 501.2(c)(1) (2012).

FACTUAL HISTORY

On September 30, 2003 appellant, then a 46-year-old fire protection inspector, sustained a concussion in the performance of duty. He fell off a desk and hit his head and neck. Appellant resumed work on October 6, 2003. OWCP accepted a recurrence beginning May 19, 2005. Appellant's claim was expanded to include a left shoulder injury.³ He underwent left shoulder arthroscopic surgery on July 13, 2005, which OWCP authorized. Appellant returned to work in a limited-duty capacity on August 29, 2005.⁴

On November 13, 2013 appellant filed a recurrence (Form CA-2a). He identified October 18, 2013 as the date of recurrence. Appellant indicated that he experienced neck pain on and off since his September 30, 2003 employment injury. The level of pain increased and remained constant. Appellant also indicated that he performed limited duty on and off until September 8, 2005. The employing establishment indicated that his limited duty involved no climbing on ladders. Appellant advised OWCP that he planned to retire effective January 3, 2014.

OWCP received an October 21, 2013 cervical spine x-ray that revealed moderate spondylosis and cervical straightening. Appellant also resubmitted a July 8, 2005 report from a Dr. Richard Stark requesting authorization for left shoulder surgery. Dr. Stark provided a chronology of the medical treatment appellant received from September 2003 through May 2005. He diagnosed left shoulder pain with tear of the subscapularis tendon with impingement syndrome. Dr. Stark attributed appellant's then-current left shoulder condition and need for surgery to the September 30, 2003 work-related fall.

On March 24, 2014 OWCP advised appellant of the need for additional information regarding his claimed recurrence. This included the submission of a narrative medical report explaining how his current condition was causally related to his accepted employment injury. OWCP also requested specific factual information regarding appellant's claimed recurrence.

In a March 28, 2014 statement, appellant indicated that, since his September 30, 2003 injury, he experienced neck and lower back pain that would flare up and then dissipate. Beginning in November 2013, he experienced neck pain that caused numbness in his arms and legs. Appellant further indicated that he remained on light-duty status until his retirement on January 3, 2014. He also listed four claims he filed for work-related injuries sustained between December 2005 and May 2013.

OWCP did not receive any additional medical evidence in response to its March 24, 2014 request.

In an April 25, 2014 decision, OWCP denied appellant's claimed recurrence beginning October 18, 2013.

³ OWCP accepted left shoulder supraspinatus sprain and unspecified left shoulder disorder of bursae and tendons.

⁴ OWCP compensated appellant for the period July 13 through August 19, 2005.

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵ Recurrence of disability 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 work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his established physical limitations.⁶

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing that the recurrence is causally related to the original injury.⁷ This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the condition is causally related to the employment injury.⁸ The physician's opinion must be based on a complete and accurate factual and medical history and supported by sound medical reasoning.⁹

A recurrence of a medical condition is defined as a "documented need for further medical treatment after release from treatment for the accepted condition or injury...."¹⁰ Continuous treatment for the original condition or injury is not considered a recurrence of a medical condition nor is an examination without treatment.¹¹ As distinguished from a recurrence of disability, a recurrence of medical condition does not involve an accompanying work stoppage.¹² It is the employee's burden to establish that the claimed recurrence is causally related to the original injury.¹³

ANALYSIS

Appellant filed a claim for recurrence beginning October 18, 2013. He attributed his current neck pain to his September 30, 2003 employment injury. The only contemporaneous medical evidence received was an October 21, 2013 cervical x-ray that revealed moderate

⁵ 20 C.F.R. § 10.5(x).

⁶ *Id.*

⁷ 20 C.F.R. § 10.104(b); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5a and 2.1500.6b.

⁸ *See S.S.*, 59 ECAB 315, 318-19 (2008).

⁹ *Id.* at 319.

¹⁰ 20 C.F.R. § 10.5(y).

¹¹ *Id.*

¹² *Id.*; 20 C.F.R. § 10.5(x).

¹³ *See* 20 C.F.R. § 10.104(b); *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

spondylosis and cervical straightening.¹⁴ OWCP has not accepted an employment-related cervical condition. Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.¹⁵ Appellant did not submit any recent medical evidence that attributed his claimed cervical degenerative arthritis to his accepted employment injury.

Although appellant claimed a recurrence beginning October 18, 2013, he continued to work until his retirement effective January 3, 2014. It is unclear whether he seeks wage-loss compensation beginning January 3, 2014 or merely medical treatment for his current cervical condition. In either case, appellant has not established that his cervical spondylosis is causally related to his September 30, 2003 employment injury.

The Board finds that appellant has not demonstrated either a recurrence of a medical condition or a recurrence of disability beginning October 18, 2013. The contemporaneous medical evidence does not establish a causal relationship between appellant's current cervical condition and his September 30, 2003 employment injury. Moreover, there is no indication that appellant's work stoppage effective January 3, 2014 was due to his accepted employment-related concussion and/or left upper extremity condition.

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

Appellant failed to establish his claimed recurrence beginning October 18, 2013.

¹⁴ Since Dr. Stark's July 8, 2005 report, there was more than an eight-year gap in the medical evidence of record.

¹⁵ *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996).

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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