

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

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**S.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Fresno, CA, Employer**

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**Docket No. 15-1391  
Issued: October 28, 2015**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 8, 2015 appellant filed a timely appeal from a May 12, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established a recurrence of disability from August 24 to November 15, 2013 causally related to a June 21, 2007 employment injury.

**FACTUAL HISTORY**

The case was before the Board on a prior appeal.<sup>2</sup> The issue then addressed by the Board was a recurrence of disability from June 22 to August 23, 2013. In the prior decision, the Board

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Docket No. 14-1511 (issued March 2, 2015).

affirmed a June 4, 2014 OWCP decision, finding the medical evidence was insufficient to establish the recurrence of disability claim. As noted above, the issue in the present appeal is a recurrence of disability from August 24 to November 15, 2013.

To summarize the relevant factual history, appellant filed a traumatic injury claim (Form CA-1) alleging injuries in a motor vehicle accident on June 21, 2007 while in the performance of duty as a letter carrier. OWCP has accepted the following conditions: abrasion of multiple sites, contusion of left knee, sprain of right hand, closed dislocation of left thumb, right shoulder rotator cuff tear, right shoulder impingement, right biceps rupture, cervical strain, cervical radiculopathy, aggravation of cervical degenerative disc disease, and herniated cervical disc. Appellant worked intermittently and received compensation for total disability on the periodic rolls commencing November 21, 2010.<sup>3</sup>

The record indicates that appellant underwent cervical surgery on March 22, 2011. An attending Board-certified orthopedic surgeon, Dr. Ali Najafi, noted in a December 18, 2012 note that appellant should lift no more than 35 pounds. OWCP referred appellant for a second opinion examination by Dr. Mojinder Nijjar, a Board-certified orthopedic surgeon. In a report dated January 31, 2013, Dr. Nijjar opined that appellant could return to his regular full-time job. The employing establishment offered appellant a modified position on June 15, 2013 that included a 35-pound lifting restriction.<sup>4</sup> Appellant began working as of June 15, 2013.

On June 25, 2013 appellant filed a claim for a recurrence of disability commencing June 22, 2013. He submitted a claim for compensation (Form CA-7) on September 4, 2013 for the period August 24 to September 6, 2013. Appellant filed additional claims for compensation through November 15, 2013.

As the Board noted in the prior appeal, appellant submitted a June 28, 2013 report from Dr. Amarjit Mangat, a preventative medicine specialist, reporting that he had been seen by Dr. Najafi on June 24, 2013 and found to be disabled. In a report dated July 9, 2013, Dr. Najafi provided results on examination and noted that a June 6, 2013 cervical magnetic resonance imaging (MRI) scan showed multilevel degenerative changes. He noted that appellant would be referred for cervical facet injections. By report dated August 1, 2013, Dr. Najafi noted that appellant had reported neck pain while delivering mail on June 22, 2013 and he had “pulled [appellant] off of work until his next office visit” on July 9, 2013. He recommended that appellant be off work until September 9, 2013. By report dated August 7, 2013, Dr. Najafi noted that appellant should be off work at least until his next office visit, in order to start treatment for cervical disc degeneration and failed back syndrome.

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<sup>3</sup> OWCP issued a schedule award decision dated December 7, 2009 for three percent right arm permanent impairment, and a March 24, 2014 decision finding appellant had five percent left arm permanent impairment.

<sup>4</sup> As the Board noted in the prior decision, Dr. Nijjar had not provided a 35-pound lifting restriction, but a vocational rehabilitation counselor had asserted in a June 5, 2013 report that Dr. Nijjar had imposed a 35-pound lifting restriction.

In a note dated November 6, 2013, Dr. Najafi noted that appellant had last been seen on July 9, 2013. He reported that appellant could return to work on November 4, 2013 with restrictions that included no carrying of a mailbag and limited walking.

The employing establishment offered appellant a full-time modified city carrier position on November 16, 2013. Appellant accepted the position on November 19, 2013 and returned to work. The record indicates that appellant submitted a report dated January 28, 2014 from Dr. Mangat, who noted that appellant had returned to full-time work in November 2013. Dr. Mangat provided results on examination and diagnosed chronic neck pain. He opined that appellant was disabled from January 28 to 30, 2014. In a report dated March 26, 2014, Dr. Mangat provided results on examination and diagnosed chronic neck pain and cervical degenerative disc disease. He reported that appellant had lifted a heavy box at work recently and had an increase in neck pain. Dr. Mangat noted that appellant was scheduled for facet injections on April 1, 2014 and may be released to full duty in the injections provided relief. He did not address disability from August 24 to November 15, 2013.<sup>5</sup>

Appellant also continued to submit reports from Dr. Najafi regarding his continuing treatment. In a report dated February 11, 2014, Dr. Najafi noted that appellant would be referred for C4-5 cervical injections. By report dated May 13, 2014, he diagnosed cervical disc degeneration. Appellant stopped working again on May 22, 2014 and filed claims for compensation (Form CA-7).<sup>6</sup>

OWCP subsequently developed the medical evidence with respect to a continuing employment-related disability and selected Dr. Perminder Bhatia, a Board-certified neurologist, as a referee physician to resolve a conflict in the medical evidence under 5 U.S.C. § 8123(a). Dr. Bhatia submitted a report dated November 10, 2014, which discussed appellant's physical capabilities to return to work; however, he did not discuss disability for work from August 24 to November 15, 2013.

With respect to the claim for compensation from June 22 to August 23, 2013, OWCP issued decisions dated September 5, 2013 and June 4, 2014. The Board affirmed these decisions in the prior appeal.<sup>7</sup> The Board found the medical evidence did not establish a recurrence of disability from June 22 to August 23, 2013.

By decision dated May 12, 2015, OWCP denied the claim for compensation from August 24 to November 15, 2013. It found the medical evidence was insufficient to establish the claim.

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<sup>5</sup> Appellant continued to submit reports regarding neck treatment from Dr. Mangat, but none of the reports address the period August 24 to November 15, 2013.

<sup>6</sup> OWCP issued decisions dated August 7, October 28, and November 5, 2014 and January 29, 2015, with respect to claims for compensation commencing May 22, 2014. These decisions are not before the Board on the current appeal.

<sup>7</sup> *Supra* note 2.

## LEGAL PRECEDENT

A person 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 claims compensation is causally related to the accepted injury.<sup>8</sup> OWCP's procedures discuss the evidence necessary if recurrent disability for work is alleged within 90 days of return to duty. It is noted that the focus is on disability rather than causal relationship of the accepted condition to the work injury.<sup>9</sup>

The Board has held that if recurrent disability for work is claimed within 90 days or less from the first return to duty, the attending physician should describe the duties which the employee cannot perform and the demonstrate objective medical findings that form the basis for the renewed disability for work.<sup>10</sup> When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>11</sup>

## ANALYSIS

The issue in the present case is a claim for recurrence of disability for the closed end period August 24 to November 15, 2013. It is appellant's burden of proof to establish the claim. Appellant had returned to work on June 15, 2013; therefore, this period of disability is within 90 days of return to work. The Board finds the medical evidence in this case is insufficient to meet appellant's burden of proof. Dr. Najafi treated appellant on August 1, 2013 and recommended that he be off work until September 9, 2013. He did not discuss objective findings with regard to disability, or refer to appellant's job duties prior to his work stoppage. A complaint of pain is not, as noted above, a probative medical opinion establishing disability for work. The August 7, 2013 report from Dr. Najafi simply documents that appellant should be off work until the next appointment, without further explanation.

There is no medical report discussing disability during the period August 24 to November 15, 2013. A brief note dated November 6, 2013 from Dr. Najafi noted that appellant could work with restrictions, but Dr. Najafi did not provide results on examination, and noted that he had last seen appellant on July 9, 2013. He does not provide a medical opinion supported by medical rationale<sup>12</sup> that establishes an employment-related disability from August 24 to November 15, 2013.

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<sup>8</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 (June 2013).

<sup>10</sup> *See G.P.*, Docket No. 14-1150 (issued September 15, 2014); *R.C.*, Docket No. 14-201 (issued May 8, 2014).

<sup>11</sup> *See S.E.*, Docket No. 14-1125 (issued October 1, 2014).

<sup>12</sup> Medical rationale is a medically sound explanation for the opinion offered. *See Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator that the conclusion drawn is rational, sound and logical).

The reports from Dr. Mangat do not address the claimed period of disability at issue on this appeal. The January 28, 2014 report, for example, refers only to a brief period of disability from January 28 to 30, 2014.

The referral to Dr. Bhatia did not involve a conflict in the medical evidence regarding disability from August 24 to November 15, 2013, and Dr. Bhatia did not address the issue.

In the absence of probative medical evidence, appellant has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant did not establish a recurrence of disability from August 24 to November 15, 2013 causally related to a June 21, 2007 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 12, 2015 is affirmed.

Issued: October 28, 2015  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board