

elbows due to engaging in job duties for 22 years that required repetitive reaching, grabbing, lifting, pushing, pulling, and typing. He did not stop work at that time.

In an October 31, 2012 letter, appellant's immediate supervisor stated that, for the past five years, appellant had been working 20 hours per week in a light-duty position which required him to occasionally lift objects weighing up to 10 pounds. He indicated that the job did not require appellant to reach above his shoulder level.

OWCP accepted that appellant sustained bilateral shoulder tendinitis. Appellant later stopped work and received partial disability compensation on the daily rolls for four hours per workday beginning June 17, 2013.

In a May 6, 2014 form report, Dr. Charles Herring, an attending Board-certified orthopedic surgeon, indicated that appellant could work eight hours per day limited to continuous lifting up to 15 pounds and intermittent lifting up to 25 pounds.

In a July 2, 2014 report, Dr. Edward Mittleman, an attending Board-certified family practitioner, indicated that he treated appellant for shoulder and elbow complaints. He reported his examination findings and diagnosed bilateral shoulder tenosynovitis (accepted), bilateral shoulder adhesive capsulitis, bilateral elbow lateral epicondylitis, and bilateral shoulder acromioclavicular joint arthropathy. Dr. Mittleman stated that appellant worked for four hours per day and indicated that he could return to modified work with restrictions of lifting and carrying up to 25 pounds on an intermittent basis and reaching above the shoulder level for up to one hour.²

In August 2014, appellant elected to receive Office of Personnel Management (OPM) retirement benefits instead of FECA benefits. He was taken off FECA's daily compensation rolls effective August 25, 2014 and began to receive OPM benefits.

In a September 4, 2014 report, Dr. Mittleman reported his examination findings and diagnosed the same conditions as identified in his July 2, 2014 report. He stated that appellant could return to modified work with restrictions of continuously lifting up to 15 pounds and intermittently lifting up to 25 pounds.

In a March 27, 2015 letter to OWCP, appellant reported that he had retired effective August 26, 2014 but was now electing to receive FECA benefits instead of OPM benefits retroactive to August 26, 2014. On April 21, 2015 he asserted that he was entitled to FECA compensation for total disability beginning August 26, 2014.

In a letter dated April 30, 2015, OWCP noted that appellant had been working in a light-duty position (20 hours per week). By requesting to return to FECA benefits, OWCP determined that appellant was effectively claiming a recurrence of total disability due to his accepted work injury, bilateral shoulder tendinitis, retroactive to August 26, 2014. OWCP requested that

² Dr. Mittleman also completed a July 2, 2014 form report indicating that appellant could work eight hours per day with restrictions of continuously lifting up to 15 pounds and intermittently lifting of up to 25 pounds. In an August 19, 2014 report, Dr. Herring noted that appellant's work status was "per primary treating physician."

appellant submit additional factual and medical evidence in support of his recurrence of disability claim.

In a May 7, 2015 letter, appellant again asserted that he was entitled to FECA compensation for total disability beginning August 26, 2014. He submitted a May 5, 2015 report in which Dr. Basimah Khulusi, an attending Board-certified physical medicine and rehabilitation physician, reported his examination findings and diagnosed bilateral shoulder tenosynovitis (accepted), bilateral shoulder adhesive capsulitis, bilateral elbow lateral epicondylitis, and bilateral shoulder acromioclavicular joint arthropathy. Dr. Khulusi stated that appellant could return to modified work noting that he would “continue him on the same restrictions on the job.”

By decision dated June 19, 2015, OWCP denied appellant’s claim because he did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability on or after August 26, 2014. It indicated that appellant had been working in a modified position for four hours per day prior to electing benefits from OPM. OWCP noted that, because appellant requested full FECA compensation benefits retroactive to August 26, 2014, he was essentially claiming a recurrence of total disability beginning that date. OWCP discussed the medical evidence of record and found that appellant had not shown a change in the nature and extent of his injury-related condition or a change in the nature and extent of his light-duty job requirements.

LEGAL PRECEDENT

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 of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.³

ANALYSIS

OWCP accepted that appellant sustained bilateral shoulder tendinitis due to performing his work duties over time. Appellant’s claim was accepted in early 2013 when he was working 20 hours per week in a light-duty position which required him to occasionally lift objects weighing up to 10 pounds. He initially received partial FECA disability benefits, but he later elected to receive OPM disability benefits. Appellant retired effective August 26, 2014. On March 27, 2015 he elected to receive full-time FECA benefits instead of OPM benefits

³ *S.F.*, 59 ECAB 525 (2008); *Terry R. Hedman*, 38 ECAB 222 (1986). 20 C.F.R. § 10.5(x) provides, “*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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.”

retroactive to August 26, 2014. Appellant asserted that he was entitled to FECA compensation for total disability beginning August 26, 2014.

The Board finds that OWCP properly interpreted appellant's claim as a claim for a recurrence of total disability beginning August 26, 2014. Appellant had not been on total disability at the time of his retirement. He has failed to submit sufficient medical evidence to establish a recurrence of total disability on or after that date. Appellant failed to establish that, on or after August 26, 2014, he was unable to perform his light-duty work due to residuals of his accepted work injury. In addition, he failed to show any change in the nature and extent of his light-duty job requirements which prevented him from performing his light-duty work.

In his September 4, 2014 report, Dr. Mittleman found appellant capable of returning to modified work with restrictions of continuously lifting up to 15 pounds and intermittently lifting of up to 25 pounds.

As this report contains an opinion that appellant could continue in his modified work, it does not show that he sustained a recurrence of total disability due to his accepted work injury. The report does not show that there was a change in the nature and extent of appellant's injury-related condition which prevented him from performing his light-duty work. The Board notes that Dr. Mittleman's work restrictions are in accordance with the requirements of the light-duty position appellant performed prior to August 26, 2014.⁴

In the May 5, 2015 report, Dr. Khulusi stated that appellant could return to modified work noting that he would "continue him on the same restrictions on the job." This report also confirms that appellant could continue in his modified work and therefore does not establish a recurrence of total disability due to his accepted work injury.

Appellant has not shown a change in the nature and extent of his injury-related condition or a change in the nature and extent of his light-duty job requirements. Therefore, OWCP properly denied his claim for a work-related recurrence of total disability beginning August 26, 2014.

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 meet his burden of proof to establish a recurrence of total disability on or after August 26, 2014.

⁴ Dr. Mittleman produced a July 2, 2014 report in which he provided a similar description of appellant's medical condition and indicated that he could perform his modified work with restrictions of lifting and carrying up to 25 pounds on an intermittent basis and reaching above the shoulder level for up to one hour. The record reflects that appellant's modified job duties prior to August 26, 2014 did not require reaching above the shoulder level.

ORDER

IT IS HEREBY ORDERED THAT the June 19, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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