

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

<p>A.W., Appellant</p> <p>and</p> <p>DEPARTMENT OF THE AIR FORCE, DEFENSE COMMISSARY AGENCY, MAXWELL AIR FORCE BASE, AL, Employer</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No. 17-0638</p> <p>Issued: August 29, 2017</p>
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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 January 30, 2017 appellant filed a timely appeal from a November 28, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (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 has met her burden of proof to establish a recurrence of total disability commencing October 27, 2015, causally related to her May 7, 2015 employment injuries.

¹ Appellant also filed a timely request for oral argument in this case. By order dated July 5, 2017, the Board exercised its discretion and denied her request for oral argument. *Order Denying Request for Oral Argument*, Docket No. 17-0638 (issued July 5, 2017).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on May 7, 2015 appellant, then a 55-year-old deli/bakery store worker, lifted boxes off a cart, causing a strain of the muscles, fascia, and tendon of the left shoulder and upper arm with sequelae, laceration of muscle, fascia, and tendon of the long head of the left biceps tendon, with sequelae.³ The employing establishment confirmed that her date-of-injury job duties required lifting and carrying from 30 to 50 pounds.

In a May 7, 2015 report, Dr. Sangeeta Doshi, an attending family practitioner, diagnosed a left shoulder and arm sprain due to appellant lifting a 40- to 50-pound box at work that day. She restricted appellant from using her left arm and from, overhead work and, limited pushing and pulling to 20 pounds, and lifting to 5 pounds.

On May 11, 2015 Dr. George Handey, an attending Board-certified family practitioner, diagnosed a partial biceps tendon tear.

Dr. Doshi released appellant to full duty with no restrictions effective May 22, 2015. Appellant returned to full-duty work on May 22, 2015.

In a November 9, 2015 report, Dr. Loren James, an attending orthopedic surgeon, diagnosed chronic shoulder pain. He noted restrictions against overhead work and limited lifting, pulling, and pushing to 10 pounds.

Appellant's employing establishment removed appellant from work in November 2015 due to inability to perform the essential functions of her position.

In a January 25, 2016 report, Dr. James noted a history of the May 7, 2015 employment injury with chronic pain since she lifted the boxes. On examination of the left shoulder, he found pain over the bicipital groove, positive Speed's and Yergson's tests, pain with cross-body abduction, and positive impingement signs. Dr. James reviewed x-rays demonstrating a Type 2 acromion with no significant elevation of the humeral head. He diagnosed degenerative joint disease of the left acromioclavicular joint, left shoulder impingement, subacromial-subdeltoid bursitis, rotator cuff tendinitis, and a possible rotator cuff tear. Dr. James noted work restrictions on February 1, 2016 limiting lifting, pulling, and pushing to five pounds.⁴

On February 29, 2016 appellant claimed a recurrence of total disability (Form CA-2a) commencing October 27, 2015. The employing establishment confirmed that she resumed full duty on May 22, 2015, and that her appointment ended on May 30, 2015. Appellant was subsequently employed at another military commissary facility. She claimed wage-loss compensation from October 27, 2015 to April 30, 2016 and from May 14 to 21, 2016.

³ By decision dated July 16, 2015, OWCP denied continuation of pay as appellant did not report the injury within 30 days of its occurrence. Appellant delayed filing a notice of traumatic injury (Form CA-1) until July 14, 2015, more than 30 days after the accepted May 7, 2015 work injury.

⁴ A February 10, 2016 magnetic resonance imaging (MRI) scan of the left shoulder showed a "[m]inimal partial thickness undersurface tear [of the] supraspinatus tendon," a tear of the long head biceps tendon distal to the intra-articular segment, and an acromioclavicular joint osteoarthritis.

In March 3 and July 18, 2016 letters, OWCP notified appellant of the additional evidence needed to establish her claim for recurrence of disability, including her physician's explanation as to why the accepted injuries would totally disable her for work. It afforded her 30 days to submit such evidence.

In response, appellant submitted her July 27, 2016 statement attributing the recurrence to "lifting and pushing deli products," including a case of chicken and a case of hams on October 19, 2015. She submitted additional evidence. Appellant also provided a January 14, 2016 patient intake questionnaire in which she described chronic left shoulder pain.

On May 7, 2015 Dr. Doshi diagnosed a left shoulder sprain. She administered an intramuscular injection. Dr. James diagnosed a left shoulder strain on May 9, 2015 and noted work restrictions. Dr. James Zumstein, a Board-certified family practitioner, an attending Board-certified family practitioner, diagnosed a left shoulder strain on May 9, 2015 and recommended physical therapy.

Dr. James provided progress notes dated from January 25 through June 7, 2016, diagnosing degenerative joint disease of the left acromioclavicular joint. He recommended continued physical therapy and a steroid injection.⁵

By decision dated September 30, 2016, OWCP denied appellant's claim finding that the evidence submitted indicated that she sustained a new injury on October 19, 2015. Additionally, it found that the medical evidence of record did not establish that she was totally disabled for work for the claimed period.

On October 21, 2016 appellant requested reconsideration. She explained that she was in receipt of disability benefits through the Social Security Administration effective April 2016. Appellant submitted additional evidence.

In an undated report received on October 21, 2016, Dr. James reviewed a history of treatment. He explained that the left supraspinatus tear was visible on MRI scan, but not on x-ray studies.

By decision dated November 28, 2016, OWCP denied modification, finding that the additional medical evidence submitted indicated that appellant sustained a new injury and not a recurrence of disability. Additionally, Dr. James and Dr. Doshi did not find her totally disabled for work for the claimed period.

LEGAL PRECEDENT

OWCP's implementing regulations define a "recurrence of disability" as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical

⁵ Appellant provided physical therapy notes dated from February through June 2016. She also submitted duplicative copies of evidence previously of record.

condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁶

When an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports this conclusion with sound medical reasoning.⁷

ANALYSIS

OWCP accepted that appellant sustained a left shoulder muscular strain and biceps tendon tear on May 7, 2015 when she lifted boxes off a cart. Appellant returned to full duty on May 22, 2015. Her appointment expired on May 30, 2015. Appellant was employed in a different commissary facility through October 27, 2015.

On February 29, 2016 appellant claimed a recurrence of total disability commencing October 27, 2015, caused by lifting and pushing of deli products on October 19, 2015. She thus implicated a new injury, an intervening cause breaking the chain of causation from the May 7, 2015 occupational injury. A new injury effectively negates appellant's recurrence claim.⁸

OWCP notified appellant in March 3 and July 18, 2016 letters of the additional evidence needed to establish her claim, including a medical report from her attending physician explaining how and why the accepted May 7, 2015 left shoulder injuries would disable her for work on and after October 27, 2015. In response, appellant provided reports from Dr. James, dated from November 9, 2015 through October 21, 2016, who noted in these reports his assignment of work restrictions due to the accepted left shoulder conditions, but did not find appellant totally disabled for work for any period. His opinion is therefore insufficient to establish the claimed total disability for work commencing October 27, 2015.⁹

⁶ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2.a (June 2013). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

⁷ *Ricky S. Storms*, 52 ECAB 349 (2001); *Helen Holt*, 50 ECAB 279 (1999).

⁸ *Carlos A. Marrero*, 50 ECAB 117 (1998) (the Board found that the claimant's use of an exercise machine constituted an intervening cause of appellant's disability and thus OWCP properly denied her claim for recurrence of disability); *Clement Jay After Buffalo*, 45 ECAB 707 (1994) (the Board found that the claimant's knee injury sustained while playing basketball broke the legal chain of causation from an accepted knee injury sustained in the performance of his duties as a firefighter).

⁹ *Ricky S. Storms*, *supra* note 7.

Reports from Drs. Doshi and Zumstein also did not find appellant totally disabled beginning October 27, 2015 due to her accepted condition. Further, the physicians did not address causation. As such, their reports are of limited probative value.¹⁰

Appellant noted in an October 1, 2016 letter that she had received disability benefits through the Social Security Administration effective April 2016. However, decisions by other administrative agencies as to whether an employee is disabled, are not binding on OWCP or the Board with respect to whether the individual is disabled under FECA.¹¹

On appeal, appellant asserts that she was injured on the job, but was misdiagnosed by her physicians. As explained above, the medical evidence of record did not establish that the accepted left shoulder injuries disabled her for work on and after October 27, 2015.

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 met her burden of proof to establish a recurrence of total disability commencing October 27, 2015, causally related to her May 7, 2015 employment injuries.

¹⁰ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *A.D.*, 58 ECAB 149 (2006).

¹¹ *Daniel F. O'Donnell, Jr.*, Docket No. 04-1545 (issued January 12, 2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 28, 2016 is affirmed.

Issued: August 29, 2017
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