United States Department of Labor
Employees' Compensation Appeals Board

A.P., Appellant	)	
and	)	**Docket No. 14-1409**
	)	**Issued: June 17, 2015**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION & CUSTOMS ENFORCEMENT, Newark, NJ, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On June 6, 2014 appellant filed a timely appeal from a May 23, 2014 merit 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 recurrence of disability commencing September 15, 2009, November 5, 2010 and November 28, 2011 causally related to his April 1, 2009 employment injury; and (2) whether appellant met his burden of proof to establish cervical radiculopathy, right lateral epicondylitis, right bicipital tendinitis, right carpal tunnel syndrome, and left supraspinatus tendon tear as consequential injuries.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 6, 2009 appellant, then a 35-year-old detention and removal assistant filed a traumatic injury claim alleging that on April 1, 2009 he injured his right arm/elbow when a coworker startled him and caused him to jump. He hit his elbow against the edge of a desk, causing severe pain and swelling. OWCP initially accepted the claim for contusion of right elbow and forearm and injury to right ulnar nerve, and paid compensation benefits. Appellant stopped work on April 1, 2009, returned to work on April 6, 2009, stopped work again on April 9, 2009, and returned to work on August 3, 2009 in a limited-duty capacity.

On October 20, 2009 appellant filed a claim for a September 15, 2009 recurrence of disability causally related to his April 1, 2009 work injury. He noted that he could not perform his restricted part-time duties as the work injury had affected the motion of his fingers and elbow, caused weakness and difficulty in typing and writing, and the pain elevated to his wrist and shoulder.

In a July 31, 2009 report, Dr. Shrenik G. Shah, a Board-certified internist, diagnosed paresthesia right elbow, carpal tunnel syndrome, and tendinitis right elbow. He cleared appellant to return to work on August 3, 2009 with restrictions of lifting no more than 20 pounds and no more than two hours of computer work for four weeks. In an August 31, 2009 report, Dr. Shah noted appellant's complaints of continued right elbow and right finger pain and diagnosed paresthesia right elbow, carpal tunnel syndrome, tendinitis right elbow, and acute right-sided cervical strain. He advised that appellant could work part time with restrictions. In a September 15, 2009 report, Dr. Shah reiterated the diagnoses and recommended an elbow magnetic resonance imaging (MRI) scan. He opined that appellant could not work from September 15 through October 23, 2009 due to tendinitis of the right elbow. An October 15, 2009 MRI scan of the right elbow showed very minimal edema.

An October 22, 2009 MRI scan of the right shoulder showed supraspinatus tendinitis without evidence of rotator cuff tear and an October 22, 2009 right wrist MRI scan showed mild tenosynovitis of the carpal tendon and old styloid fracture. In an October 22, 2009 report, Dr. Shah recommended that appellant stay off work from October 15 through November 27, 2009 due to paresthesia of the right elbow, carpal tunnel syndrome, and tendinitis right elbow. In a November 30, 2009 note, he recommended that appellant stay off work for four more weeks until December 29, 2009 due to paresthesia of the right elbow, carpal tunnel syndrome, and tendinitis of the right elbow.

By decision dated December 21, 2009, OWCP denied the recurrence claim as the evidence of record failed to demonstrate a change in the nature and extent of appellant's injury-related disability or the nature and extent of his limited-duty position. The decision noted that appellant had been returned to a light-duty employment position and had failed to present any rationalized medical evidence to establish that he could no longer perform the light-duty assignment.

In a December 22, 2009 report, Dr. Shah noted that appellant's right elbow pain worsened after he shoveled snow. He recommended that appellant see an orthopedist and held him off work on January 29, 2010. In a December 31, 2009 report, Dr. Shah wrote that

appellant's conditions of right elbow tendinitis and right carpal tunnel syndrome "happened from an accident at work April 1, 2009" and appellant could not return to work.

In a January 6, 2010 report Dr. Gary R. Rombough, a Board-certified orthopedic surgeon, reported extensive right elbow pain when appellant had recently shoveled snow. He stated that appellant's electromyogram (EMG) was positive for ulnar neuropathy right arm, but the MRI scans of the right elbow and wrist were unremarkable. Dr. Rombough diagnosed exacerbation of work injury to right elbow and mild carpal tunnel syndrome of a sensory nature and held appellant off work from mid-August 2009 until January 21, 2010 due to right medial epicondylitis.

Dr. Rombough, in a January 20, 2010 report, noted appellant's continued complaints of right arm pain and right finger numbness. He diagnosed cervical radiculopathy and recommended a cervical MRI scan. In a January 28, 2010 report, Dr. Shah indicated that appellant could not work until at least March 5, 2010 due to tendinitis and paresthesias right elbow and carpal tunnel syndrome. He noted that appellant "was getting better with arm until snow shoveling." A March 2, 2010 cervical MRI scan was noted to show a bulge at C3-4 and a right-sided disc herniation at C5-6. In a March 4, 2010 report, Dr. Rombough diagnosed right C5-6 disc herniation and recommended physical therapy. In a March 16, 2010 report, Dr. Shah diagnosed herniated cervical disc and paresthesias right elbow.

Appellant filed a request for reconsideration of the December 21, 2009 decision.

By decision dated April 28, 2010, OWCP denied modification of the December 21, 2009 decision as the medical evidence failed to show an objective worsening of the accepted work-related conditions of right elbow contusion and right elbow ulnar nerve injury and that appellant's other diagnosed conditions had not been accepted as causally related to the April 1, 2009 work injury. Moreover the decision noted appellant's flare up while shoveling snow, which resulted in extreme pain, was a new, intervening, nonwork injury breaking the chain of causation from his accepted work injury.

In a May 27, 2010 report, Dr. Shah noted appellant's complaints of continued pain of the right elbow and diagnosed paresthesias right elbow, cervical herniated disc, and accelerated hypertension. In a June 21, 2010 report, Dr. Rombough diagnosed a cervical disc herniation secondary to the workers' compensation injury. In an August 5, 2010 report, Dr. Shah found that appellant could not work until at least August 20, 2010 due to right elbow paresthesias and cervical herniated disc. August 17, 2010 cervical x-rays were stated to be unremarkable.

An August 15, 2010 emergency department record reported that appellant complained of increased left neck pain that started that day when he turned his head while praying. The emergency department noted his medical history of cervical herniated discs. Radiculopathy was diagnosed. An August 17, 2010 cervical MRI scan showed bulging discs at C3-4, C4-5, and C6-7 and a small protrusion at C5-6. In an August 19, 2010 report, Dr. Shah indicated that appellant was unable to work until August 31, 2010 due to paresthesia of the right elbow and a cervical herniated disc. In an August 19, 2010 report, Dr. Rombough noted that a cervical MRI scan showed a right disc protrusion at C5-6 and that on August 20, 2010 he diagnosed herniated cervical disc and stated that appellant could return to work on September 27, 2010. He noted on

September 24, 2010 that appellant found physical therapy to be helping a little and held appellant off work until October 25, 2010.

Appellant advised Dr. Rombough that he felt he may lose his job due to his injury and asked Dr. Rombough to release him to return to work.

In an October 22, 2010 report, Dr. Rombough noted appellant's complaints of right arm pain and carpal tunnel syndrome symptoms and that he wanted to try to return to work. In an October 22, 2010 note, he returned appellant to work on October 28, 2010 with frequent breaks from the computer and no lifting over 10 pounds. However, an October 25, 2010 Form CA-17, signed by Dr. Rombough, indicated that appellant's regular-duty job required 20 pounds lifting/carrying along with other duties and Dr. Rombough opined that appellant could return to his regular duty.

Dr. Rombough again noted in a November 8, 2010 report that appellant's complaints of neck pain going into his right arm, shoulder pain, right elbow pain, and numbness of his right thumb and index and long fingers. He diagnosed cervical disc herniation, right bicipital tendinitis, right medial and lateral epicondylitis, and right carpal tunnel syndrome. In a November 8, 2010 note, Dr. Rombough again held appellant off work until December 13, 2010. In a November 10, 2010 report, he noted that appellant had hit his right arm on a desk at work in April 2009 and had now developed neck pain. Dr. Rombough noted the snow shoveling incident in his report, but not the prayer incident. He opined that appellant "sustained an injury to his right upper extremity, which resulted in cervical disc herniation, right medial and later epicondylitis, right bicipital tendinitis, and right carpal tunnel syndrome, all directly related to the accident."

On November 12, 2010 appellant filed a claim for a recurrence of disability commencing November 5, 2010 causally related to the April 1, 2009 work injury. He claimed that he had returned to work, but his pain and suffering were unbearable and his orthopedist took him off work. Dr. Rombough continued to hold appellant off work until January 28, 2011 due to carpal tunnel syndrome, cervical disc herniation, and right elbow tendinitis. In a January 24, 2011 note, he extended the period of disability to March 28, 2011 due to cervical radiculopathy, right carpal tunnel syndrome, and right elbow tendinitis.

By decision dated February 8, 2011, OWCP denied the November 5, 2010[2] recurrence claim as the medical evidence failed to establish an objective worsening of his accepted work-related conditions such that he could not work. Appellant subsequently requested a telephonic hearing on this denial, which was held on June 7, 2011.

In a March 8, 2011 report, Dr. Rombough indicated that appellant had continued pain in his neck and right elbow along with numbness in his finger, noting that he did not want epidurals. He diagnosed persistent cervical radiculopathy, right bicipital tendinitis, right epicondylitis, and right carpal tunnel syndrome and found that appellant could not work. In an

[2] The February 8, 2011 OWCP decision incorrectly notes an alleged recurrence claim of November 8, 2010 instead of November 5, 2010, which is found to be harmless error.

April 4, 2011 report, Dr. Rombough noted appellant's complaints of pain in his neck going down his right arm and advised that he should undergo cervical epidural blocks.

In a May 5, 2011 report, Dr. John Secoy, a Board-certified anesthesiologist, diagnosed pain of the cervical spine, right elbow, wrist, and fingers for two years. He stated that the pain started on April 1, 2009. Dr. Secoy diagnosed cervical intervertebral disc displacement without myelopathy and right cervical radiculopathy.

At the June 7, 2011 hearing, appellant testified that he had no problems with his right upper extremity or his neck before April 1, 2009. He denied any new accidents or injuries since April 1, 2009. Appellant stated that he returned to work in October 2010, but he had trouble performing his daily jobs of computer and file work as it aggravated the pain and tingling of his right elbow and right wrist, which increased until he stopped work on November 5, 2010.

In a June 1, 2011 report, Dr. Rombough stated that since he had been treating appellant his symptoms had worsened and he needed cervical epidurals, right lateral epicondylar release, and right carpel tunnel release. He opined that based on his examination and the objective medical evidence, "all these diagnoses and symptoms are directly and causally related to the [w]orkmen's [c]ompensation injury."

By decision dated August 16, 2011, an OWCP hearing representative affirmed the February 8, 2011 OWCP decision for the alleged recurrence of November 5, 2010. The hearing representative specifically found the occurrence of a cervical injury on April 1, 2009 was not established upon the present record.

By letter dated September 27, 2011, received by OWCP on October 4, 2011, appellant filed a request for reconsideration of both the August 16, 2011 decision (denying the recurrence claim of November 5, 2010) and the April 28, 2010 decision (denying the recurrence claim of September 15, 2009).

In a November 17, 2011 report, Dr. Secoy reported that appellant had returned to work in early November 2011 as a trial with limitations in place. Appellant reported that he was doing poorly at work and was issued 7.5 milligrams (mg) of Mobic. An impression of cervical disc herniation and cervical radiculopathy was provided with a note that he would return to work. In a November 23, 2011 report, Dr. Shah opined that appellant had never complained of similar symptoms prior to the work incident, so his conditions seemed to be a direct result of the injury he sustained at work.

By decision dated November 9, 2011, OWCP denied appellant's request for reconsideration of the April 28, 2010 decision as it was untimely filed and failed to establish clear evidence of error. That decision was thereafter vacated on November 16, 2011 as OWCP had erroneously used the incorrect standard of review for an untimely request for reconsideration.

By letter dated November 30, 2011, OWCP advised appellant that the additional condition of a herniated cervical disc at C5-6 had been accepted.

Soon thereafter, on December 5, 2011, appellant claimed a November 28, 2011 recurrence of disability. He had returned to work on November 7, 2011 and stated that he had elbow, neck, and wrist pain each day such that he stopped work on November 28, 2011. By letter dated December 19, 2011, OWCP advised appellant that he experienced a new injury, not a recurrence. Appellant's case was assigned claim number xxxxxx987.

By decision dated February 9, 2012, the claim for new injury was denied. Appellant requested a review of the written record.

In a December 1, 2011 Form CA-20, Dr. Secoy noted that appellant was released to work on November 3, 2011 but had difficulties at work "due to herniated neck pain and weakness on the right hand (epicondylity)." He advised appellant to stay off work "until betterment of [appellant's] injury conditions." Dr. Secoy further opined that appellant's condition was due to the April 1, 2009 work injury. In a December 7, 2011 office note, he reported that appellant had an exacerbation of his pain for which he went to the emergency room on November 28, 2011.

OWCP issued two decisions on January 5, 2012. These decisions denied modification of both its August 16, 2011 decision (denying a recurrence of disability commencing November 5, 2010) and its April 28, 2010 decision (denying a recurrence of disability commencing September 15, 2009). Appellant requested reconsideration.

In a January 12, 2012 letter, Dr. Secoy indicated that he examined appellant on November 17, 2011 and appellant showed severe pain on the neck while turning to the sides. Both the right shoulder and right elbow had decreased motion and weakness. Appellant complained that he could not sleep well at night because of the pain and stated that Gabapentin 100 mg and Tramadol were taken at work so he could perform his routine duties. Dr. Secoy noted that appellant called his office twice on November 28, 2011 stating that he was in severe pain and could not sleep well. Appellant called again on November 30, 2011. On December 1, 2011 he returned for an examination with Dr. Secoy and claimed that his existing neck, shoulder, and elbow injuries were aggravated while photocopying, which caused him to go to the emergency room on November 28, 2011. Dr. Secoy disagreed with the determination that this was a new injury. He concluded that the exacerbation of appellant's workers' compensation injury caused appellant to go to the emergency room. Based on Dr. Secoy's examination, there were no new injuries to appellant's neck, right shoulder, right elbow, and right wrist on November 28, 2011, only the continuation of the existing workers' compensation injury.

In a February 22, 2012 report, Dr. Secoy confirmed that he examined appellant on February 9, 2012 and that appellant stated that he was depending on his left hand after the work incident and was now experiencing severe pain in his left shoulder. He stated that the February 17, 2012 MRI scan showed some abnormalities. Dr. Secoy opined that appellant's problems on the left shoulder resulted from the continuous usage of his left hand because of the weakness of right hand due to the injury sustained at work.

By decision dated May 1, 2012, OWCP denied modification of its January 5, 2012 decision denying appellant's recurrence claim commencing September 15, 2009.

In a May 1, 2012 letter, OWCP requested additional factual and medical evidence to support the claimed recurrence of November 28, 2011. It received appellant's statement and medical evidence. The medical evidence included hospital emergency department pathology testing from November 28, 2011 and discharge medicals, a November 28, 2011 computerized tomography scan of the cervical spine and upright portable chest, and a Form CA-20 and excuse from work note dated December 1, 2011 from Dr. Secoy.

By decision dated May 8, 2012, an OWCP hearing representative remanded the November 28, 2011 recurrence claim to OWCP to adjudicate the recurrence and combine claim number xxxxxx987 with the current case, claim number xxxxxx652. The hearing representative noted that appellant returned to work on November 7, 2011, performing minimal duties for two weeks. He then began regular duties with accommodations. OWCP combined the records on June 15, 2012 and reviewed the complete record.

On May 29, 2012 appellant requested reconsideration of the January 5, 2012 denials of his recurrence claims of September 15, 2009 and November 5, 2010.

By decision dated August 1, 2012, OWCP denied the claimed recurrence of November 28, 2011 on the basis that the evidence of record failed to demonstrate that the claimed recurrence of disability was causally related to the Apri1 1, 2009 work injury. It noted that the recurrence was developed on May 1, 2012 and additional medical evidence had been reviewed.

By decision dated October 17, 2012, OWCP denied modification of the January 5, 2012 decisions denying appellant's claims for recurrence commencing September 15, 2009 and November 5, 2010. It noted that none of the medical evidence supported a change in the nature and extent of his injury-related condition or in his employment duties. OWCP also noted that appellant's recurrence claim of November 28, 2011 had been denied by decision dated August 1, 2012 and that the evidence in that claim had been reviewed and considered.

On October 25, 2012 appellant requested reconsideration of the denial of his recurrence claims of September 15, 2009, November 5, 2010, and November 28, 2011. The documentation included numerous duplicate medical reports previously of file and previously considered.

Evidence submitted in support of appellant's reconsideration included: appellant's May 23, 2012 statement and duplicative medical evidence already in file. New medical evidence submitted consisted of a February 17, 2012 MRI scan report which provided an impression of partial thickness undersurface tears of the supraspinatus and infraspinatus tendons and a suspected anterosuperior cartilaginous labrum tear. In an undated report, Dr. Shah stated that appellant sustained an injury to his right elbow and neck after being startled by a coworker at work. This was initially treated as epicondylitis, carpal tunnel syndrome without any success. Dr. Shah noted that a cervical spine MRI scan showed herniated disc and protrusion. He noted that appellant never had previous radicular symptoms and concluded that "this seems to be a direct result of the injury sustained at work." Dr. Shah also noted that appellant has been out of work for several months due to this injury.

In an October 4, 2012 report, Dr. Secoy indicated that he was treating appellant for multiple conditions stemming from the April 1, 2009 injury which were: cervical radiculopathy, right lateral epicondylitis, right bicipital tendinitis, right carpal tunnel syndrome, and left supraspinatus tendon undersurface partial tear. He stated that it was clear appellant sustained multiple injuries at work and these injuries aggravated or worsened on November 28, 2011 at work while photocopying, causing appellant to go to the emergency room. Dr. Secoy opined, based on the nature of appellant's injury, that it was better for him to stay off work rather than to aggravate the injuries again.

In an October 23, 2012 report, Dr. Rombough noted no history of trauma since the original workmen's compensation accident. He noted appellant's complaints of pain in his neck going down both arms, in both shoulders, and weakness in his hands. Dr. Rombough provided an impression of a combination of cervical radiculopathy, ulnar nerve entrapment, and bicipital tendinitis. An MRI scan of the left shoulder showed a partial undersurface tear of the rotator cuff. Dr. Rombough opined that most of appellant's symptoms in the left shoulder were due to bicipital tendinitis. Additional diagnostic testing was recommended.

By decision dated December 4, 2012, OWCP affirmed its prior decision finding that the evidence of record failed to establish that appellant's condition had materially changed to the point where he could no longer work on the dates of the three claimed recurrences.

Appellant requested reconsideration of OWCP's December 4, 2012 decision. Evidence submitted with his request included his March 1, 2013 letter, diagnostic testing, November 20, 2012 MRI scan reports of the right shoulder and cervical spine, MRI scans of the left shoulder dated February 17 and November 20, 2012, physical therapy reports, an e-mail dated September 15, 2009, a fitness-for-duty note dated January 15, 2013, an EMG nerve conduction velocity report dated November 29, 2012, and a January 22, 2013 New York Life Insurance form signed by Dr. Suhas Badarinath, a Board-certified physiatrist, which noted that appellant was unable to work from January 15, 2013 to the present due to rotator cuff tendinitis and cervical disc herniation.

Medical reports dated April 19 and October 4, 2012, January 15, February 5 and 28, March 12, and April 2 and 16, 2013, from Dr. Badarinath were also received. Dr. Badarinath noted the history of the April 1, 2009 work injury, findings on examination, and provided an assessment of sprained rotator cuff, contusion of elbow, injury to the ulnar nerve, cervical disc displacement, and cervical spondylosis. She opined that appellant's pain from medial epicondylitis, rotator cuff sprain, and cervical radiculopathy was the result of the April 1, 2009 work-related injury. On January 15, 2013 Dr. Badarinath recommended that appellant be off work until he was reevaluated due to his chronic neck pain, arm radicular pain, and shoulder pain following work-related injury.

By decision dated May 13, 2013, OWCP denied modification of the December 4, 2012 decision on the basis that the medical evidence was insufficient to establish an expansion of appellant's claim to include a left shoulder injury, an inability to return to work on the claimed recurrence dates of September 15, 2009, November 5, 2010 or November 28, 2011, or that his condition had materially worsened to the point where he was disabled.

On March 10, 2014 appellant requested reconsideration of OWCP's May 13, 2013 decision. He also requested that his claim be expanded to include left and right shoulder conditions. Evidence included with his reconsideration request included July 18, 2013 MRI scan reports of the left and right shoulders, a May 7, 2013 MRI scan cervical report, a November 6, 2013 x-ray of the shoulder, November 25, 2013 and February 17, 2014 reports on nerve block injections to the C4-5 and C5-6 areas, an April 16, 2014 anesthesia record, an April 28, 2014 epidural C7-T1, physical therapy prescriptions for the shoulder and/or cervical areas and reports by physical therapists, requests for physical therapy, requests for nerve blocks and various prescription slips advising of an inability to work. Medical reports previously of record were also received.

Also received were appellant's March 4, 2014 statement requesting reconsideration, other statements dated June 24, July 24, August 7, and November 8, 2013 and January 30, 2014, a removal action of November 18, 2013 and documents pertaining thereto, a May 13, 2013 letter from the Office of Personnel Management (OPM) accepting his carpal tunnel syndrome claim, a January 30, 2014 decision by the Equal Employment Opportunity Commission (EEOC) dismissing his claim and associated documents, and an article from the Malankara Jacobite Syrian Christian Network regarding appellant.

In an August 8, 2013 report, Dr. Mohammed Shafi, an internist and Board-certified gastroenterologist, noted that appellant's complaints regarding his neck and bilateral shoulder pain have been ongoing for the last five years. Appellant stated that he injured his shoulder and neck when somebody came from behind, startled him, and he jumped, injuring his neck and shoulders. Examination findings were provided and an assessment of complete rupture of rotator cuff, nontraumtic right, old tear of rotator cuff, rotator cuff syndrome, bilateral; partial nontraumatic tear of left rotator cuff; cervical intervertebral disc disorder with myelopathy; and cervical spondylosis without myelopathy was provided. In his October 1, 2013 report, Dr. Shafi noted that appellant presented for right elbow pain and swelling. A diagnosis of medial epicondylitis elbow was provided.

In a November 6, 2013 report, Dr. Michael T. Lu, a Board-certified orthopedic surgeon, noted appellant's history of injury. Impressions of displacement of cervical intervertebral disc without myelopathy chronic, brachial neuritis or radiculitis NOS chronic, medial epicondylitis right chronic, pain in joint, right forearm chronic, and disorders of bursae and tendons in bilateral shoulder region chronic were provided. Dr. Lu advised that the abnormal findings on appellant's shoulder MRI scan may be age appropriate. He noted that appellant's physical examination revealed pain out of proportion to his radiographic findings and stated that much of his shoulder pain may be originating in his neck. Dr. Lu also found that appellant's right elbow and wrist pain were out of proportion to his radiographic findings. He stated that his examination was nonspecific for a single pathology that might be surgically addressed.

In reports dated April 30, May 14, June 13 and 27, July 18, August 29, September 19 and October 23, 2013, and January 9 and March 3, 2014, Dr. Badarinath continued to provide assessments of cervical radiculopathy, cervical spondylosis, bilateral shoulder pain, injury right ulnar nerve, medial epicondylitis, cervical disc displacement, and rotator cuff sprain. She advised that appellant's pain was a result of the April 1, 2009 work injury.

By decision dated May 23, 2014, OWCP denied modification of its May 13, 2013 decision. It noted that the medical documentation submitted (the reports by Drs. Shafi, Singh, Lu, and Badarinath) did not address recurrent disability on the dates claimed, nor did they mention any incidence of recurrent disability or provide an opinion on recurrent disability. Nor did they explain how such disability would be causally related to the accepted work incident. Furthermore, it noted that no medical opinion of record suggested that additional conditions arose as a result of any of the three claimed recurrences, or the accepted work injury of April 1, 2009.

LEGAL PRECEDENT -- ISSUE 1

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[3] When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part of this burden of proof, 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.[4]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a contusion of his right elbow and forearm, injury to his right ulnar nerve, and a herniated cervical disc at C5-6 as a result of the April 1, 2009 work incident.

The record reflects that, at the time of his September 15, 2009 claimed recurrence, appellant was working part-time limited duty with restrictions, and at the time of his November 5, 2010 and November 28, 2011 recurrences, he was working full-time limited duty with restrictions. He does not allege and the record does not reflect that any of his light-duty job requirements had changed. Rather, appellant attributes his disability on the claimed dates of recurrence to his employment-related residuals such that he could not perform the light-duty job requirements. The Board has reviewed the medical record and finds no reasoned opinion to support his claims that he sustained a change in his accepted medical conditions on September 15, 2009, November 5, 2010, or November 28, 2011 to substantiate his claims of total disability.

With regard to the claimed recurrence of September 15, 2009, appellant returned to work on August 3, 2009 working a part-time limited-duty position with restrictions. OWCP's procedures provide that if a claim of recurrence of disability is made within 90 days or less

[3] 20 C.F.R. § 10.5(x).

[4] *Terry R. Hedman*, 38 ECAB 222 (1986).

following the first return to duty, the focus is on disability, rather than causal relationship.[5] There is, however, no medical evidence of record showing how or why the accepted right elbow/forearm contusion and injury to the right ulnar nerve objectively worsened such that appellant could not work as of September 15, 2009.

On September 15, 2009 Dr. Shah took appellant off work due to right elbow tendinitis. On October 22 and November 27, 2009 he recommended that appellant stay off work due to carpal tunnel syndrome, right tendinitis, and paresthesia. Medical notes from November 27, 2009 referred to appellant's right elbow pain. While Dr. Shah recommended that appellant stay off work from September 16 until December 29, 2009, he provided no detailed information or medical rationale to support his conclusion. He did not offer an explanation as to how the accepted conditions of contusion of right elbow and forearm and injury to the right ulnar nerve had worsened to the point where appellant could not perform restricted part-time work. While Dr. Shah notes appellant's complaints of right elbow pain, subjective complaints of pain, without other significant medical findings, are insufficient to establish his claim. The Board has held that the mere diagnosis of pain does not constitute the basis for payment of compensation.[6] Dr. Shah's diagnosis of carpal tunnel syndrome, which is not supported by any diagnostic testing, has not been accepted by OWCP. While he opined in his December 31, 2009 report that appellant's conditions of right elbow tendinitis and right carpal tunnel syndrome occurred from the April 1, 2009 work accident, no medical rationale was provided for his opinion.

Reports from Dr. Rombough, contemporaneous to the September 15, 2009 claimed recurrence, do not address appellant's condition at the time of the claimed recurrence of disability. They also fail to show an objective worsening of the accepted work-related conditions of right elbow contusion and right elbow ulnar nerve injury.

With regard to the November 5, 2010 recurrence claim, there is no medical evidence contemporaneous to appellant's work stoppage to support that any of the accepted work-related conditions had objectively worsened such that he could not work as of November 5, 2010. Additionally, as noted by Drs. Shaw and Rombough, appellant also had intervening injuries from shoveling snow and turning his head while praying.

OWCP accepted a herniated cervical disc condition on November 30, 2011. In his November 8, 2010 sick slip, Dr. Rombough indicated that appellant could not work for one month due to cervical strain. However, he offered no medical rationale as to how the cervical strain was causally related to the April 1, 2009 work incident. In his November 10, 2010 report, Dr. Rombough noted the snow shoveling incident, but not the prayer incident which appellant had claimed. He concluded that appellant "sustained an injury to his right upper extremity which resulted in cervical disc herniation, right medial and lateral epicondylitis, right bicipital tendinitis, and right carpal tunnel syndrome, all directly related to the accident." Dr. Rombough did not specifically address how the accepted conditions, including cervical herniation, caused disability as of November 5, 2010.

[5] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500(5)(a) (June 2013).

[6] *Robert Broome*, 55 ECAB 339 (2004).

With regard to the November 28, 2011 recurrence claim, the record indicates that appellant stated that he did poorly the past month at his limited-work position desk job and asked Dr. Secoy for a medical leave from work. Medical reports from Dr. Secoy dated November 17, 2011 through February 24, 2012 were received along with testing and discharge medicals from the emergency department dated November 28, 2011 and reports from Dr. Shah dated January 3 and 19, 2012. The November 28, 2011 discharge notes and testing from the emergency department are insufficient to establish appellant's recurrence claim as they offer no opinion as to his claim of total disability. They merely rely on appellant's subjective complaints. The reports from Dr. Shah are also insufficient to establish appellant's claim as the claimed recurrence of November 28, 2011 is not mentioned.

The reports from Dr. Secoy fail to support that any of the accepted work-related conditions had objectively worsened such that appellant could not work as of November 28, 2011. They also fail to establish any medical condition causally related to the April 1, 2009 work injury. Dr. Secoy noted in his December 1, 2011 report that appellant was released to return to work on November 3, 2011, but he had difficulties at work due to the neck pain and right hand weakness. Appellant was advised to stay off work "until betterment of his injury conditions," which he opined were due to the April 1, 2009 work injury. However, Dr. Secoy failed to state what difficulties appellant was having at work such that he could not perform his limited duties or how the herniated neck pain had worsened such that he was unable to perform his duties. He further offered no rationale as to how appellant's right hand weakness was causally related to the April 1, 2009 work injury. In his January 12, 2012 letter, Dr. Secoy indicated that he saw appellant on November 17, 2011 and that he took Gabapentin 100 mg and Tramadol at work to perform his routine duties. He noted on December 1, 2011 that appellant returned to the office where a thorough examination was performed. Appellant told Dr. Secoy that Mobic 7.5 mg was not helping his injury and explained the events of the November 28, 2011 work stoppage. Dr. Secoy stated that there was no new injury sustained, only the exacerbation of existing injury. He concluded that the exacerbation of appellant's workman's compensation injury and noneffect of Mobic led appellant to go to the emergency room. Based on his examination, Dr. Secoy stated that there was no new injury to appellant's neck, right shoulder, right elbow, and right wrist on November 28, 2011 and opined that it was the continuation of the existing workers' compensation injury. He, however, provided no objective findings or medical rationale as to what work factors exacerbated appellant's accepted work conditions or why he could not perform his work duties. Dr. Secoy further provided no explanation as to why appellant's accepted work conditions caused him to perform poorly and had worsened to the point he stopped work on November 28, 2011. Thus, these reports are insufficient to establish appellant's claim.

Dr. Secoy stated in an October 4, 2012, report that he was treating appellant for multiple conditions stemming from the April 1, 2009 injury which were: cervical radiculopathy, right lateral epicondylitis, right bicipital tendinitis, right carpal tunnel syndrome, and left supraspinatus tendon undersurface partial tear. He stated that it was clear appellant sustained multiple injuries at work and these injuries aggravated or worsened on November 28, 2011 while photocopying, leading him to visit the emergency room. Dr. Secoy opined that, based on the nature of appellant's injury, it was better to stay off from work rather than aggravate the injuries again and he advised appellant to stay off from work. However, he provided no examination findings or medical rationale with objective evidence to support that the conditions he was

treating were causally related to the April 1, 2009 work injury. Dr. Secoy further provided no rationale or explanation as to how those conditions were aggravated or worsened on November 28, 2011 while appellant was at work. Thus, his report is insufficient to establish that appellant was incapable of performing limited-duty work and that his condition had materially changed to the point he was disabled on September 15, 2009, November 5, 2010, and November 28, 2011.

In several reports, Dr. Shah concluded that appellant sustained multiple injuries as a result of the April 1, 2009 work injury and his condition has worsened due to work conditions. However, he does not provide a rationalized explanation of how appellant's condition worsened as a result of his working conditions or what the working conditions were. Dr. Shah further does not mention the snow shoveling or praying incidents or provide any objective findings to show that the accepted medical conditions worsened on any of the claimed dates of recurrence, which would preclude appellant from working. While he subsequently opines in 2012 reports that appellant's problems with his neck, right shoulder, right elbow, and right wrist are the result of the April 1, 2009 work injury and that his injury worsened due to work conditions, Dr. Shah appears to base his opinion on the fact that appellant had never had any medical problems in those areas prior to the work injury. The Board had held that an opinion that a condition is causally related because the employee was asymptomatic before the incident is insufficient, without supporting rationale, to establish causal relation.[7] A physician must provide a narrative description of what happened on the date of the claimed traumatic event so as to determine whether he or she is relying on a proper history of injury.[8] Medical conclusions unsupported by rationale are of little probative value and are insufficient to satisfy the causal relationship element of appellant's burden of proof.[9]

The remaining medical reports of record, which include reports from Dr. Singh, Dr. Shafi, Dr. Lu, and Dr. Badarinath are insufficient to establish appellant's inability to return to work or that his accepted conditions have materially changed to the point he was disabled on September 15, 2009, November 5, 2010, or November 28, 2011. They neither discuss the claimed dates of recurrence, nor explain how the diagnostic test results and objective medical evidence, which include additional left and right shoulder conditions, are causally related to either the April 1, 2009 work injury or factors of appellant's employment. While Dr. Badarinath opines in the majority of his reports that appellant's pain is the result of the April 1, 2009 work injury, he provides no medical rationale with objective evidence to support his opinion. Furthermore, he fails to mention any causally related disability as a result of the claimed recurrences. No supported and substantiated medical opinion is of record which suggests that appellant's shoulder conditions arose as a result of either the claimed recurrences or the accepted work incident of April 1, 2009.

The other medical reports of record fail to mention any of the alleged recurrences of September 15, 2009, November 5, 2010, and November 28, 2011 or support an objective

[7] *See John F. Glynn*, 53 ECAB 562 (2002).

[8] *See John W. Montoya*, 54 ECAB 306 (2003).

[9] *Ceferino L. Gonzalez*, 32 ECAB 1591 (1981).

worsening of the accepted conditions. They also fail to offer a well-rationalized opinion as to why appellant's other diagnosed conditions are causally related to the April 1, 2009 work injury.

As previously noted, evidence from physical therapists and diagnostic testing of record are insufficient to establish appellant's claim. Appellant's statements and evidence pertaining to other claims such as EEOC and OPM are not relevant to the issues of claimed recurrent disability.

Appellant has submitted no probative medical opinion evidence to support his three recurrence claims. The medical evidence of record is unsupported by rationalized medical evidence to demonstrate that the claimed periods of total disability were caused, precipitated, accelerated, or aggravated by the accepted injury or to explain the nature of the relationship between his current conditions and his accepted injury.[10] Accordingly, the Board finds that appellant has not met his burden of proof.

On appeal, appellant contends that he was injured at work and his physicians have provided a detailed account of his injuries and diagnosed conditions in relation to his claimed recurrences. As explained above, there is no probative medical opinion evidence to establish that he either had a material change in his accepted conditions due to the claimed recurrences of September 15, 2009, November 5, 2010, or November 28, 2011 or a new condition arising out of the April 1, 2009 work incident.

LEGAL PRECEDENT -- ISSUE 2

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.[11] To establish a causal relationship between the condition claimed, as well as any attendant disability and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.[12] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[13] Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale, explaining the nature

[10] *A.M.*, Docket No. 09-1895 (issued April 23, 2010) (when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of FECA).

[11] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[12] *Jennifer Atkerson*, 55 ECAB 317 (2004).

[13] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[14]

Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[15]

ANALYSIS -- ISSUE 2

OWCP denied appellant's request to expand his claim to include injury to his shoulders, right carpal tunnel, and other conditions not accepted by OWCP. The issue is whether he has met the burden of proof to establish that his diagnosed conditions are causally related to his accepted injury. The Board finds that appellant has not met his burden of proof.

While Dr. Shah, as early as July 31, 1999 diagnosed carpal tunnel syndrome and tendinitis of the right elbow, he never offered a rationalized medical explanation as to the objective basis of these diagnoses and how the April 1, 2009 incident in which appellant hit his right arm/elbow against his desk would have caused these conditions. He never explained the significance of the October 15, 2009 MRI scan of the right elbow which showed only minimal edema, and the October 22, 2009 MRI scan of the right wrist which showed old styloid fracture and mild tenosynovitis of the carpal tendon. As such Dr. Shah's opinion is of limited probative value.

Similarly, Dr. Rombough diagnosed cervical disc herniation, right bicipital tendinitis, right medial and lateral epicondylitis, and right carpal tunnel syndrome. While he concluded on November 10, 2010 that these conditions were due to the April 1, 2009 incident, he never explained with medical rationale, the basis of his opinion. Dr. Rombough did note in this report appellant's history regarding the snow shoveling incident, but did not explain how the diagnosed conditions were physiologically caused by the elbow bump on April 1, 2009 as opposed to this new incident. In his October 23, 2012 report, he noted no history of trauma since the original workers' compensation accident. Dr. Rombough provided an impression of a combination of cervical radiculopathy, ulnar nerve entrapment, and bicipital tendinitis and noted the MRI scan of left shoulder showed a partial undersurface tear of the rotator cuff. He opined that most of appellant's symptoms in the left shoulder were due to bicipital tendinitis. Dr. Rombough, however, indicated multiple diagnoses which OWCP has not accepted and he offered no medical rationale or explanation as to how those diagnosed would have been caused by the April 1, 2009 work incident. Furthermore, there is no mention of either the December 2009 snow shoveling incident or the August 15, 2010 praying incident.[16] Thus, this report is insufficient to establish a basis for expansion of appellant's claim. Dr. Rombough additionally does not offer any opinion on any of the recurrence claims or discuss appellant's ability to perform any of the limited-duty

[14] *Leslie C. Moore*, 52 ECAB 132 (2000).

[15] *Ernest St. Pierre*, 51 ECAB 623 (2000).

[16] *See John W. Montoya*, *supra* note 8.

functions of his position when he stopped work on September 15, 2009, November 5, 2010, and November 28, 2011.

In his January 12, 2012 report, Dr. Secoy diagnosed left shoulder injury, due to overuse of appellant's left hand following his right hand injury. With respect to consequential injuries, the Board has stated that where an injury is sustained as a consequence of impairment related to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment.[17] Dr. Secoy, however, provided no history of how appellant used his left hand to cause a left shoulder injury. This explanation is especially important given appellant's work status following the April 9, 2009 injury.

For the reasons discussed above, the medical reports from appellant's other treating physicians, including Dr. Shafi and Dr. Badarinath, fail to provide a well-rationalized medical opinion with objective evidence supporting how the additional medical conditions were caused, precipitated, or aggravated by the April 1, 2009 work injury or his duties of federal employment. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.[18]

Finally, the Board notes that Dr. Lu in his November 6, 2013 report stated that the abnormal findings on appellant's shoulder MRI scan may be age appropriate. He also noted that appellant's physical examination revealed pain out of proportion to his radiologic findings. Dr. Lu concluded that his examination was nonspecific for a single pathology.

The Board finds that appellant has not met his burden of proof to establish any additional conditions causally related to his accepted work injury. Therefore, OWCP properly denied his request to expand his claim as alleged.

CONCLUSION

The Board finds that appellant failed to establish a recurrence of disability on September 15, 2009, November 5, 2010, or November 28, 2011 causally related to his April 1, 2009 employment injury. The Board also finds that he has not met his burden of proof to expand the accepted conditions in this claim.

[17] *See Kathy A. Kelley*, 55 ECAB 206 (2004).

[18] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated May 23, 2014 is affirmed.

Issued: June 17, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board