

FACTUAL HISTORY

On November 28, 1997 appellant, then a 43-year-old mail handler, filed a claim for traumatic injury alleging that he sustained back, shoulder and arm injuries that day when trying to pull a postal pack, which had fallen from a forklift, off of a coworker. He did not initially stop work.

By decision dated March 11, 1998, OWCP accepted appellant's claim for compensation for left shoulder strain due to the work-related incident. Appellant filed a claim for total disability from December 15, 1998 through April 15, 2009 and requested that his claim be expanded to include additional conditions. By decision dated April 15, 2009, OWCP denied his claim for total disability. It found that appellant's claim was being accepted for the additional conditions of left shoulder strain, bilateral knee strain and lumbar strain. The conditions of L4-S1 ruptured disc and a post-traumatic right knee injury with postoperative residuals, were not accepted as work related.

In a work status report dated October 27, 1998, Dr. Carlos A. Oteyza, Board-certified in physical medicine and rehabilitation, stated that appellant could work modified duty with restrictions of no lifting greater than 25 pounds and sitting/standing to appellant's tolerance.

On January 16, 1999 appellant was removed from the employing establishment for cause for failure to maintain a regular work schedule. A supervisor noted that limited duty would have remained available.

Appellant continued to submit regular progress reports from his treating physicians between 1998 and 2008.

In a report dated October 28, 2008, Dr. Oteyza stated that appellant had been totally disabled since his work-related injury on November 28, 1997. However, he also wrote, "Previous past injury, which he reported happened six years prior to the work-related accident of November 28, 1997, resulted in right wrist injury that was a previous work-related accident." Dr. Oteyza diagnosed appellant with disc ruptures at L4-5 and L5-S1; a status post meniscus right knee injury with postoperative surgery; cervical radiculopathy; facet arthropathy; left shoulder pain; and left knee pain.

On March 10, 2009 appellant claimed compensation for leave without pay subsequent to December 15, 1998. A supervisor noted that appellant had been terminated from the employing establishment effective January 15, 1999.

In a memorandum dated March 13, 2009, a supervisor noted that appellant had violated a last chance agreement for maintaining a regular work schedule and did not provide documentation for his absence. She noted that on March 10, 1998 his physician had taken him off work from March 11 through 19, 1998, and that he had been on limited duty other than these dates. The supervisor noted that the report dated October 27, 1998 was used to establish his medical restrictions for limited duty.

On April 15, 2009 OWCP denied appellant's claim for compensation subsequent to December 15, 1998. It noted that the medical evidence of record did not support how a shoulder

strain, lumbar sprain, and knee sprain could be active for over 11 years after the original injury took place, unless there were other underlying medical factors.

On April 22, 2009 appellant requested an oral hearing before an OWCP hearing representative. He submitted a deposition of Dr. Oteyza along with his request.

On November 3, 2009 an OWCP hearing representative affirmed the April 15, 2009 decision denying compensation for disability. She noted that appellant had been terminated from the employing establishment for cause, and found that the medical evidence did not support work-related total disability.

On April 29, 2010 appellant filed a claim for a recurrence of disability beginning February 21, 2000. On August 10, 2010 OWCP noted that the November 3, 2009 decision denied wage loss covering this period, and that the present evidence of file was not sufficient to proceed with further development of his claim.

On January 24, 2012 appellant filed another claim for a recurrence of disability beginning June 1, 2009. On February 4, 2013 OWCP noted that no action would be taken on his claim until further clarification was given as to the conditions that have recurred.

OWCP received a claim for a recurrence of disability on February 19, 2013. Appellant alleged that he had sustained a recurrence of disability on June 1, 2009 related to his accepted November 28, 1997 injury. He explained that he had not had any new injury since the 1997 injury, but that his medical conditions had worsened since that time.

On March 22, 2013 OWCP referred appellant to a second opinion physician, Dr. George C. Hochreiter, a Board-certified osteopath and orthopedic surgeon, in order to determine whether appellant continued to have residuals of his accepted conditions of left shoulder sprain, lumbar sprain and bilateral knee sprain and whether there were clinical findings to support possible aggravation to the left shoulder, back or knees. In a report dated April 17, 2013, Dr. Hochreiter replied that appellant had underlying conditions of bilateral osteoarthritis of the knees, rotator cuff tendinitis, impingement of the left shoulder and failed back surgery following a surgical decompression of the lumbar spine. He noted that appellant's sprains had resolved. Dr. Hochreiter stated, "I consider this to be a permanent aggravation and in fact permanent injury secondary to the accepted injury, which occurred on November 28, 1997."

In a decision dated April 22, 2013, OWCP noted that a formal decision on the matter of recurrence had been issued on November 3, 2009, and that as such, no further action would be taken on this claim.

By letter dated May 28, 2013, appellant, through counsel, requested that OWCP expand the medical conditions related to appellant's accepted injury to include multilevel disc degeneration with mild disc bulging at C4-5, degenerative joint disease in the acromioclavicular joint of his shoulder with some spurring, shoulder impingement syndrome and extensive tendinopathy in the rotator cuff region, a complex tear of the posterior horn of the lateral meniscus of the knee, a partial thickness tear of the rotator cuff tendon and an L4-5 herniated disc with spinal stenosis. With his request, he enclosed a letter from Dr. Oteyza, dated May 28, 2013, in which he noted that appellant had been diagnosed with the above conditions, among

others, and stated, “The Department of Labor should accept much more specific conditions related to the accident, including the shoulder injury which we have demonstrated on [magnetic resonance imaging], the low back injury which involve[s] laminectomy and discectomy, as well as the bilateral knee problem, one of which involves surgery.” On August 5, October 15, November 11, and December 2, 2013, appellant, through counsel, requested that OWCP advise him as to the status of his request to expand his claim to include additional conditions. In the December 2, 2013 letter, appellant’s counsel asserted that both OWCP’s second opinion physician and Dr. Oteyza had diagnosed appellant with bilateral osteoarthritis of the knee, rotator cuff tendinitis, impingement of the left shoulder and failed back surgery of the lumbar spine.

By letter dated December 11, 2013, OWCP advised appellant that it had already disposed of the issue and that it had denied expansion of his claim to include any further medical condition by decisions dated April 15 and November 3, 2009, the latter of which OWCP considered the last merit decision.

LEGAL PRECEDENT

In issuing a decision regarding a claimant’s entitlement to benefits, OWCP’s regulations at 20 C.F.R. § 10.126 require that OWCP issue decisions which contain findings of fact and a statement of reasons.³ The decision is to be accompanied by information regarding appellant’s appeal rights.

ANALYSIS

Appellant’s attorney contends on appeal that the December 11, 2013 letter constitutes an effective denial of appellant’s request to expand his claim to include additional conditions, even though the letter contained no statement of appeal rights. In support of his contention, he references the Board’s decision in *B.C.*, Docket No. 11-1903, issued March 26, 2012, which contained a similar factual scenario. In that case, the Board found that an OWCP letter dated July 14, 2011 advising appellant that her case had been formally denied constituted an effective denial of her claim for a recurrence of disability. It, therefore, found that the July 14, 2011 letter presented a final, adverse decision subject to review under 20 C.F.R. §§ 501.2(c) and 501.3(a). Appellant’s counsel argues that the instant claim is sufficiently similar to warrant the same finding by the Board.

Appellant is claiming that OWCP should expand his claim to include additional conditions. OWCP stated in its December 11, 2013 letter that it had already disposed of the issue of expansion of the claim to include any additional conditions by decisions dated April 15 and November 3, 2009. However, the April 15, 2009 decision did not address the current conditions that appellant requested to be added to his claim. Instead, it found only that diagnoses of an L4-S1 ruptured disc and a post-traumatic right knee injury with postoperative residuals had

³ 20 C.F.R. § 10.126.

not been established to be work related. The November 3, 2009 decision also did not contain specific findings regarding the expansion of his claim to include additional diagnoses.⁴

Section 20 C.F.R. § 10.126 requires OWCP to issue a decision containing findings of fact and a statement of reasons.⁵ As counsel contends, OWCP effectively denied appellant's request to expand his claim to include additional conditions in its December 11, 2013 letter, but did not consider the medical evidence in this case, including the second opinion report of Dr. Hochreiter, make findings of fact regarding the medical evidence appellant submitted, or provide a statement of reasons supporting its determination. It erred by finding that the April 15 and November 3, 2009 decisions addressed and disposed of this issue.

The Board finds that OWCP failed to make detailed findings and state the reasons for its denial to expand appellant's claim to include additional conditions in its December 11, 2013 decision. As such, the Board finds that the appeal docketed as No. 14-557 must be set aside and remanded for adjudication of the case pursuant to section 8128(a).

CONCLUSION

Accordingly, the December 11, 2013 decision will be set aside and the case remanded for consideration of all the medical evidence to determine whether appellant has established that his claim should be expanded to include additional conditions. After such further development as OWCP deems necessary, it should issue an appropriate decision to protect appellant's appeal rights.

⁴ The November 3, 2009 decision also referenced appellant's termination for cause in relation to the denial of his claim for disability. The Board notes that if an appellant was "terminated due to his physical inability to perform his assigned duties [or] there is evidence that appellant stopped work due to his physical condition," he may still be entitled to compensation for disability even after being terminated for cause, if the medical evidence supports such disability. See *John W. Normand*, 39 ECAB 1381 (1988); see also *Major W. Jefferson*, 47 ECAB 295 (1996).

⁵ 20 C.F.R. § 10.126.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 11, 2013 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: April 6, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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