

FACTUAL HISTORY

On January 17, 2012 appellant, then a 44-year-old letter carrier, filed a claim for occupational disease (Form CA-2) alleging an injury to his left shoulder due to repetitive pulling of mail and reaching for and handling mail packages/bundles as required by his job over time. He indicated that on January 6, 2012 he first became aware of his claimed condition and that it was caused or aggravated by his federal employment. Appellant did not stop work at that time.

In a report dated February 1, 2012, Dr. Vincent Kent, a Board-certified orthopedic surgeon, indicated that appellant complained of left shoulder pain due to repetitive lifting, stretching, and extension of his left arm and noted that his left arm had been hurting for approximately one year. He diagnosed a left shoulder rotator cuff tear, supraspinatus tear, as seen on a magnetic resonance imaging (MRI) scan, which he opined was caused by repetitive reaching to deliver mail. Dr. Kent recommended that appellant undergo conservative treatment.³

After development of the evidence, OWCP issued a May 31, 2012 decision accepting appellant's claim for left shoulder rotator cuff tear, supraspinatus tear. Appellant received disability compensation on the daily rolls for the periods July 17 to August 8, 2012 and August 11 to 15, 2014.

Appellant received periodic care for his left shoulder conditions from attending physicians. In a report dated January 15, 2015, Dr. Kevin B. Cleveland, an attending Board-certified orthopedic surgeon, indicated that appellant reported that his left shoulder was "killing" him and that the action which most aggravated his left shoulder condition was reaching out to the side to get mail at work. He detailed the findings of his physical examination noting that appellant had pain upon abducting his left arm and that his left biceps tendon was tender to palpation. Dr. Cleveland diagnosed left biceps tendinitis.

Appellant stopped work on May 26, 2015. On June 4, 2015 he filed a claim for a recurrence of disability (Form CA-2a) beginning March 26, 2015 due to his accepted work injury. Appellant noted on the claim form that, after work on May 26, 2015, he went to pick up a weed eater and his left shoulder "popped like a rubber band." He indicated that the location of the popping was in the same place where he had pain from the accepted work-related supraspinatus tear.⁴

In a June 9, 2015 letter, OWCP requested that appellant submit additional factual and medical evidence in support of his claim within 30 days of the date of the letter.

Appellant submitted the report of a June 3, 2015 MRI scan of his left shoulder. The findings revealed a massive rotator cuff tear characterized by full-thickness, full-width tearing of the supraspinatus and infraspinatus tendons.

³ In an attending physician's report (Form CA-20) dated January 13, 2012, Dr. Buffy J. Cook, an attending Board-certified family practitioner, noted that the MRI scan findings showed a high-grade partial thickness tear of the supraspinatus tendon, resulting from repetitive lifting, stretching, and extension of the left arm at work.

⁴ Appellant later filed claims for compensation (Form CA-7) for disability due to his accepted work injury for periods in July 2015.

In a decision dated August 13, 2015, OWCP denied appellant's claim for a recurrence of disability beginning March 26, 2015 due to his accepted work injury. It found that appellant had failed to submit sufficient medical evidence to establish a recurrence of disability claim.

Appellant subsequently submitted additional medical evidence. In a June 6, 2015 report, Dr. Cleveland indicated that appellant came in for follow up of his left shoulder condition and reported that it still was painful. He reported that the physical examination of appellant's left shoulder revealed abduction of 20 degrees, forward flexion of 20 degrees, nontenderness to palpation, and 3/5 motor strength in the supraspinatus and infraspinatus tendons. Dr. Cleveland noted that a June 3, 2015 MRI scan revealed full-thickness left rotator cuff tear with retraction of approximately three centimeters. He diagnosed massive left rotator tear. Dr. Cleveland discussed setting up surgery and noted, "Regarding the fact that he did have a partial rotator cuff tear previously and certainly this probably did not heal and now he has a complete tear of the rotator cuff."

On July 13, 2015 Dr. Cleveland performed surgical repair of appellant's left supraspinatus tear.⁵

On September 14, 2015 Dr. Cleveland reported that appellant was healing well after his surgery and that he would see him back in four weeks. He gave appellant a note indicating total disability from May 26 to November 2, 2015 due to "shoulder injury and surgery."

In a November 10, 2015 report, Dr. Cleveland indicated that appellant asked him whether the partial supraspinatus tear accepted by OWCP had contributed to the rotator cuff weakness of mid-2015 and Dr. Cleveland noted, "I have told him that it certainly could cause it to be weak and more susceptible to injury having a previous rotator cuff tear that might not have healed completely, kind of analogous to a frayed rope which would be working until it finally reached a point where it failed." He advised that appellant could perform light-duty work and he returned to such work for the employing establishment in late-November 2015.

By decision dated December 14, 2015, OWCP denied modification of its August 13, 2013 decision. It indicated that Dr. Cleveland had not adequately explained how appellant's work-related left shoulder condition spontaneously worsened without intervention from another cause.

Appellant continued to submit additional medical evidence. In a December 8, 2015 report, Dr. Cleveland noted that appellant had reported problems with abduction of his left shoulder while performing his duties at work. He noted left massive rotator cuff repair on July 13, 2015. On January 12, 2016 Dr. Cleveland provided results on examination and noted, "[He] probably did have a partial tear from the earlier injury. As time went on, he continued to use his arm in a repetitive motion as he has to do as far as delivering the mail is concerned. It probably attritioned the rotator cuff that was remaining. It definitely could have contributed to his complete tear."

⁵ On August 17, 2015 an OWCP medical adviser discussed the rotator cuff tear observed on June 2016 diagnostic testing and noted, "Recommend accepting rotator cuff tear and the eventual arthroscopy, left shoulder." It does not appear that the July 13, 2015 surgery was authorized and no additional conditions were accepted by OWCP.

In a February 23, 2016 affidavit, Dr. Cleveland noted:

“Based upon my education and medical experience, evaluating the patient, and after reviewing the medical records, it is my professional opinion as [appellant’s] treating physician that the rotator tear that [appellant] suffered in May 2015 is due to the previous tear from January 2011. I believe that the previous tear did not heal, therefore causing a full tear in May 2015.”

In a May 20, 2016 decision, OWCP denied modification of its December 14, 2015 decision. It found that Dr. Cleveland’s opinion on the cause of appellant’s left shoulder condition beginning in mid-2015 was not well rationalized.

LEGAL PRECEDENT

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.⁶ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁷ Where no such rationale is present, medical evidence is of diminished probative value.⁸

ANALYSIS

OWCP accepted in May 2012 that appellant sustained an occupational disease in the form of a left shoulder rotator cuff tear, supraspinatus tear. Appellant stopped work on May 26, 2015 and filed a Form CA-2a claim for a recurrence of disability beginning March 26, 2015 due to his accepted work injury. He noted on the claim form that, after work on May 26, 2015, he went to pick up a weed eater and his left shoulder “popped like a rubber band.” In decisions dated August 13, December 14, 2015, and May 20, 2016, OWCP denied appellant’s claim for a recurrence of disability beginning March 26, 2015 because he had failed to submit sufficient rationalized medical evidence in support of his claim.

The Board finds that appellant failed to meet his burden of proof.

Appellant submitted several reports in which Dr. Cleveland, an attending physician, posited that his massive supraspinatus tear diagnosed in 2015 was related to the supraspinatus

⁶ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986). Under 20 C.F.R. § 10.5(x), a recurrence of disability is defined, in part, as “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.”

⁷ *L.F.*, Docket No. 15-1069 (issued August 12, 2015); *Mary S. Brock*, 40 ECAB 461, 471-72 (1989).

⁸ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

tear accepted by OWCP in 2012. Dr. Cleveland found that this medical condition caused total disability beginning in mid-2015 and continuing through late 2015.

In a November 10, 2015 report, Dr. Cleveland indicated that appellant asked him if the partial supraspinatus tear accepted by OWCP contributed to the rotator cuff weakness of mid-2015 and Dr. Cleveland noted, “I have told him that it certainly could cause it to be weak and more susceptible to injury having a previous rotator cuff tear that might not have healed completely, kind of analogous to a frayed rope which would be working until it finally reached a point where it failed.”⁹ In a February 23, 2016 affidavit, he indicated:

“Based upon my education and medical experience, evaluating the patient, and after reviewing the medical records, it is my professional opinion as [appellant’s] treating physician that the rotator tear that [appellant] suffered in May 2015 is due to the previous tear from January 2011. I believe that the previous tear did not heal, therefore causing a full tear in May 2015.”

The Board finds that the reports of Dr. Cleveland are of limited probative value regarding whether appellant sustained a recurrence of disability on or after May 26, 2015 due to his accepted work injury. Dr. Cleveland failed to provide adequate medical rationale in support of his opinion on causal relationship. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁰ Dr. Cleveland provided a conclusory statement that appellant’s left shoulder condition observed in mid-2015 was related to the left shoulder condition accepted in 2012 and did not explain the medical process of how the accepted supraspinatus tear spontaneously worsened to become the left shoulder condition diagnosed in 2015.

The provision of such medical rationale is especially necessary in the present case due to the fact that the record contains limited reports of treatment of appellant’s left shoulder condition between 2012 and 2015. Dr. Cleveland failed to adequately consider whether there was some explanation for appellant’s left shoulder condition in mid-2015 other than the left supraspinatus tear that was accepted as occurring in 2012. For example, he did not consider whether appellant could have sustained a new left shoulder condition when he picked up a weed eater on May 26, 2015 and his left shoulder “popped like a rubber band.”

Moreover, Dr. Cleveland failed to adequately address whether appellant’s left shoulder problems in mid-2015 might have been due to a condition associated with work factors that arose after appellant’s claim was accepted in 2012. For example, on January 15, 2015 appellant reported to Dr. Cleveland that his left shoulder was “killing” him and that the action which most

⁹ In a June 6, 2015 report, Dr. Cleveland had indicated, “Regarding the fact that [appellant] did have a partial rotator cuff tear previously and certainly this probably did not heal and now he has a complete tear of the rotator cuff.”

¹⁰ *C.M.*, Docket No. 14-88 (issued April 18, 2014).

aggravated his left shoulder condition was reaching out to the side to get mail at work.¹¹ Dr. Cleveland did touch on this subject in a January 12, 2016 report, but his comments in this report only serve to render equivocal the opinion he provided in other reports that appellant had a spontaneous recurrence in mid-2015 of the left shoulder condition accepted by OWCP in 2012.¹² In his January 12, 2016 report, Dr. Cleveland indicated, “[Appellant] probably did have a partial tear from the earlier injury. As time went on, he continued to use his arm in a repetitive motion as he has to do as far as delivering the mail is concerned. It probably attritioned the rotator cuff that was remaining. It definitely could have contributed to his complete tear.”¹³

The Board notes that, in a June 9, 2015 development letter and the decisions denying appellant’s recurrence of disability claim, OWCP improperly characterized the accepted condition as being “sprain of shoulder and upper arm, rotator cuff, left” rather than the actual accepted condition of “left shoulder rotator cuff tear, supraspinatus tear.” However, although Dr. Cleveland did in fact diagnose appellant with a rotator tear in several reports dating from 2015, the Board has found that he did not provide adequate medical rationale to explain why appellant’s left shoulder tear in 2015 was not due to some new injury rather than a spontaneous worsening of the accepted work injury.

Because appellant has not shown that his left shoulder condition beginning in mid-2015 was related to his accepted left shoulder condition, he has not shown that he had work-related disability on or after May 26, 2015 such that he sustained a recurrence of disability on or after that date due to his accepted work injury.

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 May 26, 2015 due to his accepted work injury.

¹¹ The Board notes that the record does not contain a claim for a new traumatic injury or occupational disease and the question of whether appellant sustained such a new traumatic injury or occupational disease is not presently before the Board.

¹² The Board has held that an opinion which is equivocal in nature is of limited probative value regarding the issue of causal relationship. See *Leonard J. O’Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956).

¹³ The Board notes that, on August 17, 2015, an OWCP medical adviser discussed the rotator cuff observed on June 2016 diagnostic testing and indicated, “Recommend accepting rotator cuff tear and the eventual arthroscopy, left shoulder.” However, OWCP’s medical adviser did not provide any explanation for this recommendation.

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 2017
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