United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 16-1907**
	)	**Issued: August 29, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Flushing, NY, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 29, 2016 appellant, through counsel, filed a timely appeal from a June 10, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish a recurrence of total disability beginning October 25, 2013, adjudicated by OWCP under File No. xxxxxx781;

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

and (2) whether appellant met his burden of proof to establish an employment-related injury on October 24, 2013, in a claim adjudicated by OWCP under File No. xxxxxx352.

On appeal counsel asserts that OWCP should have provided a *de novo* determination concerning File No. xxxxxx781 as a new occupational disease claim, and that the June 10, 2016 decision should be vacated and remanded to OWCP for further development of the occupational disease claim, File No. xxxxxx352, to be followed by a *de novo* decision.

FACTUAL HISTORY

This case has previously been before the Board. In a June 10, 2009 decision in OWCP File No. xxxxxx781, the Board found that appellant had not established a recurrence of total disability on August 3, 2007 causally related to accepted cervical spondylosis without myelopathy.[3] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 7, 2000 appellant, then a 52-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that carrying heavy mail caused upper back pain. He stopped work that day. OWCP accepted cervical spondylosis. Appellant returned to part-time, limited-duty work on September 6, 2000. OWCP adjusted appellant's compensation accordingly. OWCP thereafter accepted four recurrences of disability. In May 2006 appellant began working three hours a day in a sedentary job. On October 2, 2007 he claimed a recurrence of disability (Form CA-2a) for total disability beginning August 3, 2007. On January 3, 2008 OWCP denied appellant's recurrence claim and a hearing representative affirmed this decision on July 25, 2008. Appellant appealed to the Board and on June 10, 2009 the Board affirmed the September 25, 2008 decision.

Following the August 2007 recurrence claim, appellant returned to modified duty for three hours daily on September 26, 2007. OWCP adjusted his wage-loss compensation to reflect his modified part-time letter carrier duties. On August 16, 2010 it accepted a May 10, 2010 recurrence of total disability. Appellant returned to modified duty as a registry scanner for three hours a day on July 12, 2013.[4] He received intermittent wage-loss compensation benefits after that day.

On November 17, 2013 appellant filed a recurrence claim (Form CA-2a) alleging that he had to handle hundreds of pieces of mail and had stopped work on October 25, 2013 because his neck and shoulders hurt too much to work.[5] The employing establishment controverted the claim for recurrence. A customer services manager indicated that appellant's modified duties

[3] Docket No. 08-2473 (issued June 10, 2009).

[4] In July 18, 2013 reports, Dr. Zhaoming Huang, a Board-certified physiatrist, advised that appellant could work for three hours a day within restrictions. In August 15, September 3, and October 18, 2013 reports, she related that repetitive job duties caused neck and right shoulder pain. Dr. Huang continued to limit appellant to three hours of modified duty.

[5] A time analysis form (Form CA-7a) signed by appellant and an employing establishment representative indicated that appellant worked 2.36 hours on October 24, 2013 and did not work at all on October 25, 2013.

were below the physical limitations provided which were three hours total sitting, standing, walking, pulling, pushing, and simple grasping intermittently; one hour bending and twisting intermittently; no climbing stairs, kneeling, driving a vehicle, and reaching above shoulders, with a 10-pound lifting restriction; and no pulling, pushing, or walking. The job was described as clearing carriers at the registry cage with duties of obtaining a signature from the carriers, and placing keys and a one-pound scanner from carriers into a cabinet.

The employing establishment indicated that on October 25, 2013 the manager of customer service was to request appellant's presence for a predisciplinary interview regarding attendance. When the manager approached appellant, he clocked out, indicating that his neck hurt and he had to see his physician. In an attached e-mail, he indicated that appellant then called in saying he would be sick for a month. An attached October 25, 2013 letter-of-warning cited appellant for failure to regularly report for duty.

On October 21, 2013 Dr. Huang advised that appellant had worsening right-sided neck and shoulder pain after repetitive job duties. She noted physical examination findings and advised that he was totally disabled from neck pain secondary to cervical sprain/strain with C4 to C6 herniated discs, right C6 cervical radiculopathy, exacerbation of right traumatic shoulder impingement syndrome, and left medial epicondylitis and left cubital tunnel syndrome.[6] In an October 25, 2013 treatment note, Dr. Huang's associate, Dr. Tsai C. Chao, a Board-certified physiatrist, advised that appellant's right-sided neck and shoulder pain worsened after returning to work the previous day. He diagnosed chronic neck pain exacerbation with multiple intervertebral disc herniations and radiculopathy, bilateral shoulder impingement syndrome aggravating right shoulder pain, bilateral lateral epicondylitis, and chronic discogenic lower back pain with bilateral sacroiliac joint dysfunction, and possible left lumbosacral radiculopathy. Dr. Chao found appellant totally disabled. On November 15, 2013 he diagnosed cervical sprain and strain with C4-5 and C5-6 intervertebral disc herniation and right C6 cervical radiculopathy, right shoulder pain with impingement, and left medial epicondylitis with left cubital tunnel syndrome and right carpal tunnel syndrome. Dr. Chao found that appellant could work modified duties. However, Dr. Huang completed a duty status report (Form CA-17) that day noting that appellant could not work.[7] On January 9, 2014 Dr. Huang related that appellant's current job required frequent right hand movement that increased dizziness, neck and right shoulder pain, and pain and numbness in his hands. She reiterated Dr. Chao's diagnoses and advised that appellant could work his modified position, as tolerated, and that he should avoid repetitive and stressful activities involving the right arm.

[6] There is no indication that appellant has an accepted left or right upper extremity condition.

[7] The record indicates that from December 14 through 27, 2013 appellant worked a total of eight, three-hour shifts.

On January 16, 2014 appellant accepted a modified job for three hours daily with lobby assistance duties for up to three hours, registry and scanning for less than 1.5 hours, and distributing forms and supplies for less than three hours.[8]

In a February 4, 2014 disability slip, Dr. Chao advised that appellant was totally disabled due to his diagnosed conditions. On February 7, 2014 he noted that appellant reported that he had a "heavy" work assignment that required repetitive overhead lifting. Dr. Chao advised that appellant could work his modified job as tolerated.

By letter dated February 24, 2014, OWCP advised appellant of the evidence needed to develop his claim. In a response received on March 17, 2014, appellant asserted that register window duties required constant movement of his hands and body which he felt would worsen his symptoms. In answers to an OWCP factual development questionnaire, appellant indicated that working at the register window required overhead work, dealing with heavy packages, and caused severe neck, right shoulder, and left shoulder pain.

In a March 19, 2014 letter, the employing establishment advised that appellant's job did not require repetitive motions or overloaded mail and packages. It listed appellant's duties as:

> "[R]eceiving accountable items such as letter[-]sized mail, large envelope, and parcels; accepting handheld scanner devices, and inserting them into the charging stations; accepting keys and storing them in assigned compartments. These activities when organized properly and executed as instructed can be completed without exceeding the physical restrictions outlined by the employee's medical assessments."

On March 28, 2014 Dr. Chao noted appellant's continued complaint of dizziness, neck pain, and right shoulder pain. Appellant remained unable to perform repetitive heavy overhead lifting. Dr. Chao limited appellant to working at the register three hours per day with elbow support and repetitive right arm movement no more than 180 times. He reiterated his diagnoses and advised that appellant could return to part-time, limited-duty work as tolerated.

In an April 4, 2014 decision, OWCP denied appellant's claim for a recurrence of total disability beginning October 25, 2013, with intermittent periods thereafter until February 20, 2014 when he again stopped work. It found the medical evidence of record to be insufficient to establish the claim.

Appellant requested reconsideration on May 7, 2014. He submitted medical evidence including an April 1, 2014 electrodiagnostic study of the upper extremities. This testing was interpreted by Dr. Huang as demonstrating right C6 and C7 radiculopathy, mild right carpal tunnel syndrome, and left cubital tunnel syndrome.

[8] On February 6, 2014 the employing establishment notified OWCP that on February 4, 2014 appellant refused to perform registry duties. In a February 4, 2014 statement, appellant advised that from January 16 to February 3, 2013 he worked as a lobby director, and that on February 3, 2014 he was sent to a register window. He told the manager that he could not work there because it required too much movement and would worsen his symptoms. Appellant stopped work on February 4, 2014.

In April 4 and 11, May 30, and June 27, 2014 treatment notes, Dr. Chao reported complaints of neck, right shoulder, and right wrist pain and his opinion that appellant could not engage in repetitive heavy overhead lifting. He described physical findings, reiterated diagnoses, and advised that appellant could work part-time modified duty as tolerated until June 27, 2014 when he found that appellant was totally disabled. Dr. Chao's April 4 and May 2, 2014 disability slips also indicated that appellant was totally disabled. In duty status reports from March 7 to July 25, 2014, he indicated that appellant could not work. Dr. Chao listed cervical herniated discs with radiculopathy as the diagnosis due to the injury and included left cubital tunnel syndrome as an additional disabling condition. In attending physician's reports (Form CA-20), he noted first seeing appellant on August 1, 2000. Dr. Chao diagnosed cervical herniated discs with radiculopathy, right shoulder impingement, and right-sided carpal tunnel syndrome. He checked a box marked "yes" indicating that the diagnoses were work related.

In a July 31, 2014 decision, OWCP noted that the conditions diagnosed by Dr. Chao had not been accepted as work related and denied modification of the prior decision.

On August 28, 2014 appellant filed a traumatic injury claim (Form CA-1) for an October 24, 2013 injury that occurred at 5:40 p.m. when he put a key scanner to his shoulder and had sudden and severe shoulder and neck pain.[9] In an attached statement, appellant indicated that his job required working with a package key and scanner at a register window, and on October 24, 2013 he had a sudden pain onset and reported it to a supervisor. OWCP adjudicated the traumatic injury claim under File No. xxxxxx352. The employing establishment controverted the claim, noting that appellant's recurrence claim for October 24, 2013, in File No. xxxxxx781, had twice been denied by OWCP. Appellant stopped work on October 24, 2013, resumed modified duty on December 14, 2013, stopped again on February 18, 2014, and did not return.

On September 9, 2014 appellant requested reconsideration of the July 31, 2014 decision in File No. xxxxxx781. He provided a June 10, 2002 cervical spine computerized tomography (CT) scan which showed degenerative changes, most significant at C5-6, with a herniated disc, but no evidence of cord compression. Also submitted were a July 25, 2014 treatment note, an August 22, 2014 duty status report, and an August 22, 2014 attending physician's report in which Dr. Chao repeated prior findings and conclusions. In an August 22, 2014 disability slip he noted that appellant was totally disabled.

In a September 19, 2014 letter, OWCP informed appellant of the evidence needed to support his traumatic injury claim, File No. xxxxxx352. On October 22, 2014 appellant noted that, after the denial of his recurrence, his union told him to file a CA-1 form. He asserted that "overload" duties of his modified job worsened his preexisting injury.

In a merit decision dated September 25, 2014, OWCP denied modification of its July 31, 2014 decision denying a recurrence of disability under File No. xxxxxx781.

[9] Appellant indicated that the date of the notice was October 24, 2013, but he signed the claim form on August 28, 2014.

Appellant requested reconsideration on October 9, 2014. Evidence from Dr. Chao included several reports from August 22 to October 17, 2014 in which he repeated his findings and conclusions.

In an October 2, 2014 report, Dr. Hal Rosenfeld, a chiropractor, noted that appellant had not worked since October 24, 2013 due to a recurrence of disability. He examined appellant and listed cervical x-ray findings of spondylosis at C3, C4, C5, and C6. Dr. Rosenfeld diagnosed cervical spondylosis and advised that appellant's symptoms and October 2013 recurrence of disability were caused by the August 7, 2000 work injury.

Dr. Barry M. Katzman, a Board-certified orthopedic surgeon, provided an October 7, 2014 report. He noted appellant's complaint of neck pain, and a history that he injured his neck on August 1, 2000 and aggravated his condition on October 24, 2013 by lifting too much mail and using his hand. Dr. Katzman noted limited range of neck motion and diagnosed recurrence of cervical spondylosis. He advised that appellant had a neck problem that was going into his shoulder which had become the issue.

On November 7, 2014 OWCP denied appellant's traumatic injury claim in File No. xxxxxx352, finding that the evidence of record did not support that the injury occurred as alleged as there were significant deficiencies which cast doubt on his account of the factual events.

On November 11, 2014 appellant requested reconsideration of the September 25, 2014 decision. In reports dated November 14 and December 12, 2014 and January 9, 2015, Dr. Chao indicated that appellant was unable to perform heavy overhead lifting and was totally disabled. He diagnosed cervical herniated discs with radiculopathy, right shoulder impingement, and right carpal tunnel syndrome. On form attending physician's reports, he checked a form box marked "yes" indicating that the conditions were employment related.[10] Dr. Chao continued to submit reports reiterating his findings and conclusions.

In January 2015, OWCP referred appellant to Dr. Hormozan Aprin, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding appellant's recurrence claim in File No. xxxxxx781. In a February 19, 2015 report, Dr. Aprin noted his review of the statement of accepted facts and the medical record. He described appellant's report of the August 7, 2000 work injury, and his complaint of constant neck, upper back, and shoulder pain with right arm numbness. Cervical spine examination revealed limited range of motion with tenderness and muscle spasm present. Bilateral shoulder forward flexion and abduction were also decreased with tenderness on examination. Upper extremity strength was 5/5 with decreased sensation, more noticeable on the left. Dr. Aprin advised that appellant continued to have residuals of the accepted cervical spondylosis with partial disability related to his neck and bilateral shoulders. He advised that appellant could perform a sedentary job with restrictions for four hours daily with 15-minute breaks every two hours and no reaching above the shoulder level, and no pushing, pulling, or bending. Occasional lifting and carrying were limited to 10 pounds.

[10] Appellant continued to receive wage-loss compensation for five hours daily.

In an April 2, 2015 merit decision, OWCP denied modification finding the evidence of record insufficient to alter its prior decisions denying appellant's recurrence claim under File No. xxxxxx781.

On April 5, 2015 appellant informed OWCP that the Social Security Administration (SSA) and the Office of Personnel Management (OPM) had approved disability retirement. He forwarded a March 21, 2015 letter from OPM advising that he was found to be disabled for a city carrier position due to multi-level cervical degenerative disc disease with radiculopathy.

Dr. Rosenfeld provided chiropractic reports dated April 22 and June 29, 2015 noting that appellant was being treated for a work-related neck condition with associated upper extremity weakness. He advised that appellant had been totally disabled since February 22, 2014 and could not reach, grasp, or perform any repetitive use of his hands.

In June 23 and 29, 2015 reports, Dr. Katzman noted limited neck motion on cervical spine examination. He diagnosed recurrence of cervical spondylosis and advised that appellant should avoid repetitive movement and overhead work, but could do a monitoring job. Dr. Jason M. Gallina, a Board-certified orthopedic surgeon and an associate of Dr. Katzman, advised on July 15, 2015 that appellant could not return to work because he could not lift above shoulder height and could not carry over five pounds.

Dr. Chao continued providing reports describing appellant's status, reiterating diagnoses, and finding that he was totally disabled. On June 14, 2015 he noted appellant's report that he had retired. Dr. Chao diagnosed cervical sprain and strain with C4-5 and C5-6 disc herniations and right C6 cervical radiculopathy, right shoulder pain with traumatic impingement syndrome, and bilateral carpal tunnel syndrome. He advised that some of the diagnoses were due to cumulative work activity, and it would not be practical for appellant to work.

On June 8, 2015 appellant had several diagnostic studies. A scoliosis x-ray series showed a trace of leftward pelvis tilt and slight reversed S-shaped scoliosis of the thoracolumbar spine. Cervical spine x-rays revealed spine curvature with left-sided facet arthropathy, moderate degenerative disc disease at C5-6, and moderate multilevel foraminal stenosis. A computerized tomography (CT) scan of the cervical spine noted multilevel degenerative changes. Lumbosacral spine x-rays showed degenerative changes, and a lumbar magnetic resonance imaging (MRI) scan revealed minimal disc bulges without significant spinal canal or neural foraminal stenosis.

In August 2015, appellant accepted a modified job offer and worked four hours daily from August 5 to September 4, 2015, when he was told to go home pending orientation.[11] He received wage-loss compensation for four hours per day.

In October 8, 2015 correspondence, counsel requested reconsideration of the November 7, 2014 decision denying appellant's traumatic injury claim in File No. xxxxxx352.

[11] The employing establishment initially offered appellant a modified job for four hours a day on April 17, 2015. In June 1 and July 21, 2015 letters, OWCP advised him of the suitability of the position.

On October 19, 2015 he requested reconsideration of the April 2, 2015 decision denying appellant's recurrence claim in File No. xxxxxx781. Medical evidence submitted included December 2, 2014 and February 17, 2015 reports from Dr. Katzman noting appellant's worsening radiating neck pain. Appellant had limited neck range of motion. He diagnosed recurrence of cervical spondylosis that was going into his shoulder. In July 10, August 1, and 28, 2015 treatment notes, Dr. Gallina reported appellant's complaint of radiating neck pain since an October 25, 2013 recurrence of an August 1, 2000 injury, as well as radiating low back pain. Findings included limited cervical and lumbar motion, positive straight leg raising and Spurling's tests, and absent sensation to light touch in both hands. He diagnosed cervical and lumbar disc displacement without myelopathy. (352-rd11/10/15) On November 20, 2015 Dr. Gallina reiterated his findings and conclusions. On September 18, 2015 Dr. Chao noted that appellant had fewer symptoms while in therapy, but had a psychological fear of aggravating his condition. He restated his diagnoses and advised that appellant could not work.

A November 5, 2015 functional capacity evaluation indicated that appellant could not perform work requiring static standing, forward bending, or rotation of his neck and trunk, squatting, lifting from floor, or lifting arms above shoulder height. Repetitive activities and motions increased his pain and symptoms.

On November 19, 2015 Dr. John S. Viattas, Board-certified in physiatry and pain medicine, reported a history that appellant injured his neck and right shoulder on August 1, 2000, that his symptoms gradually worsened, and that he was no longer working. He described spasm and tenderness of the cervical spine with restricted motion and a positive Spurling's maneuver with right shoulder tenderness and mildly restricted motion. Light touch and pinprick were decreased in the left C6-7 dermatomes, and grasp was weak bilaterally. Dr. Viattas diagnosed cervical derangement with herniation and bilateral radiculopathy, left greater than right. He advised that appellant was totally disabled for employment.

Appellant returned to modified duty for four hours daily on January 9, 2016.

In a nonmerit decision dated January 15, 2016 in File No. xxxxxx781, OWCP found the evidence submitted insufficient to warrant merit review of its April 2, 2015 decision denying appellant's recurrence claim.

On March 21, 2016 appellant, through counsel, again requested reconsideration of the April 2, 2015 decision denying appellant's recurrence claim under File No. xxxxxx781. He submitted a May 19, 2015 report from Dr. Katzman, which described appellant's physical examination findings and treatment. Counsel advised that appellant's complaints of radiating neck pain were causally related to the August 1, 2000 work injury and diagnosed recurrent cervical spondylosis. Treatment notes dated April 7 and May 19, 2015 were attached.

In a November 7, 2015 report, Dr. Jordan Sudberg, a physiatrist, noted seeing appellant for the first time. Appellant related injuring himself at work while lifting on August 1, 2000. He reported radiating neck pain as well as shoulder, wrist, and hand weakness. Findings included neck spasms and tenderness, and decreased thoracolumbar and cervical motion. Cervicalgia and muscle spasm limited shoulder motion. Both arms and the right leg and foot had sensory deficits. Dr. Sudberg diagnosed possible cervical disc herniation, cervical myofascial pain

syndrome, cervical radiculopathy, and shoulder pain. He advised that appellant was totally disabled and opined that, within a reasonable degree of medical certainty, based on the history appellant reported and his objective and subjective findings, the August 1, 2000 work injury caused appellant's diagnosed conditions. In January 16, 2016 reports, Dr. Sudberg diagnosed cervical disc displacement, checked a form box marked "yes" indicating it was work related, and advised that appellant could work limited duty for three to four hours daily.

Bilateral shoulder x-rays on January 20, 2016 demonstrated mild degenerative changes. A January 30, 2016 MRI scan of the right shoulder revealed moderate tendinopathy consistent with subcoracoid impingement and mild thickening which could reflect adhesive capsulitis. A March 3, 2016 scoliosis series x-ray examination showed dextroscoliosis of the cervical, thoracic, and lumbar regions.

After appellant's January 9, 2016 return to work, Drs. Viattas, Gallina, and Sudberg submitted status reports.

By decision dated June 10, 2016, issued under File Nos. xxxxxx781 and xxxxxx352, OWCP determined that File No. xxxxxx352 should be adjudicated as an occupational disease claim. It found that the evidence of record was insufficient to establish causal relationship for appellant's occupational disease claim under File No. xxxxxx352. OWCP further found that none of the medical evidence submitted under either claim was sufficient to explain how employment factors caused or aggravated appellant's condition on October 25, 2013. As such, the claimed recurrence under File No. xxxxxx781 remained denied.

LEGAL PRECEDENT -- ISSUE 1

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[12] This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to the 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.[13]

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 establishes that light duty can be performed, the employee has the burden of proof to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part

[12] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

[13] *Id.*

of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.[14]

An employee who claims a recurrence of disability resulting from an accepted employment injury has the burden of proof to establish that the disability is related to the accepted injury. This burden requires 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 reasoning.[15]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not established a recurrence of total disability beginning October 25, 2013 causally related to the accepted cervical spondylosis without myelopathy in File No. xxxxxx781. He has not established that the nature and extent of his injury-related condition changed so as to prevent him from continuing to perform his modified assignment. A partially disabled claimant who returns to a light-duty job has the burden of proving that he or she cannot perform the light duty, if a recurrence of total disability is claimed.[16] The issue of whether an employee has disability from performing a modified position is primarily a medical question and must be resolved by probative medical evidence.[17]

Until the claimed recurrence of disability appellant was performing modified duties for three hours daily. His wage-loss compensation was adjusted to reflect his modified duties. Appellant reported that he had to handle hundreds of pieces of mail which caused neck and shoulder pain that worsened on October 24, 2013. However, the evidence of record establishes that appellant's modified duties were three hours total sitting, standing, walking, pulling, pushing, and simple grasping intermittently; one hour bending and twisting intermittently; no climbing stairs, kneeling, driving a vehicle, and no reaching above shoulders, pulling, pushing, or walking, with a 10-pound lifting restriction. The job was described as clearing letter carriers at the registry cage with duties of obtaining a signature from the carriers, and placing keys and a one pound scanner from the carriers into a cabinet.

The record contains a significant number of medical reports. None, however, is sufficient to establish appellant's burden of proof to establish a recurrence of disability on October 25, 2013. None of the physicians exhibited knowledge of the specific duties of appellant's modified position or included any explanation of why the accepted cervical spondylosis without myelopathy had changed such that he could no longer perform modified duties. Most of the physicians diagnosed conditions that have not been accepted, and no

[14] *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

[15] *S.S.*, 59 ECAB 315 (2008).

[16] *See William M. Bailey*, 51 ECAB 197 (1999).

[17] *Cecelia M. Corley*, 56 ECAB 662 (2005).

physician provided a rationalized explanation as to why additional conditions should be found to be employment related.[18] Their opinions therefore are of diminished probative value.[19]

Dr. Huang advised that beginning on October 21, 2013, when appellant was still working modified duties, he was totally disabled due to repetitive work movements including frequent right-hand movement that caused increased dizziness, neck and right shoulder pain, and pain and numbness in his hands. She diagnosed cervical and upper extremity conditions that have not been accepted. As Dr. Huang did not exhibit knowledge of appellant's modified job duties and indicated that his disability was due to conditions that have not been accepted, her opinion is of insufficient probative value to establish a recurrence of disability.[20]

Similarly, Dr. Chao's opinion is of limited probative value. He submitted numerous reports beginning on October 25, 2013 when he reported that appellant's symptoms of right-sided neck and shoulder pain worsened after he returned to work the previous day. Dr. Chao also diagnosed numerous cervical, upper extremity, and low back conditions which have not been accepted. He did not include any explanation linking employment factors to these diagnosed conditions, and based his opinion on an incorrect history, reporting that appellant's job duties involved heavy work that required repetitive overhead lifting whereas the modified duties appellant was performing when he stopped work would not be characterized as heavy, and overhead lifting was not required. Dr. Chao also did not explain how or why the accepted cervical spondylosis prevented appellant from performing his modified duties. While he advised in September 2015 that appellant had a psychological fear for reexacerbation of his condition and could not work, the Board has long held that fear of future injury is not compensable.[21]

In a November 7, 2015 report, Dr. Sudberg also described an incorrect history of injury. He indicated that appellant injured himself at work lifting something heavy on August 1, 2000. As noted, this is not the history provided on appellant's occupational disease claim of August 7, 2000 when he indicated that carrying heavy mail caused neck pain. Moreover, Dr. Sudberg also diagnosed conditions that have not been accepted. He did not provide medical rationale explaining how appellant's disability beginning October 25, 2013 was causally related to the accepted cervical spondylosis.[22]

The Board also finds the opinions of Dr. Katzman, Dr. Gallina, and Dr. Viattas are insufficient to meet appellant's burden of proof. Dr. Katzman noted that appellant aggravated his neck condition on October 24, 2013 by lifting too much mail and using his hand. None of the conditions diagnosed by Dr. Gallina and Dr. Viattas have been accepted, and neither they nor Dr. Katzman exhibited knowledge of the modified duties appellant was performing when he stopped work, first in October 2013 and again in February 2014, nor did they provide a

[18] *Supra* note 15.

[19] *Id.*

[20] *Id*.

[21] *I.J.*, 59 ECAB 408 (2008).

[22] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

rationalized explanation of why the accepted cervical spondylosis caused a recurrence of disability or why additional conditions should be accepted.

The various diagnostic studies of record did not provide a cause of any diagnosed conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[23]

Likewise, Dr. Rosenfeld's reports do not constitute probative medical evidence. Under section 8101(2) of FECA, the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.[24] However, Dr. Rosenfeld did not diagnose spinal subluxation based on the results of an x-ray. His reports therefore do not constitute probative medical evidence as he does not meet the statutory definition of a physician.[25]

In assessing medical evidence, the weight of a physician's opinion is determined by the opportunity for and thoroughness of the examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale used to explain the conclusions reached.[26] For the reasons given, none of the medical reports submitted in this case were of sufficient rationale to establish a recurrence of disability commencing October 25, 2013 under File No. xxxxxx781.

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.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking compensation under FECA[27] has the burden of proof to establish the essential elements of his claim by the weight of reliable, probative, and substantial evidence,[28] including that he or she is an "employee" within the meaning of FECA and whether the claim was filed within the applicable time limitation.[29] An employee must also establish that he or she sustained an injury in the performance of duty as alleged and that disability from work, if any, was causally related to the employment injury.[30]

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[23] *Willie M. Miller*, 53 ECAB 697 (2002).

[24] 5 U.S.C. § 8102(2); *see D.S.*, Docket No. 09-860 (issued November 2, 2009).

[25] *See J.G.*, Docket No. 15-1468 (issued October 7, 2015).

[26] *L.G.*, Docket No. 09-1692 (issued August 11, 2010).

[27] *Supra* note 2.

[28] *J.P.*, 59 ECAB 178 (2007).

[29] *R.C.*, 59 ECAB 427 (2008).

[30] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

OWCP regulations at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[31]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, an employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, an employee must submit medical evidence to establish that the employment incident caused a personal injury.[32]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[33] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[34] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[35]

ANALYSIS -- ISSUE 2

Although OWCP found in its June 10, 2016 that appellant's claim filed on August 28, 2014, adjudicated under File No. xxxxxx352, constituted an occupational disease claim rather than a traumatic injury, the Board finds that, based on his CA-1 claim form and his personal statement, the claim was for a traumatic injury. Appellant alleged that on October 24, 2013, while using a package key and scanner, he had a sudden onset of pain. OWCP regulations define traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift.[36] Therefore the circumstances described by appellant at the time he filed his claim satisfy the regulatory definition of a traumatic injury.[37] The Board finds, however, that the medical evidence of record is insufficient to establish a traumatic injury on October 24, 2013.

To establish a traumatic injury claim, a claimant's burden of proof includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate

[31] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

[32] *T.H.*, 59 ECAB 388 (2008).

[33] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[34] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[35] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[36] 20 C.F.R. § 10.5(ee).

[37] *Id*.

factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale. Where no such rationale is present, the medical evidence is of diminished probative value.[38]

Dr. Huang advised beginning on October 21, 2013, when appellant was still working modified duties, that he was totally disabled due to repetitive movements at work including frequent right hand movement that caused increased dizziness, neck and right shoulder pain, and pain and numbness in his hands. This report predates the alleged October 24, 2013 traumatic injury. While she advised on January 9, 2014 that appellant could return to his modified position, as tolerated, again she did not mention the alleged traumatic injury.

Similarly, Dr. Chao's opinion is of limited probative value. He submitted numerous reports beginning on October 25, 2013 when he reported that appellant's symptoms of right-sided neck and shoulder pain worsened after he returned to work the previous day. Although Dr. Chao diagnosed many cervical and upper extremity conditions that have not been accepted, he did not explain how these conditions were caused by the claimed October 24, 2013 lifting incident. He also based his opinion on an incorrect history, reporting that appellant's job duties involved heavy work that required repetitive overhead lifting whereas the modified duties appellant was performing when he stopped work would not be characterized as heavy, and overhead lifting was not required. While Dr. Chao continued to submit reports, noting that appellant had a psychological fear for reexacerbation of his condition and advised that appellant could not work, the Board has long held that fear of future injury is not compensable.[39]

The Board also finds the opinions of Dr. Katzman, Dr. Gallina, and Dr. Viattas insufficient to meet appellant's burden of proof to establish an October 24, 2013 employment injury. Dr. Katzman noted that appellant aggravated his neck condition on October 24, 2013 by lifting too much mail and using his hand and diagnosed recurrence of cervical spondylosis, caused by an August 1, 2000 work injury. He exhibited no knowledge of the specifics of the alleged October 24, 2013 employment injury and did not describe the mechanics of how this incident aggravated the employment-related cervical spondylosis. None of the conditions diagnosed by Dr. Gallina, Dr. Viattas, or Dr. Sudberg have been accepted, and they too did not explain how the lifting incident of October 24, 2013 caused any specific condition.

The diagnostic studies of record are of limited probative value as they did not address the cause of any diagnosed conditions.[40] Also, as explained, because Dr. Rosenfeld is a chiropractor who did not diagnose a spinal subluxation based on the results of an x-ray, his reports do not constitute probative medical evidence.[41]

The Board, therefore, finds that the medical evidence of record is insufficient to establish an October 24, 2013 traumatic injury under File No. xxxxxx352.

[38] *Mary A. Ceglia*, 55 ECAB 626 (2004).

[39] *Supra* note 21.

[40] *Supra* note 23.

[41] *See supra* notes 24-25, and accompanying text.

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 has not established a recurrence of total disability beginning October 25, 2013, in File No. xxxxxx781, and has not established an employment-related injury on October 24, 2013, in File No. xxxxxx352.

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 29, 2017
Washington, DC

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

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

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