United States Department of Labor
Employees' Compensation Appeals Board

K.P., Appellant	)	
and	)	**Docket No. 15-1711**
	)	**Issued: January 14, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Madison, WI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 17, 2015 appellant filed a timely appeal from a May 7, 2015 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 claim.

ISSUE

The issue is whether appellant has established a recurrence of disability on or after July 22, 2013 due to his accepted October 11, 2011 work injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 11, 2011 appellant, then a 49-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that same date he sustained a left shoulder injury when he was pushing a hamper onto a trailer and the hamper locked, causing pain in his left shoulder.

By decision dated December 16, 2011, OWCP accepted the claim for left rotator cuff tear. Appellant sought treatment with his attending physician, Dr. William Pennington, a Board-certified orthopedic surgeon. On April 13, 2012 he underwent left shoulder arthroscopic surgery which was approved by OWCP. Appellant received compensation for medical and wage-loss benefits as a result of his accepted injuries and returned to full-duty work on November 21, 2012.

In a July 31, 2013 medical report, Dr. Pennington reported that appellant presented for a follow up of his left shoulder and complained of tightness and pain which began approximately two weeks prior. He provided findings on physical examination and recommended a left shoulder magnetic resonance imaging (MRI) scan due to concern for the rotator cuff as well as evidence of acromioclavicular joint pathology from impingement. In a return to work note that same date, Dr. Pennington released appellant to work without restrictions on August 1, 2013 and requested reevaluation upon completion of the MRI scan. On August 1, 2013 he requested OWCP authorize a left shoulder MRI arthrogram.

In an October 7, 2013 report, Brian Bartz, a physician assistant, reported that beginning on July 19, 2013, appellant complained of increasing left shoulder pain during work. Dr. Pennington had performed an arthroscopic rotator cuff repair of his shoulder about one and a half years prior and appellant had been released to full duty. Mr. Bartz noted prior x-rays failed to demonstrate fracture or arthrosis and that an MRI arthrogram of the left shoulder had been ordered. In a return to work note on that same date, Dr. Pennington released appellant to work with restrictions on October 8, 2013 and requested reevaluation upon completion of the MRI scan testing.

On October 11, 2013 appellant submitted claim for compensation CA-7 forms for intermittent periods of leave without pay from July 22 through November 15, 2013.

By decision dated October 31, 2013, OWCP expanded the claim to include left sprain of shoulder rotator cuff and left complete rotator cuff rupture.

In a letter dated October 31, 2013, OWCP informed appellant that the evidence of record was insufficient to support his recurrence claim beginning July 22, 2013. It noted that based on his description of the circumstances which prompted the filing of the Form CA-7, it appeared that he was claiming a new occupational disease attributed to repetitive work exposure over the course of more than one work shift and thus, a new occupational disease claim should be pursued using a Form CA-2.

In a December 2, 2013 return to work note, Dr. Pennington released appellant to full-duty work without restrictions. Appellant resumed full-duty employment the first week of December 2013.

A narrative report dated December 2, 2013 was also received from Dr. Pennington who reported that appellant underwent an MRI scan due to left shoulder pain and weakness. The scan demonstrated intact rotator cuff without any evidence of tear, either partial or full thickness in nature. Dr. Pennington noted evidence of acromioplasty, some moderate glenohumeral articular cartilage thinning, and arthrosis. He diagnosed left shoulder early glenohumeral arthrosis with intact rotator cuff repair and informed appellant that his pain was mostly arthritic in nature. Appellant was provided with Lidocaine injections.

By letter dated January 21, 2014, OWCP informed appellant that the evidence of record was insufficient to support his recurrence claim. It noted that he filed a Form CA-2 for his left shoulder injury with a July 19, 2013 date of injury in claim No. xxxxxx748, which had not yet been formally decided.[2] Appellant was advised of the medical and factual evidence needed to establish a claim for recurrence of disability and was directed to submit it within 30 days.

In a January 27, 2014 report, Mr. Bartz reported that appellant's MRI scan revealed an intact repair of the rotator cuff and also some chondral thinning with subchondral edema which had worsened.

By decision dated June 9, 2014, OWCP denied appellant's recurrence claim because the medical evidence failed to establish disability beginning July 22, 2013 due to a material change/worsening of his accepted October 11, 2011 work injury.

On June 30, 2014 appellant requested an oral hearing before an OWCP hearing representative.

In an October 8, 2014 medical report, Dr. Pennington reported that appellant had known chondral damage from a previous work injury. He explained that the latest MRI scan demonstrated an intact rotator cuff repair, but the chondral change, which was noted at the time of his surgery, seemed to have worsened as appellant now had subchondral bone edema from a minor to moderate extent, suggestive of continued and worsening chondral loss in the postoperative state. In a return to work note of that same date, Dr. Pennington released appellant to work without restrictions on October 9, 2014.

A hearing was held on February 17, 2015. Appellant testified regarding his condition. He explained that on July 19, 2013 he was stacking hampers at work and developed pain in his left shoulder which was similar to the pain he experienced with his initial injury. Appellant stated that he was unable to obtain a medical appointment until August 1, 2013 and had to wait until November 2013 for approval of an MRI scan which caused him to be off work. He reported that he was treated for arthritis in the shoulder which he allegedly developed as a result of his prior surgery. Appellant further stated that he had filed a new occupational disease claim (Form CA-2) for the July 2013 work injury but his claim had been denied.

In a March 31, 2015 certificate of return to work, Dr. William G. Dralle, Board-certified in family medicine, reported that appellant was excused from work for the period February 17 through April 5, 2015.

[2] No other information pertaining to appellant's occupational disease claim is before the Board.

In an April 19, 2015 medical report, Dr. Dralle reported that appellant had left shoulder pain from a work injury. Appellant had undergone surgery in April 2012 and returned to work following his recovery. He claimed he reinjured his shoulder on July 19, 2013 and was out of work intermittently from August through October, 2013. Dr. Dralle reported that appellant had not worked from October 8 through early December 2013 pending approval of a medically necessary MRI scan of his shoulder. He noted some arthritic changes because of the original injury and opined that appellant should be compensated for time lost while waiting for further evaluation in the fall of 2013.

By decision dated May 7, 2015, an OWCP hearing representative affirmed the June 9, 2014 decision finding that the medical evidence of record failed to establish a recurrence of disability causally related to the accepted October 11, 2011 work injury.

LEGAL PRECEDENT

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 resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.[3] This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations and which is necessary because of a work-related injury or illness is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force.[4]

OWCP procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from the previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.[5]

An employee 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 or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to

[3] 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

[4] *Id.*

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013). *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

the employment injury, and supports that conclusion with medical reasoning.[6] Where no such rationale is present, the medical evidence is of diminished probative value.[7]

ANALYSIS

OWCP accepted appellant's claim for left sprain of shoulder rotator cuff and left complete rotator cuff rupture. On April 13, 2012 appellant underwent left shoulder arthroscopic surgery which was approved by OWCP. He stopped work and returned to full duty without restrictions on November 21, 2012. The issue is whether appellant established a recurrence of disability from July 22 through November 15, 2013 causally related to his accepted October 11, 2011 work injuries.

Appellant has not alleged a change in his light-duty job requirements as he was released to full duty following his arthroscopic surgery. Instead, he attributed his inability to work due to a change in the nature and extent of his employment-related left shoulder condition. Appellant, therefore, has the burden of proof to establish that he was disabled due to a worsening of his accepted work-related conditions.[8] He filed claims for compensation for the period July 22 through November 15, 2013 alleging that his left shoulder injury was causally related to the accepted October 11, 2011 employment injury. However, appellant did not submit probative medical evidence demonstrating total disability for this period of time due to his accepted conditions and failed to provide a sufficiently rationalized medical opinion explaining a causal relationship between his current condition and his October 11, 2011 work injury. The Board finds that he has not met his burden of proof to establish his claim.

In support of his claim, appellant submitted medical reports dated July 31, 2013 through October 8, 2014 from his attending physician, Dr. Pennington. The Board finds that the opinion of Dr. Pennington is not well rationalized. The reports of Dr. Pennington fail to provide sufficient medical rationale to establish disability due to a recurrence of disability beginning July 22, 2013.[9] Dr. Pennington's July 31, 2013 report noted that appellant complained of left shoulder tightness and pain. However, an increase in pain alone does not constitute objective evidence of disability.[10] Dr. Pennington's December 2, 2013 report indicated that MRI scan testing revealed that the left shoulder pain was due to early arthrosis of his glenohumeral joint, explaining that appellant's pain was mostly arthritic in nature. The Board notes that arthrosis of the glenohumeral joint is not a condition which has been accepted as work related. Dr. Pennington's reports do not support that the claim should be expanded to include this additional condition as he provided no opinion that the arthrosis was causally related to the accepted October 11, 2011 work injury. Moreover, it is unclear if appellant's arthrosis resulted from a preexisting degenerative condition which had progressed beyond what might be expected

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

[7] *Mary A. Ceglia*, Docket No. 04-113 (issued July 22, 2004).

[8] *D.L.*, Docket No. 13-1653 (issued November 22, 2013).

[9] *L.G.*, Docket No. 11-142 (issued August 12, 2011).

[10] *See supra* note 5 at Chapter 2.1500.6.a(2) (June 2013).

from the natural progression of that condition.[11] A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.[12]

With respect to the accepted work-related rotator cuff injury, Dr. Pennington found that the rotator cuff remained intact without any evidence of tear, either partial or full-thickness in nature. He did not provide adequate bridging evidence to show a spontaneous worsening of the accepted conditions as diagnostic testing revealed normal. Rather, Dr. Pennington correlated in general terms that appellant began experiencing left shoulder pain in July 2013.[13] He had no knowledge of any employment activities which could have caused appellant injury given that appellant himself has alleged that he sustained a left shoulder injury on July 19, 2013 when he was stacking hampers and developed pain. Furthermore, not only did Dr. Pennington fail to opine that the left shoulder glenohumeral arthrosis was causally related to the October 11, 2011 work injury, but he also failed to find appellant disabled for the period July 22 through November 15, 2013.[14] As his report contains no rationale explaining why appellant was disabled beginning July 22, 2013, his opinion is insufficient to support that appellant sustained a worsening of his work-related condition.[15]

Dr. Pennington's return to work notes also do not support appellant's claim for disability compensation beginning July 22, 2013. His August 2, 2013 note released appellant to full duty without restrictions and requested reevaluation upon completion of MRI scan testing. Dr. Pennington's October 7, 2013 note released appellant to work with restrictions and requested reevaluation upon completion of the MRI scan testing. Following MRI scan testing, his December 2, 2013 note released appellant to full-duty work without restrictions. The return to work notes do not provide support that appellant was disabled from July 22 through November 15, 2013 as a result of his October 11, 2011 work injury. Appellant has alleged that he was off work pending approval of a left shoulder MRI scan. On appeal, he argues that OWCP's delay in approving this MRI scan was detrimental to his claim. However, the medical evidence submitted reveals that Dr. Pennington found appellant capable of working both prior to the submission of the MRI scan test, as well as after the scan was completed given the findings made. The Board, therefore, finds appellant's argument without merit.

Subsequent to OWCP's initial June 9, 2014 denial of appellant's recurrence claim, appellant submitted an October 8, 2014 medical report from Dr. Pennington. Dr. Pennington reported that appellant had known chondral damage from a previous work injury and explained that although the latest MRI scan demonstrated an intact rotator cuff repair, the chondral change, which was noted at the time of his surgery, seemed to have worsened as appellant now had

[11] *R.E.*, Docket No. 14-868 (issued September 24, 2014).

[12] The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship. *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[13] *J.H.*, Docket No. 14-775 (issues July 14, 2014).

[14] *R.A.*, Docket No. 14-1327 (issued October 10, 2014).

[15] *See Sedi L. Graham*, 57 ECAB 494 (2006) (medical form reports and narrative statements merely asserting causal relationship generally do not discharge a claimant's burden of proof).

subchondral bone edema from a minor-to-moderate extent suggestive of continued and worsening chondral loss in the postoperative state. The Board notes that Dr. Pennington failed to provide a firm medical diagnosis with a fully-rationalized opinion which could be attributed to residuals of the April 13, 2012 surgery resulting in chondral loss, nor did he provide any opinion finding appellant disabled as a result of his original October 11, 2011 work-related injury. Dr. Pennington's medical reports contemporaneous with the disability dates in question indicate that appellant was capable of performing his employment duties. Therefore, the reports of Dr. Pennington do not constitute sufficient medical evidence demonstrating a recurrence of disability from July 22 through November 15, 2013.[16]

Dr. Dralle's March 31 and April 5, 2015 medical notes are also insufficient to meet appellant's burden of proof. He reported that appellant had left shoulder pain from a work injury, underwent surgery in April 2012, and returned to work following his recovery. Dr. Dralle explained that on July 19, 2013 appellant reinjured his shoulder and was out of work intermittently from August through December 2013 pending approval of a medically necessary MRI scan. The Board notes that Dr. Dralle did not evaluate appellant during the period for which recurrence is claimed and failed to provide a thorough medical history documenting appellant's treatment. Moreover, Dr. Dralle's reports provide no medical examination findings or review of diagnostic testing. The FECA procedure manual provides that greater probative value is given to a medical opinion based on an actual examination. An opinion based on a cursory or incomplete examination will have less value compared to an opinion based on a more complete evaluation.[17] Dr. Dralle's opinion that appellant's arthritic changes were due to the original injury is of no probative value as the physician provided no connection to the two conditions.[18] He failed to have any understanding of appellant's work duties and did not provide support for a spontaneous material change of appellant's work-related injury without an intervening incident. Moreover, Dr. Dralle's opinion that appellant was disabled from August through December 2013 pending approval of a medically necessary MRI scan does not establish employment-related disability. Thus, his reports are insufficient to meet appellant's burden of proof.[19]

The remaining medical evidence is also insufficient to support appellant's claim. The older medical reports of record did not discuss appellant's disability from July 22 through November 15, 2013. For this reason, the Board finds that these reports are of limited probative value regarding the current issue.[20] The reports contemporaneous with the period of disability in

[16] *D.M.*, Docket No. 11-2086 (issued August 15, 2012).

[17] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.6(a)(4) (September 2010).

[18] *J.P.*, Docket No. 14-87 (issued March 14, 2014).

[19] *W.P.*, Docket No. 13-1992 (issued September 10, 2014).

[20] *J.A.*, Docket No. 13-1657 (issued February 3, 2014).

question failed to provide sufficient medical rationale explaining how appellant remained disabled as a result of the October 11, 2011 employment injury.[21]

The reports of Mr. Bartz are also insufficient to establish appellant's claim as they are not signed by a physician. The Board has held that a medical opinion can only be provided by a physician.[22] Registered nurses, physical therapists, and physicians assistants, are not physicians as defined under FECA.

Appellant did not submit any medical reports from a physician who, on the basis of a complete and accurate factual and medical history, established that appellant was totally disabled from work July 22 through November 15, 2013 due to residuals of his accepted injury. He failed to establish by the weight of the reliable, probative, and substantial evidence, a change in the nature and extent of the injury-related condition resulting in his inability to perform his employment duties.[23]

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 disability from July 22 through November 15, 2013, causally related to his accepted October 11, 2011 employment injury.

[21] *W.F.*, Docket No. 12-479 (issued November 27, 2012); *Dean E. Pierce*, 40 ECAB 1249 (1989).

[22] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005).

[23] *Beverly A. Spencer*, 55 ECAB 501 (2004).

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 14, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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