United States Department of Labor
Employees' Compensation Appeals Board

M.P., Appellant	)	
and	)	**Docket No. 14-1763**
	)	**Issued: January 7, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Cape Girardeau, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 8, 2014 appellant filed a timely appeal from a March 28, 2014 merit decision and a May 30, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant established a recurrence of medical condition causally related to the accepted left upper extremity and cervical spine injuries; and, (2) whether OWCP properly denied appellant's request for reconsideration.

FACTUAL HISTORY

OWCP accepted that on April 1, 2011 appellant, then a 56-year-old mail processing clerk, sustained a left shoulder sprain, left shoulder contusion, left elbow sprain, left elbow

[1] 5 U.S.C. § 8101 *et seq.*

contusion, a sprain of the left fifth finger, cervicothoracic strain, and a left trapezius strain when the forklift he was driving malfunctioned and fell against a wall. Appellant did not stop work. He remained on full duty.

In an April 11, 2011 report, Dr. Thomas Marsh, an attending physician Board-certified in occupational medicine, noted a history of injury. He opined that appellant could continue working full duty. In an April 26, 2011 report, Dr. Marsh diagnosed late onset left trapezial myalgia. He noted that the left shoulder and elbow contusions were significantly improved. In an April 26, 2011 report, Dr. Marsh diagnosed a cervicobrachial sprain, resolved left shoulder pain, and left elbow pain. He prescribed physical therapy. Dr. Marsh obtained April 26, 2011 x-rays showing degenerative changes at C3-4 and C6-7, and a C3-4 retrolisthesis with anteroposterior canal narrowing of uncertain significance.

In a May 16, 2011 report, Dr. Marsh related appellant's complaints of increased left shoulder and left-sided neck pain to working overtime. He opined on May 23, 2011 that appellant could perform full-duty work and did not require additional treatment. On June 21, 2011 appellant presented with complaints of numbness in the left fifth finger. Dr. Marsh opined that appellant had no objective pathology of the neck or upper extremities on examination. He noted that appellant was distressed because he wanted additional physical therapy but Dr. Marsh would not prescribe it.

In a June 28, 2011 report, Dr. Matthew Karshner, an attending Board-certified physiatrist, diagnosed early cervical degenerative disc disease, possible left biceps tendinitis, possible cubital tunnel syndrome affecting the left fifth digit, and possible myofascial pain of the left shoulder. He prescribed physical therapy through October 2011. Dr. Karshner administered trigger point injections in the left upper trapezius on July 13, 2011. He found that the left biceps tendinitis improved with physical therapy and that appellant could continue full-duty work. Dr. Karshner noted on August 3 and 17, 2011 that the accepted conditions had resolved. On September 7, 2011 Dr. Karshner observed that appellant's subjective symptoms could be reproduced by nonphysiologic factors. In an October 27, 2011 report, Dr. Karshner diagnosed a "[l]eft shoulder sprain with myofascial features, nearly completely resolved, with exacerbation due to repeated left upper extremity activity during fishing" for 8 to 10 hours the previous weekend. He found that the left elbow contusion had resolved and that the anterior left shoulder contusion had essentially resolved. Dr. Karshner released appellant from care.

In a November 18, 2011 letter, appellant requested that OWCP authorize additional physical therapy. He acknowledged that Dr. Karshner had released him from treatment, but alleged that his condition worsened after physical therapy ended in October 2011.

In an April 19, 2012 letter, OWCP explained that appellant's case remained open for medical treatment. It instructed appellant to have his physician contact OWCP if additional treatment was required. Appellant provided a May 11, 2012 report from Dr. Karshner opining that the accepted injuries had resolved or essentially resolved. Appellant had attained maximum medical improvement with regard to the accepted injuries. Dr. Karshner opined that appellant's neck symptoms were due to idiopathic degenerative disc disease.

On October 6, 2013 appellant filed a claim (Form CA-2a) for a recurrence of disability commencing on an unspecified date. He noted, however, that he was not claiming a recurrence of disability, but attempting to obtain additional medical treatment. In a November 14, 2013 letter, OWCP advised appellant that to establish the claimed recurrence of disability he must provide medical evidence supporting a worsening of the accepted injuries without intervening cause. It afforded him 30 days to submit such evidence.

In an undated statement received on December 9, 2013, appellant reiterated that he did not wish to claim a recurrence of disability, but only to obtain additional medical treatment.

By decision dated December 11, 2013, OWCP denied appellant's claim for a recurrence as causal relationship was not established. It found that he had not submitted medical evidence establishing a worsening of the accepted injuries. OWCP noted that Dr. Marsh and Dr. Karshner opined that the accepted injuries had resolved, and that any residual symptoms were due to idiopathic cervical degenerative disc disease.

In a January 6, 2014 letter, appellant requested reconsideration. He explained that he sought treatment for his left upper extremity symptoms through the Department of Veterans' Affairs, then brought test results and chart notes to Dr. Karshner. Appellant alleged that Dr. Karshner dismissed these reports as he did not want to complete OWCP billing forms.

Appellant submitted chart notes from the Department of Veterans' Affairs. A February 12, 2012 cervical computerized tomography (CT) scan showed chronic degenerative disc disease, most marked at C3-4, C6-7, and C7-T1. Appellant received a left shoulder injection on July 24, 2013. August 13, 2013 electrodiagnostic testing showed mild left median and ulnar nerve entrapment. A September 25, 2013 magnetic resonance imaging (MRI) scan showed degenerative changes in the acromioclavicular joint causing impingement, and a possible partial tear of the supraspinatus tendon.

By decision dated March 28, 2014, OWCP denied modification of the December 11, 2013 decision finding that the medical record did not support a causal relationship between the claimed recurrence and the accepted injuries. It noted that Dr. Karshner opined on May 11, 2012 that an MRI scan of appellant's left shoulder was essentially normal.

In a May 8, 2014 letter, appellant requested reconsideration. He contended that the April 1, 2011 incident also caused a rotator cuff tear. Appellant alleged that OWCP erred in its March 28, 2014 decision by referring to an MRI scan obtained by Dr. Karshner, whereas Dr. Karshner had not ordered an MRI scan. He submitted a duplicate copy of Dr. Karshner's May 11, 2012 report.

By decision dated May 30, 2014, OWCP denied reconsideration as it did not contain new, relevant evidence or legal argument. It found that its reference to an MRI scan in the March 28, 2014 decision was harmless, nondispositive error.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of a medical condition is defined under OWCP's implementing federal 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.[2] Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment.[3]

A claimant has the burden of establishing that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury.[4] To meet this burden, the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.[5]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a left shoulder sprain, left shoulder contusion, left elbow sprain, left elbow contusion, a sprain of the left fifth finger, cervicothoracic strain, and a left trapezius strain. Dr. Marsh, an attending physician Board-certified in occupational medicine, opined that the accepted conditions resolved by June 21, 2011. Appellant then sought treatment from Dr. Karshner, a Board-certified physiatrist, who opined that accepted conditions had resolved by October 27, 2011 following a course of physical therapy. Dr. Karshner noted that appellant's ongoing symptoms appeared nonphysiologic in nature. Appellant then requested that OWCP authorize additional physical therapy. OWCP responded by April 19, 2012 letter, explaining that requests for additional treatment must originate with appellant's physicians. Appellant filed a recurrence claim on October 6, 2013 seeking medical benefits.

Appellant has the burden of providing sufficient evidence, including rationalized medical evidence, to establish the causal relationship asserted between the accepted cervical spine and left upper extremity injuries, and a spontaneous worsening of his condition as claimed.[6] However, he did not claim a recurrence of disability. Appellant explained in his claim form and in a December 9, 2013 letter that he claimed a recurrence in an attempt to obtain additional medical treatment. Appellant's physicians did not opine that the accepted injuries had worsened. Rather, Dr. Marsh and Dr. Karshner both opined that the injuries had resolved, and that any residual symptoms were due to idiopathic, degenerative disc disease. OWCP therefore denied the recurrence claim on December 11, 2013.

In support of his January 6, 2014 request for reconsideration, appellant submitted imaging studies and test results from the Department of Veterans Affairs showing chronic cervical degenerative disc disease, mild left median and ulnar nerve entrapment, degenerative changes in the left shoulder, and a possible left supraspinatus tear. However, these test results

[2] 20 C.F.R. § 10.5(y). *See also R.B.*, Docket No. 13-1663 (issued July 29, 2014).

[3] *Id.*

[4] *See S.S.*, Docket No. 14-211 (issued May 1, 2014).

[5] *See Ronald A. Eldridge*, 53 ECAB 218 (2001).

[6] *Ricky S. Storms*, 52 ECAB 349 (2001).

were not accompanied by medical opinion supporting a causal relationship between these findings and the accepted injuries, or that the accepted injuries had spontaneously worsened.

OWCP advised appellant in a November 14, 2013 letter of the type of evidence needed to establish his claim for a recurrence, including medical evidence addressing how and why the accepted cervical spine and left upper extremity injuries had worsened. As appellant did not submit such evidence, OWCP properly issued its March 28, 2014 decision affirming the prior denial of his recurrence claim.

On appeal, appellant alleged that OWCP failed to properly develop his claim for a shoulder injury. As set forth above, he failed to meet his burden of proof to establish a recurrence of a medical 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.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,[7] section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.[8] Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.[9]

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.[10] Appellant need only submit relevant, pertinent evidence not previously considered by OWCP.[11] When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.[12]

[7] 5 U.S.C. § 8128(a).

[8] 20 C.F.R. § 10.606(b)(2).

[9] 20 C.F.R. § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

[10] *Helen E. Tschantz*, 39 ECAB 1382 (1988).

[11] *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

[12] *Annette Louise*, 54 ECAB 783 (2003).

ANALYSIS -- ISSUE 2

Appellant requested reconsideration by a May 8, 2014 letter. He argued that OWCP erred in its March 28, 2014 decision by finding that Dr. Karshner mentioned an MRI scan in his May 11, 2012 report. Appellant enclosed a duplicate copy of the May 11, 2012 report. OWCP denied reconsideration by its May 30, 2014 decision, finding that the May 8, 2014 letter did not contain new, relevant evidence or argument.

The Board finds that OWCP appropriately denied reconsideration as his argument was not relevant to the claim. The critical issue was the causal relationship of a claimed recurrence of his medical condition to the accepted injuries. Appellant's arguments did not address that issue. Therefore, they do not comprise a basis for reopening the case.[13] Also, evidence which is duplicative or cumulative or repetitive in nature is insufficient to warrant reopening a claim for merit review.[14] The duplicate copy of Dr. Karshner's May 11, 2012 report is therefore insufficient to warrant consideration on the merits.

On appeal, appellant asserts that OWCP erred in its March 28, 2014 decision by referring to an MRI scan. As set forth above, OWCP properly denied reconsideration as this argument was not relevant to the critical issue of causal relationship in the case.

CONCLUSION

The Board finds that appellant did not establish a recurrence of a medical condition causally related to accepted cervical spine and left upper extremity injuries. The Board further finds that OWCP properly denied appellant's request for reconsideration.

[13] *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

[14] *Denis M. Dupor*, 51 ECAB 482 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 30 and March 28, 2014 are affirmed.

Issued: January 7, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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