

ISSUE

The issue is whether appellant sustained a recurrence of disability beginning April 14, 2014 causally related to his December 21, 2013 employment injury.

FACTUAL HISTORY

On December 23, 2013 appellant, then a 52-year-old vocational nurse, filed a traumatic injury claim (Form CA-1) alleging that on December 21, 2013 he sprained his left knee after an altercation with a patient. He did not stop work. OWCP accepted the claim, currently on appeal, assigned File No. xxxxxx153, for a left knee contusion that had resolved as of January 8, 2014.

On April 16, 2014 appellant filed a second traumatic injury claim (Form CA-1) alleging that he sustained an injury to his left knee on April 14, 2014 when a patient tried to escape. OWCP assigned the case File No. xxxxxx561 and, on October 3, 2016, accepted the claim for a temporary aggravation of unilateral primary osteoarthritis of the left knee.

In an April 15, 2014 report, submitted to OWCP under File No. xxxxxx561, Dr. Juan Antonio Cortes, an osteopath, obtained a history of appellant sustaining a left knee injury from dealing with a combative patient. He indicated that it was a “reinjury from December 21, 2013.” Dr. Cortes noted that the pain began gradually and that a review of records indicated that he had “severe left knee findings with total knee arthroplasty already recommended.” He diagnosed left knee traumatic arthritis due to an industrial accident.

In a report dated April 17, 2014 (Form CA-16), Dr. Gerald I. West, who specializes in occupational medicine, indicated that appellant reinjured his left knee on April 14, 2014 “due to a combative patient.” He diagnosed traumatic arthritis of the left knee. Dr. West noted that appellant related that his “primary injury occurred on December 21, 2013” and that he was “very clear that on both dates he was involved with the containment of combative patients.” He opined that appellant had a preexisting left knee condition accelerated by “the above-mentioned incidents.”

Appellant related, in an undated statement received April 25, 2014, that on April 14, 2014 he again injured his left knee while helping to restrain a combative patient.

On May 22, 2014 OWCP notified appellant that it had closed his December 21, 2013 accepted injury for medical care and recommended that he obtain treatment under the File No. assigned with the April 14, 2014 claimed injury, xxxxxx561. It informed him that he could file an occupational disease claim if he believed that he sustained arthritis due to continuing work factors.

In a May 28, 2014 response, appellant advised that his physicians found that he required a total knee replacement, scheduled for August 11, 2014. He attributed his condition to the combined trauma to his knee as a result of his December 21, 2013 and April 14, 2014 injuries.

By letter dated June 19, 2014, OWCP informed appellant that, if he believed that he had sustained a recurrence of disability with no intervening injury, he could file a recurrence of

disability under the current File No. It further advised that he could also proceed with his claim for a traumatic injury under File No. xxxxxx561.

Appellant, on June 26, 2014, filed a recurrence (Form CA-2a) alleging that on April 14, 2014 he sustained a recurrence of disability causally related to his December 21, 2013 work injury. He stopped work on April 15 and returned to work on June 9, 2014. In a statement accompanying his claim, appellant described his December 21, 2013 work injury and noted that he also had arthritis due to a service-connected injury to his left knee. He related that he experienced another work injury on April 14, 2014 due to an altercation with a patient.

OWCP, by letter dated September 19, 2014, advised appellant of the definition of a recurrence of disability, noting that he had described an intervening injury on April 14, 2014. It requested that he submit medical evidence showing that his condition spontaneously worsened without any intervening cause.

An August 9, 2014 magnetic resonance imaging (MRI) scan study of the left knee, received by OWCP on October 18, 2014, revealed a lateral cyst and loss of cartilage in the medial femoral condyle and patella.

Appellant, on October 18, 2014, related that the results from the MRI scan study showed a spontaneous worsening of his condition. He maintained that his initial physician did not sufficiently diagnose his condition.

In an October 20, 2014 report, Dr. West diagnosed traumatic arthritis and found that appellant could perform light-duty work beginning October 17, 2014. He again noted that appellant advised that he sustained an injury to his knee on April 21, 2014, but that the main injury was on December 21, 2013, both incidents occurring when he attempted to subdue combative patients. Dr. West diagnosed a loss of cartilage of the anterior portion of the medial femoral condyle and patella.

By decision dated October 21, 2014, OWCP found that appellant had not established an April 14, 2014 recurrence of disability. It determined that the evidence revealed that he experienced an intervening injury on April 14, 2014 rather than a spontaneous worsening of his December 21, 2013 employment condition.

Appellant, on November 10, 2014, requested an oral hearing before an OWCP hearing representative. At the telephone hearing, held on June 2, 2015, he discussed his knee injury in the military and subsequent left knee injuries due to altercations with patients on December 21, 2013 and April 14, 2014.

In a decision dated August 13, 2015, OWCP's hearing representative affirmed the October 21, 2014 decision. He noted that OWCP was currently developing the issue of whether appellant sustained a left knee injury on April 14, 2014 in the performance of duty under a separate File No. The hearing representative determined that the medical evidence was insufficient to establish a recurrence of disability on April 14, 2014 due to his accepted December 21, 2013 work injury.

Dr. G.B. Ha'Eri, a Board-certified orthopedic surgeon, examined appellant on October 7, 2015 and January 27, 2016. In a report dated January 27, 2016, he reviewed his history of a left knee fracture in 1987 while in the military and work injuries on December 21, 2013 and April 14, 2014 due to altercations with patients. Dr. Ha'Eri diagnosed an aggravation of osteoarthritis of the left knee due to work injuries on December 21, 2013, April 14, 2014, and June 22, 2015 and a torn left lateral meniscus likely caused by injuries on December 21, 2013 and January 14, 2014.

Appellant, on August 12, 2016, requested reconsideration. He contended that the April 14, 2014 employment injury was causally related to the December 21, 2013 employment injury. Appellant asserted that he had established that work injuries aggravated a preexisting condition and maintained that OWCP failed to construe the evidence in his favor.

By decision dated February 28, 2017, OWCP denied modification of its August 13, 2015 decision.³ It noted that it had accepted that he sustained a temporary aggravation of left knee arthritis due to an April 14, 2014 work injury under File No. xxxxxx561; OWCP found, however, that the medical evidence failed to establish recurrence of disability on April 14, 2014 causally related to the December 21, 2013 employment injury. It determined that appellant experienced an intervening injury on April 14, 2014 rather than a recurrence of disability on that date.

On appeal counsel contends that OWCP erred in adjudicating the claim as a recurrence of disability instead of a traumatic injury causing an aggravation of a preexisting injury. He asserts that the medical evidence supports a causal relationship between the April 14, 2014 and December 21, 2013 employment injuries.

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴

Appellant has the burden of proof to establish by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.⁵ This burden includes the necessity of furnishing medical evidence from a

³ OWCP, on February 29, 2016, referred appellant to Dr. Michael J. Einbund, a Board-certified orthopedic surgeon, for a second opinion examination in File No. xxxxxx561. It requested that he evaluate whether appellant had any current condition causally related to work incidents occurring on December 21, 2013 and April 14, 2014. In a report dated April 21, 2016, Dr. Einbund reviewed the December 21, 2013 and April 14, 2014 work injuries, accepted for a resolved left knee contusion, and noted that appellant had a history of multiple left knee surgeries due to a 1987 injury while in the military. He diagnosed a temporary aggravation of left knee osteoarthritis as a result of the April 14, 2014 work incident. Dr. Einbund opined that the December 21, 2013 left knee contusion “resolved in that appellant was able to resume full unrestricted duty within a few days.”

⁴ 20 C.F.R. § 10.5(x).

⁵ *Carmen Gould*, 50 ECAB 504 (1999).

physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

ANALYSIS

OWCP accepted that appellant sustained a left knee contusion due to an altercation with a patient on December 21, 2013 which had resolved by January 8, 2014. Appellant filed a notice of recurrence of disability on April 14, 2014 asserting that he reinjured his left knee on that date in another altercation with a patient.

The Board finds that appellant failed to establish that he also sustained a recurrence of disability on April 14, 2014 causally related to his December 21, 2013 employment injury. Appellant attributed his April 14, 2014 recurrence of disability to an altercation with a patient, which would constitute an intervening injury rather than a recurrence of disability. A recurrence of disability is a work stoppage caused by “a spontaneous change in a medical 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.”⁷

The medical evidence further supports the occurrence of an intervening injury on April 14, 2014 rather than a recurrence of disability. Dr. West, on April 17, 2014, found that appellant reinjured his knee on April 14, 2014 in an altercation with a combative patient. He diagnosed an aggravation of a preexisting knee condition due to events on December 21, 2013 and April 14, 2014. In a January 27, 2016 report, Dr. Ha’Eri discussed his history of knee injuries on December 21, 2013 and April 14, 2014 handling patients. There is no reasoned medical opinion supporting that appellant experienced a spontaneous change in his medical condition on April 14, 2014 due to his December 21, 2013 employment injury, consequently, he has not met his burden of proof to establish a recurrence of disability.⁸ Appellant’s claim does not constitute a recurrence of disability as defined by OWCP regulations.⁹

On appeal counsel contends that OWCP erred in adjudicating the claim as a recurrence of disability instead of a traumatic injury causing an aggravation of a preexisting injury. It, however, had handled the claim as a traumatic injury claim and OWCP accepted an aggravation of a preexisting knee condition on April 14, 2014 under File No. xxxxxx561. It was appellant who continually argued to handle the claim as a recurrence of disability due to the December 21, 2013 injury. As discussed, a recurrence of disability does not include disability resulting from exposure to new work factors, even if it involves the same part of the body previously injured.¹⁰

⁶ *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁷ *See supra* note 4; *see R.P.*, Docket No. 15-1335 (issued October 6, 2016).

⁸ *See S.K.*, Docket No. 14-1279 (issued September 25, 2014).

⁹ *See supra* note 4; *see also S.K.*, Docket No. 14-1279 (issued September 24, 2014).

¹⁰ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(c)(5) (June 2013).

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established a recurrence of disability beginning April 14, 2014 causally related to his December 21, 2013 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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