

ISSUE

The issue is whether appellant met his burden of proof to establish a recurrence of total disability on or after May 26, 2015 caused by the accepted employment conditions.

On appeal counsel asserts that the November 1, 2016 decision is contrary to fact and law.

FACTUAL HISTORY

On July 23, 2006 appellant, then a 56-year-old regular rural carrier, filed an occupational disease claim (Form CA-2) alleging that job duties caused left shoulder rotator cuff impingement and osteoarthritis of the acromioclavicular joint. He did not stop work. OWCP adjudicated the claim under File No. xxxxxx702, and on September 25, 2006 accepted aggravation of closed acromioclavicular joint, left, and aggravation of sprain of shoulder and upper arm, acromioclavicular, left.⁴

On October 22, 2007 appellant filed a second occupational disease claim alleging that work duties caused left rotator cuff tendinitis and impingement syndrome of the left shoulder. He stopped work on October 16, 2007. OWCP adjudicated this claim under File No. xxxxxx053, and on November 16, 2007 accepted left shoulder impingement syndrome and left shoulder rotator cuff tendinitis. It combined the claims in November 2007, with File No. xxxxxx702 becoming the master file. Appellant filed a claim for a schedule award (Form CA-7).

By decision dated November 2, 2007, OWCP granted appellant 12 percent permanent impairment of the left upper extremity, for a total of 37.44 weeks, to run from October 7, 2007 to June 19, 2008.

Appellant accepted modified rural carrier positions with permanent restrictions on October 29, 2007. He stopped work on April 24, 2008. A December 14, 2011 functional capacity evaluation demonstrated unreliable effort, but his performance demonstrated he could perform duties in the medium physical classification level.⁵ An April 26, 2013 modified rural carrier job offer, accepted by appellant on May 4, 2013, included duties that he would case mail within his restrictions for two hours daily and deliver mail within his restriction for seven hours daily. Lifting and carrying were limited to 10 pounds intermittently for three hours, pushing and pulling to 20 pounds for one hour, and reaching above the shoulder 10 pounds intermittently for two hours.⁶

⁴ The record indicates that appellant had previous left shoulder arthroscopic surgery on June 7, 2004 and September 28, 2005.

⁵ The report indicated that appellant demonstrated the ability to perform floor to knuckle lift 20 pounds frequently, 30 pounds occasionally; knuckle to shoulder lift, 10 pounds frequently; floor to shoulder lift, 10 pounds frequently; could constantly walk, stoop, crouch, kneel, handle, and finger bilaterally; and could frequently reach bilaterally, reach overhead on the right, and carry 10 to 20 pounds.

⁶ On a March 18, 2013 work capacity evaluation (Form CA-17), Dr. Keith C. Anderson, a Board-certified physiatrist, provided restrictions that appellant could never climb, could push and pull 20 pounds one hour a day, and reach above the shoulder for two hours daily, with a weight restriction of 10 pounds intermittent.

Appellant requested authorization for a cervical spine magnetic resonance imaging (MRI) scan. In a May 27, 2014 decision, OWCP denied appellant's request for the MRI scan and filed claims for compensation (Form CA-7) for the period April 24, 2008 to May 13, 2013. On July 15, 2014 it denied his claim for wage loss.⁷

On July 30, 2015 appellant filed a claim for recurrence of disability (Form CA-2a). He indicated that the recurrence occurred on April 30, 2015 and that he had stopped work on July 20, 2015. Appellant indicated that his physician had changed his restrictions.

The employing establishment controverted the claim, asserting that the offered accommodated position was in compliance with a functional capacity evaluation dated December 14, 2011, but that appellant's physician, Dr. J. Kendall Black, a Board-certified orthopedic surgeon, had changed appellant's restrictions on July 20, 2015. In a July 20, 2015 return to work form, Dr. Black indicated that appellant could not lift, push, or pull greater than five pounds with the left arm and could perform no repetitive lifting.

By letter dated August 5, 2015, OWCP informed appellant of the evidence needed to perfect his claim.

In an August 22, 2015 response, appellant indicated that the date of recurrence was May 26, 2015 when he felt a pull in his shoulder and biceps area while lifting heavy packages. He indicated that he had worked several years in pain caused by repetitive use of his left shoulder in his rural carrier position. Appellant submitted a July 20, 2015 treatment note in which Dr. Black noted that appellant's job duties had changed and he had to do more repetitive lifting with heavier weights and this caused increased pain that radiated into his neck and down the left arm. Left shoulder examination demonstrated limited range of motion in all planes. Dr. Black noted that appellant had evidence of bicipital tenosynovitis as well as unspecified bursa and tendinitis about the left shoulder. He advised that appellant could continue to work with a five-pound lifting limit of the left shoulder and no repetitive lifting.

On September 21, 2015 the employing establishment again controverted the claim as appellant had not reported a May 26, 2015 injury until he was presented a new job offer on June 23, 2015.⁸

By decision dated October 30, 2015, OWCP denied the claim. It noted the accepted conditions in both claims and that appellant had been working a light-duty job as a rural carrier, since May 4, 2013, based on restrictions provided by Dr. Anderson.⁹ It found Dr. Black's

⁷ Appellant claimed that he lost wages for this period because he had been downgraded.

⁸ On June 23, 2015 the employing establishment offered appellant an accommodated bid position. Low lift, carrying, and pushing were restricted to 40 pounds occasional and 20 pounds frequent. Midlift and full lift were restricted to 20 pounds occasional and 10 pounds frequent. Additional restrictions included constant balancing, stooping, kneeling, crouching, bilateral handling, finger dexterity, and sitting, with frequent bilateral reaching. Reaching overhead was not rated on the left.

⁹ *Supra* note 6.

July 20, 2015 report lacking because he had not provided the status of appellant's work injuries or explained the basis for his new work restrictions.

In an October 7, 2015 report, received by OWCP on November 2, 2015, Dr. Helen Powell-Stoddart, a Board-certified physiatrist, noted that appellant was complaining of left shoulder and neck pain. Examination findings included significant cervical tenderness, weakness in the deltoids bilaterally and in the supraspinatus on the left, with evidence of left shoulder impingement. Tinel's sign was positive at the wrists and elbows bilaterally, and Phalen's sign was positive on the left. Dr. Powell-Stoddart recommended MRI scans of the left shoulder and cervical spine, and upper extremity electrodiagnostic studies.

Appellant requested reconsideration on November 20, 2015. In a November 23, 2015 report, Dr. Black indicated that appellant had reached maximum medical improvement and that his recommendation for work limitations was unchanged. He diagnosed primary osteoarthritis of the left shoulder, pain in the left shoulder, bicipital tendinitis of the left shoulder, impingement syndrome of the left shoulder, and superior glenoid labrum lesion of the left shoulder.

In a merit decision dated February 3, 2016, OWCP denied modification of the prior decision. It found that Dr. Black had not sufficiently explained why appellant could not perform his April 26, 2013 modified position.

On August 15, 2016 appellant, through counsel, requested reconsideration. He submitted an August 2, 2016 report in which Dr. Powell-Stoddart noted a history that appellant's pain began while driving a manual gearshift mail truck in 2004. Dr. Powell-Stoddart noted that appellant described the pain as aching, burning, throbbing, shooting, and tingling, and that lifting or moving the arm caused the pain to increase. She related that appellant had no improvement following previous surgery, and that he also had limited range of motion of the cervical spine with tenderness on cervical examination. Dr. Powell-Stoddart diagnosed left arm pain, mid-cervical disc degeneration, neck pain, and left shoulder impingement. She opined that one of the causes of her diagnoses were work activities described by appellant, including repetitive motion.

In a merit decision dated November 1, 2016, OWCP again denied modification. It found that the evidence appellant had submitted was not of sufficient probative value to establish that he became disabled as of May 26, 2015 due to a material change/worsening of the accepted work-related conditions.

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.¹⁰ 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,

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

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.¹¹

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 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.¹²

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing 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.¹³

ANALYSIS

The Board finds that appellant has not established a recurrence of total disability on or after May 26, 2015 causally related to the accepted left shoulder conditions of aggravation of closed acromioclavicular joint, aggravation sprain of the shoulder and upper arm, acromioclavicular, impingement syndrome, and shoulder rotator cuff tendinitis. Appellant has failed to demonstrate that the nature and extent of these injury-related conditions changed so as to prevent him from continuing to perform his modified assignment.

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.¹⁴

Following acceptance of appellant's left shoulder conditions, he returned to modified duty as a rural carrier. At the time of the claimed recurrence, he was performing duties described in an April 2013 job offer. Although appellant was offered a different position on June 23, 2015, there is no evidence that he ever performed this new position, but rather continued duties based on the April 26, 2013 job offer, which appellant had accepted on May 4, 2013.

When appellant filed his recurrence claim on July 20, 2015, he reported that disability occurred on April 30, 2015. Appellant later related that the recurrence occurred on May 26, 2015 when he lifted heavy packages. The employing establishment contended that it was only after he had been presented with a new job offer that he reported an injury.

¹¹ *Id.*

¹² *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹³ *S.S.*, 59 ECAB 315 (2008).

¹⁴ *Cecelia M. Corley*, 56 ECAB 662 (2005).

In his July 20 and November 23, 2015 reports, Dr. Black's diagnoses included left shoulder bicipital tenosynovitis, unspecified bursa and tendinitis, and superior labrum glenoid lesions. These conditions have not been accepted in this claim. While the weight restriction of five pounds that he provided is different from the requirements of the 2013 position, Dr. Black included no explanation as for the increased restriction other than to indicate that appellant reported that his job duties had changed and this caused an increase in pain. He exhibited no knowledge of the specific duties of appellant's modified position and did not include any explanation of why the accepted conditions had changed such that appellant could no longer work. His opinion, therefore, is of diminished probative value.¹⁵

Dr. Powell-Stoddart described appellant's symptoms and reported physical examination findings of cervical tenderness and left shoulder impingement. While she diagnosed left shoulder impingement, an accepted condition, she also diagnosed left arm pain and cervical disc degeneration, conditions that have not been accepted. As such, appellant has the burden of proof to establish causal relationship between the nonemployment-related conditions and the accepted employment conditions.¹⁶ This he has not done. Dr. Powell-Stoddart did not provide any specific physical restrictions and she, too, exhibited no knowledge of appellant's modified job duties at that time. She failed to provide an opinion on his work capabilities. Her reports are therefore insufficient to establish that appellant sustained a recurrence of total disability on July 20, 2015.

Medical opinion evidence submitted by appellant to support his claim for compensation benefits should reflect a correct history and should offer a medically-sound explanation by the physician of how the modified duties he was performing on July 20, 2015 physiologically caused or aggravated the accepted left shoulder conditions.¹⁷ Appellant submitted no such evidence in this case. He has, therefore, failed to meet his burden of proof.

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 failed to establish a recurrence of total disability on or after May 26, 2015 caused by the accepted employment conditions.

¹⁵ *Id.*

¹⁶ See *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

¹⁷ *Supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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