

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

C.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Hattiesburg, MS, Employer**

)
)
)
)
)

**Docket No. 16-1157
Issued: November 25, 2016**

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 May 11, 2016 appellant filed a timely appeal from a January 21, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 met his burden of proof to establish a recurrence of disability on or after March 24, 2013 due to his accepted March 21, 2003 work injury.

FACTUAL HISTORY

On April 10, 2003 appellant, then a 48-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on March 21, 2003 he sustained injury when he reached for a mail tray on top of a rack and felt muscle pain. He stopped work on March 21, 2003. OWCP

¹ 5 U.S.C. § 8101 *et seq.*

accepted that appellant sustained a herniated cervical disc at C6-7 with myelopathy, cervical spine stenosis, cervical spondylosis with myelopathy, bilateral brachial neuritis, and bilateral carpal tunnel syndrome.² Appellant received disability compensation on the daily rolls beginning May 12, 2003 and on the periodic rolls beginning September 7, 2003.

OWCP authorized several corrective surgeries in connection with the accepted conditions that were performed between 2003 and 2010, including anterior cervical discectomy with allograft bone arthrodesis at C6-7 using microscopic dissection; bilateral decompressive laminectomies from C3 through C6 with partial bilateral laminectomy at the caudal aspect of C2; and left and right carpal tunnel release surgeries.

In late 2011, OWCP referred appellant to Dr. Richard Harris, a Board-certified orthopedic surgeon, for examination and an opinion on continuing residuals of the March 21, 2003 work injury. In a January 3, 2012 report, Dr. Harris indicated that appellant continued to have residuals of the March 21, 2003 work injury. In a February 28, 2012 form report, he recommended various work restrictions on such activities as reaching, lifting, pushing, and pulling.

On January 29, 2013 the employing establishment offered appellant a permanent modified processing clerk job that accommodated the restrictions provided by Dr. Harris. Appellant accepted the offer on February 3, 2013, and he returned to light-duty work on a full-time basis on February 9, 2013.

Appellant stopped work on March 4, 2013 and used leave to cover his absence for the period March 4 to 23, 2013. He continued to stay off work and filed claims for compensation (Forms CA-7) claiming disability due to his March 21, 2003 work injury for the period March 24, 2013 and continuing.³

In an April 8, 2013 report, Dr. Michael C. Patterson, an attending Board-certified orthopedic surgeon, indicated that appellant had not been allowed any conservative care and noted that "he had a clear work-related issue that was significant and documented by x-ray findings." He opined that a previous physician who examined appellant did not have expertise in taking care of spinal patients.⁴ Dr. Patterson reported physical examination findings and diagnosed chronic neck pain and chronic low back pain.

² Appellant also filed an occupational disease claim (under OWCP File No. xxxxxx641) in which he listed March 21, 2003 as the date that he first realized that he had a medical condition caused or aggravated by his employment. This claim was deemed to be duplicative of the present traumatic injury claim and the documents from the claim have been doubled into the file for the present claim. OWCP previously accepted (under OWCP File No. xxxxxx629) that appellant sustained a traumatic low back strain on April 13, 2000. Appellant's April 13, 2000 work injury is not the subject of the present appeal. On May 20, 2013 he filed an occupational disease claim (under OWCP File No. xxxxxx585) alleging that he sustained an occupational disease in early 2013 due to performing his work duties over time. In an August 26, 2013 decision, OWCP denied appellant's claim. This occupational disease claim is not the subject of the present appeal.

³ Appellant asserted that he sustained a recurrence of disability on March 24, 2013 due to his March 21, 2003 work injury.

⁴ Dr. Patterson did not identify the physician to whom he referred.

In a May 23, 2013 report, Dr. Patterson indicated that appellant's symptoms and physical examination findings were unchanged. He noted that appellant had multilevel cervical kyphosis from previous anterior cervical discectomy and fusion surgeries "related to his work-related injury." Dr. Patterson diagnosed chronic neck pain and chronic low back pain.

In a June 10, 2013 letter, OWCP advised appellant regarding the type of medical evidence needed to establish his recurrence of disability claim. It provided appellant 30 days to submit additional medical evidence, but he did not submit any medical evidence in the allotted period.

By decision dated July 22, 2013, OWCP denied appellant's claim because he did not submit sufficient medical evidence to establish a recurrence of disability on or after March 24, 2013 due to his accepted March 21, 2003 work injury. It noted that Dr. Patterson did not provide an opinion that residuals of the March 21, 2003 work injury prevented appellant from performing his limited-duty work.

Appellant requested a telephonic hearing with an OWCP hearing representative. During the hearing held on February 13, 2014, he testified that he believed that residuals of his March 21, 2003 work injury prevented him from carrying out his limited-duty work tasks.

After the hearing, appellant submitted a February 28, 2013 report in which Dr. Patterson noted that he reported that he had "made no progress." Dr. Patterson indicated that appellant reported that he had symptoms that were much worsened by his work. He diagnosed chronic neck pain and chronic low back pain.

By decision dated April 14, 2014, OWCP's hearing representative affirmed OWCP's July 22, 2013 decision denying appellant's recurrence of disability claim. She found that the medical evidence of record did not contain a rationalized medical opinion showing a recurrence of disability on or after March 24, 2013 due to the March 21, 2003 work injury.

On October 27, 2014 appellant requested reconsideration of his claim in an October 3, 2014 letter that was initially sent to his congressional representative.

In a March 3, 2014 report, Dr. Patterson indicated that appellant reported that a majority of his symptoms were related to his right shoulder. He noted that the symptoms appeared to show rotator cuff tendinitis and/or tear. Dr. Patterson diagnosed chronic cervicalgia and chronic lumbago. He recommended physical therapy for appellant's neck and indicated that additional diagnostic testing was required to evaluate his right shoulder.

In a March 31, 2014 report, Dr. Michael J. Stonnington, an attending Board-certified orthopedic surgeon, indicated that appellant's right acromioclavicular joint and the anterior aspect of his right shoulder were tender to palpation. He listed range of motion findings for the right shoulder. Dr. Stonnington diagnosed partial thickness rotator cuff tear of the right shoulder and acromioclavicular degenerative joint disease. He noted, "We cannot say without some degree of medical probability that this is a work[-]related injury."

In a July 28, 2014 report, Dr. Susi Folsom, an attending Board-certified physical medicine and rehabilitation physician, indicated that, upon examination, appellant was tender to palpation

of the acromioclavicular joint and the anterior aspect of his right shoulder. She noted that appellant's right shoulder motion was limited. Dr. Folse diagnosed chronic cervicalgia, chronic pain in limb, chronic cervical disc degeneration, and chronic lumbago.

In a September 4, 2014 report, Dr. Folse reported physical examination findings from that date which were similar to those previously found. She noted that appellant had some paraspinal spasms and trigger points in his neck and that his trapezius muscles had some taut bands. Dr. Folse indicated that she was going to keep appellant off work until reevaluation in four to six weeks.

By decision dated December 17, 2014, OWCP denied modification of the April 14, 2014 decision denying appellant's claim for a recurrence of disability on or after March 24, 2013 due to his accepted March 21, 2003 work injury.

Appellant requested reconsideration in a form received by OWCP on November 9, 2015.

In a January 26, 2015 report, Dr. Folse noted that appellant primarily complained of neck pain and low back pain with left leg radiculopathy symptoms. The physical examination revealed low back and buttocks pain with sacroiliac joint tenderness. There were paraspinal spasms and trigger points of pain in the neck and intrascapular areas. Dr. Folse diagnosed lumbago, cervicalgia, cervical degenerative disc disease, and cervical spine disease.

In a report dated April 27, 2015, Dr. Folse noted that appellant reported that he previously had experienced work-related injuries to his back and neck. She noted that appellant's most recent MRI scan showed fusion at C4-5, C5-6, and C6-7 with increased degenerative changes at C7-T1. A recent lumbar MRI scan showed multilevel degenerative disc disease with some broad bulges and canal stenosis at multiple levels. Dr. Folse indicated that appellant was not interested in surgery at the time. She diagnosed cervicalgia, cervical disc disease, lumbago, and degenerative lumbar intervertebral disc. In an August 3, 2015 report, Dr. Folse described appellant's current pain and ongoing symptoms and discussed medical treatment that had been provided. She described findings that were similar to those contained in her prior reports.

By decision dated January 21, 2016, OWCP denied modification of its December 17, 2014 decision denying appellant's recurrence of disability claim. It noted that the medical evidence did not provide an opinion that residuals of the March 21, 2003 work injury prevented appellant from performing his limited-duty work on or after March 24, 2013.

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.⁵

ANALYSIS

OWCP accepted that on March 21, 2003 appellant sustained a herniated cervical disc at C6-7 with myelopathy, cervical spine stenosis, cervical spondylosis with myelopathy, bilateral brachial neuritis, and bilateral carpal tunnel syndrome. It approved a series of neck and upper extremity surgeries that were performed between 2003 and 2010. Appellant stopped work after his March 21, 2003 work injury and was paid disability compensation for periods of disability. He returned to light-duty work on a full-time basis on February 9, 2013. Appellant stopped work on March 4, 2013 and used leave to cover his absence for the period March 4 to 23, 2013. He continued to stay off work and filed claims for compensation (Forms CA-7) claiming disability due to his March 21, 2003 work injury for the period March 24, 2013 and continuing.⁶ In several decisions, OWCP denied appellant's claim because he did not submit sufficient medical evidence to establish a recurrence of disability on or after March 24, 2013 due to his accepted March 21, 2003 work injury.

The Board finds that appellant failed to submit sufficient medical evidence to establish a recurrence of disability on or after March 24, 2013 due to his accepted March 21, 2003 work injury.

In an April 8, 2013 report, Dr. Patterson indicated that appellant had not been allowed any conservative care and noted that "he had a clear work-related issue that was significant and documented by x-ray findings." He reported examination findings and diagnosed chronic neck pain and chronic low back pain. The submission of this report does not establish appellant's recurrence of disability claim because, although Dr. Patterson mentioned a "clear work-related issue," he did not provide any indication that appellant sustained a recurrence of disability on or after March 24, 2013 due to his accepted March 21, 2003 work injury. He did not provide an opinion that residuals of the March 21, 2003 work injury prevented appellant from carrying out the limited-duty work he performed when he stopped work in March 2013. The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's condition or disability is of limited probative value on the issue of causal relationship.⁷

⁵ *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."

⁶ Appellant asserted that he sustained a recurrence of disability on March 24, 2013 due to his March 21, 2003 work injury.

⁷ See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

In a May 23, 2013 report, Dr. Patterson indicated that appellant's symptoms and physical examination findings were unchanged. He diagnosed chronic neck pain and chronic low back pain. Dr. Patterson noted that appellant had multilevel cervical kyphosis from previous anterior cervical discectomy and fusion surgeries "related to his work-related injury." However, he did not discuss any particular surgeries or explain how they caused cervical kyphosis. Moreover, Dr. Patterson did not identify any period of disability. He produced other reports, from 2013 and 2014, but none of these reports contains an opinion that appellant sustained a recurrence of disability on or after March 24, 2013 due to his accepted March 21, 2003 work injury.

In a March 31, 2014 report, Dr. Stonnington diagnosed partial thickness rotator cuff tear of the right shoulder, and acromioclavicular degenerative joint disease. However, he did not discuss appellant's disability and, in fact, he suggested a nonwork-related cause for the conditions when he indicated, "We cannot say without some degree of medical probability that this is a work[-]related injury." The Board notes that appellant's March 21, 2003 work injury was not accepted for a right shoulder injury and the medical evidence of record does not otherwise show that he sustained a right shoulder injury on March 21, 2003.

In a July 28, 2014 report, Dr. Folse indicated that, upon examination, appellant was tender to palpation of the acromioclavicular joint and the anterior aspect of his right shoulder. She diagnosed chronic cervicalgia, chronic pain in limb, chronic cervical disc degeneration, and chronic lumbago. On September 4, 2014 Dr. Folse reported examination findings from that date which were similar to those previously noted. She indicated that she was going to keep appellant off work until reevaluation in four to six weeks. Although Dr. Folse recommended a period of disability, she did not provide any indication that the disability was caused by appellant's March 21, 2003 work injury. She produced other reports in 2015, but none of these reports contain an opinion that appellant sustained a recurrence of disability on or after March 24, 2013 due to his accepted March 21, 2003 work injury.

On appeal, appellant asserts that he still cannot work because he has neck pain, upper extremity numbness and weakness, and back pain. However, with respect to his back pain, it should be noted that the March 21, 2003 work injury was not accepted for any back condition and appellant has not submitted medical evidence to support that he sustained a back injury on March 21, 2003.⁸ Appellant also has not submitted evidence showing that neck pain or upper extremity numbness/weakness from the March 21, 2003 work injury has disabled him from light-duty work on or after March 24, 2013.

For these reasons, appellant did not establish a recurrence of disability on or after March 24, 2013 due to his accepted March 21, 2003 work injury.⁹

⁸ Appellant has the burden of proof to establish causal relationship as OWCP did not accept a back condition as employment related. *See Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁹ The Board further notes that the evidence does not show that there was a change in the nature and extent of appellant's light-duty job requirements such that he sustained a recurrence of disability on or after March 24, 2013. *See supra* note 5.

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 on or after March 24, 2013 due to his accepted March 21, 2003 work injury.

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 25, 2016
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