

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

W.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Little Rock, AR, Employer**

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**Docket No. 13-1992
Issued: September 10, 2014**

Appearances:
Shane A. Henry, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 28, 2013 appellant, through his attorney, filed a timely appeal from a July 30, 2013 merit decision of the Office of Workers’ Compensation Programs (OWCP). 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 claim.

ISSUE

The issue is whether appellant established a recurrence of disability on June 13, 2012 due to his accepted employment-related injuries.

FACTUAL HISTORY

On July 18, 1996 appellant, then a 45-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed injuries to his upper extremities as a result

¹ 5 U.S.C. § 8101 *et seq.*

of his repetitive employment duties. OWCP accepted the claim for bilateral carpal tunnel syndrome (CTS), left elbow lateral epicondylitis and bilateral shoulder impingements.²

As a result of appellant's accepted employment-related injuries, OWCP authorized surgeries for release of left extensor tendon on August 6, 1999; arthroscopic left shoulder subacromial decompression with debridement of the biceps on January 2, 2002; right carpal tunnel release on January 8, 2003 and an arthroscopic right shoulder debridement of the rotator cuff, glenoid and humeral head with a subacromial decompression on May 12, 2004. Appellant returned to full-duty work after intermittent periods of disability.

On June 5, 2012 appellant filed a notice of recurrence claim alleging a return/increase of disability as of June 13, 2012. He stated that he continued to perform his repetitive employment duties but suffered from increased inflammation and pain over the years.

In support of his claim, appellant submitted a May 31, 2012 work capacity evaluation (Form OWCP-5c) and duty status report (Form CA-17) from his treating physician, Dr. Robert F. McCarron, Board-certified in orthopedic surgery, who reported that appellant could not perform his usual employment duties as a result of his bilateral CTS, left elbow lateral epicondylitis and bilateral shoulder impingement from his July 16, 1996 employment injury.

By letter dated June 15, 2012, Dr. McCarron stated that appellant had been under his care since 1995 for bilateral upper extremity conditions, which had been a chronic ongoing problem involving his shoulders, arms and hands. He stated no recurrent date applied.

By letter dated June 25, 2012, Karen Osowski, a postmaster at the Conway Post Office, controverted the claim. Postmaster Osowski stated that appellant submitted his CA-2a form on June 13, 2012 but had been on annual leave for the past few weeks and had not been at work performing his regular letter carrier duties. Appellant had not returned to work since he submitted his June 13, 2012 CA-2a form.

By letter dated June 28, 2012, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was provided with a questionnaire for completion, advised of the medical and factual evidence needed and was directed to submit it within 30 days.

By letter dated July 9, 2012, the employing establishment again controverted the claim stating that appellant could not have suffered an employment-related recurrence of injury given that he was on annual leave from May 30 to June 15, 2012.

On July 18, 2012 appellant responded to an OWCP questionnaire stating that numbness, pain, lack of grip and range of motion had worsened with his repetitive employment duties. He

² The Board notes that, following appellant's July 18, 1996 CA-2 form, OWCP accepted the claim for bilateral CTS. On January 11, 1999 appellant filed a notice of recurrence claim (Form CA-2a) alleging a return/increase of disability due to increased elbow pain. By decision dated April 13, 1999, OWCP accepted the claim for left elbow lateral epicondylitis. On October 19, 2001 appellant filed another Form CA-2a alleging a recurrence of disability as of June 23, 2000 due to ongoing shoulder pain from repetitive work activities. By decision dated January 2, 2002, OWCP accepted the claim for bilateral shoulder impingement.

stated that he had sustained no other injuries since his original injury and did not have any hobbies or activities which could have affected his work-related conditions.

In support of his claim, appellant submitted a July 17, 2012 medical report from Dr. McCarron, who reported that appellant had multiple upper extremity complaints, which had been present for years but continued to worsen. He complained of his hands going to sleep with activity and driving, bilateral elbow pain and stiffness and discomfort in the fingers with decreased gripping ability. Appellant's symptoms decreased with less work. Dr. McCarron noted a previous history of carpal tunnel surgery and shoulder arthroscopy. He further identified appellant's employment as a letter carrier, which required casing mail, lifting mail, reaching for mail bundles and reaching for and opening mailboxes. Dr. McCarron stated that appellant did not have one specific injury but had years of repetitive usage of his upper extremities.

Dr. McCarron provided findings upon physical examination and provided review of diagnostic studies. He stated that a March 28, 2012 electromyogram (EMG) and nerve conduction study (NCV) of the upper extremities revealed moderate left CTS and mild right CTS. March 5, 2012 x-rays of the right and left shoulders revealed increased sclerosis at the greater tuberosity of both shoulders consistent with impingement. X-rays of the right and left hand revealed cystic subchondral changes in the metacarpophalangeal joints of the index and middle finger of the left hand, subchondral cysts in the lateral margins of the distal and middle joints, subchondral degenerative cysts in the index, middle and ring fingers and narrowing of the distal joints bilaterally. Dr. McCarron diagnosed bilateral osteoarthritis small joints of hands, bilateral shoulder impingement, bilateral CTS, flexion contractures of both wrists and bilateral/lateral epicondylitis.

In a narrative report dated July 17, 2012, Dr. McCarron stated that, although the cause of appellant's diagnoses can be multifactorial, he believed that appellant's job as a letter carrier was most likely the aggravating cause of his symptoms noting that reaching impinges the rotator cuff and subacromial bursa on the undersurface of the acromion. Repetitive lifting with appellant's outstretched arm caused overuse of the extensor tendon origin at the lateral epicondyle at the elbow. Work stresses caused swelling and nerve compression at the wrist, which was one of the causes of CTS. The osteoarthritis of appellant's hands was also most likely due to repetitive usage as opposed to a single trauma.

By decision dated August 20, 2012, OWCP denied appellant's recurrence claim finding that the medical evidence did not establish total disability due to a material worsening of his accepted employment-related conditions beginning June 13, 2012.

On April 30, 2013 appellant requested reconsideration of the August 20, 2012 OWCP decision.³

³ The Board notes that appellant initially requested an oral hearing before the Branch of Hearings and Review, postmarked on September 20, 2012. By decisions dated November 14, 2012 and February 27, 2013, the Branch of Hearings and Review denied his request for a hearing finding that his request was not made within 30 days of the August 20, 2012 OWCP decision. The Branch of Hearings and Review further determined that the issue in the case could equally well be addressed by requesting reconsideration from OWCP.

In a May 13, 2013 brief, counsel for appellant argued that appellant had established a recurrence of his bilateral CTS and left elbow lateral epicondylitis, as well as a claim for new injuries of bilateral osteoarthritis small joints of hand, bilateral shoulder impingement, flexion contractures of both wrists and bilateral/lateral epicondylitis. He noted that appellant had been working for the postal service for over 30 years and began suffering adverse medical symptoms in the mid 1990's from the constant reaching, grasping, pushing and pulling required from his employment duties. Counsel further stated that he was submitting documents in support of appellant's claim.

In a May 22, 2013 affidavit, appellant reported that he returned to his regular-duty letter carrier position in March 2006. His regular job duties required constant use of his hands, wrists and elbows to package mail, sort mail, bundle mail, carry mail, retrieve mail from the back seat, open and close mailboxes, deposit mail and drive his vehicle. Appellant was also required to drive with one hand on the steering wheel and reach into the back seat with the other hand, which caused stress and strain on both shoulders. He stated that his ability to perform these tasks worsened over the years, especially in the last 24 months of his employment. Appellant noted that he suffered many painful movements with his shoulders and wrists, but that he could not overcome the pain and injury he experienced on his last workday in May 2012. He stated that, outside of his regular work duties, he could barely maintain his own property and animals or do any other nonfederal work activity. As a result, appellant had to hire outside help to care for his animals, mow his property, bale hay and other general upkeep. He noted that, on occasion, he had been able to assist physically by operating his tractor from inside the climate controlled cab with hydraulic operational controls. However, even getting in and out of the tractor was sometimes not possible due to appellant's shoulder, wrist and hand problems. Appellant stated that occasional operation of his farm tractor was the extent of his nonfederal work activity for the past eight years. He further noted that he would supervise and instruct, as necessary, but that required no physical work. In support of his claim, appellant submitted various medical reports from his treating physicians.

In a March 28, 2012 diagnostic report, Dr. Keith Schluterman, a Board-certified neurologist, reported that an EMG/NCV study revealed moderate left CTS and mild right CTS.

In a January 28, 2013 medical report, Dr. McCarron reported that appellant complained of hand numbness and pain in the shoulders. He noted that appellant's bilateral CTS was fairly stable and he could obtain relief by taking his hands and shaking. Dr. McCarron recommended a magnetic resonance imaging (MRI) scan of the shoulders.

In a March 15, 2013 report, Dr. McCarron reported that appellant's MRI scan of the shoulders revealed two new diagnoses of bilateral full-thickness rotator cuff tear and bilateral shoulder acromioclavicular (AC) joints arthrosis. He noted that these diagnoses were a worsening of appellant's shoulder conditions. Dr. McCarron further stated that this was consistent with repetitive trauma, which he opined was a result of appellant's job as a rural letter carrier, which required repetitive reaching across his body and repetitive lifting with his outstretched arm. He recommended repair of the rotator cuff. In a May 25, 2013 note, Dr. McCarron diagnosed bilateral rotator cuff tear, bilateral shoulder AC joint arthrosis, bilateral osteoarthritis small joints of hands, bilateral shoulder impingement, bilateral CTS, flexion

contractures of both wrists and bilateral/lateral epicondylitis. He noted functional limitations and stated that appellant was not capable of tolerating work stress.

In a July 5, 2013 statement, Dr. McCarron reported that he had been treating appellant for the past 20 years. Appellant's regular job duties required driving with one hand on the steering wheel and reaching into the back seat with the other hand, which produced stress and strain on both shoulders. He also repetitively gripped large bundles of mail, which could also strain the hands and wrists. Other relevant work-related activity included frequent reaching, pushing and pulling required to retrieve and deliver mail. Dr. McCarron noted that all of these movements were medically likely to be contributing to the physical impairment that led to appellant's inability to work after June 2012. He opined that appellant's job-related duties were contributing to or causing his physical impairments, which resulted in pain and limitation of his functional capacity. Dr. McCarron recommended that appellant not return to his current employment in June 2012 due to his upper extremity symptoms.

By decision dated July 30, 2013, OWCP affirmed the August 20, 2012 decision finding that the medical evidence of record failed to establish a recurrence of disability beginning June 13, 2012 causally related to the accepted employment-related conditions.

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 compensable injury or illness and without an intervening injury or new exposure in the work environment.⁴ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations and which is necessary because of a work-related injury or illness is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force.⁵

OWCP's procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁶

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence

⁴ 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

⁵ *Id.*

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997). *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.⁷ Where no such rationale is present, the medical evidence is of diminished probative value.⁸

ANALYSIS

OWCP has accepted bilateral CTS, left elbow lateral epicondylitis and bilateral shoulder impingements as relating to factors of his federal employment. It authorized left epicondylitis surgery on August 6, 1999, left shoulder arthroscopy on January 2, 2002, right carpal tunnel release on January 8, 2003 and right shoulder/rotator cuff arthroscopy on May 12, 2004. Appellant returned to full-duty work after intermittent periods of disability. On June 13, 2012 he stopped work, alleging a recurrence of disability.

In its July 30, 2013 decision, OWCP denied appellant's claim finding that the medical evidence of record failed to establish a recurrence of disability beginning June 13, 2012 causally related to the accepted employment-related conditions. The Board finds that the medical evidence of record is insufficient to establish a recurrence of disability

Medical reports dated May 31, 2012 to July 5, 2013 were submitted from Dr. McCarron, appellant's treating physician. In his May 31, 2012 CA-17 form, Dr. McCarron stated that appellant was totally disabled as a result of his accepted bilateral CTS, bilateral shoulder impingement and left elbow lateral epicondylitis. In subsequent reports, he provided diagnoses of bilateral rotator cuff tear, bilateral shoulder AC joints arthrosis, bilateral osteoarthritis small joints of hands, bilateral shoulder impingement, bilateral CTS, flexion contractures of both wrists and bilateral/lateral epicondylitis.

The reports dated June 15 and July 17, 2012 and March 15, 2013 of Dr. McCarron do not provide sufficient medical rationale to establish total disability due to a recurrence. He stated that although the cause of appellant's diagnoses can be multifactorial, it is "my feeling that [appellant's] job as a carrier has most likely been the aggravating cause of the symptoms that he has." Dr. McCarron uses general terms and describes repetitive general movements required by appellant's letter carrier job. Additionally, in his statement of July 5, 2013, he indicated that he had treated appellant for 20 years and listed job duties of driving with one hand which stresses the shoulders, gripping bundles which can strain the hands and the general duties of reaching, pushing, pulling to deliver mail.

Dr. McCarron did not provide adequate bridging evidence since 2004 necessary to show a spontaneous worsening of the accepted conditions. Rather, he correlated in general terms, appellant's current upper extremity conditions with his letter carrier duties.⁹ Dr. McCarron did not fully describe the mechanism of injury with the requisite rationale; rather, he provided a

⁷ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁸ *Mary A. Ceglia*, Docket No. 04-113 (issued July 22, 2004).

⁹ *J.H.*, Docket No. 14-775 (issues July 14, 2014).

general opinion on causation.¹⁰ Further, in his note of June 15, 2012, he stated that there was no recurrent date that would apply in this case.

The Board also notes that, while bilateral CTS, bilateral shoulder impingements and left elbow lateral epicondylitis were accepted by OWCP as work-related conditions, the additional conditions of bilateral rotator cuff tear, bilateral shoulder joints arthrosis, bilateral osteoarthritis small joints of hands, flexion contractures of both wrists and right lateral epicondylitis have not been accepted. Dr. McCarron's reports fail to identify which of these conditions caused appellant's disabilities beginning June 13, 2012 and whether, or how, these additional conditions are causally related to his accepted work-related disability. As noted in OWCP's July 30, 2013 decision, if appellant is attributing his newly diagnosed medical conditions to an occupational injury produced by his work environment over a period longer than a single workday or shift, he may consider filing a new claim.¹¹

The Board finds that appellant has not established that he sustained a recurrence of disability. In the instant case, appellant has failed to submit a sufficiently rationalized, probative medical report which relates his claimed recurrence of disability for work as of June 13, 2012 to his accepted conditions. For this reason, he has not discharged his burden of proof to establish a recurrence of disability as a result of his accepted employment condition.

CONCLUSION

The Board finds that appellant has not established a recurrence of disability on June 13, 2012 due to his accepted employment-related injuries.

¹⁰ *Albert C. Brown*, 52 ECAB 152 (2000) (medical conclusions was updated by rationale are diminished probative value).

¹¹ A traumatic injury means a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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