

retired on July 30, 2001. After initial denial of the claim on July 8, 2003, and subsequent further development of the evidence, OWCP accepted the claim on April 20, 2006 for bilateral sprain/strain of the rotator cuff and bilateral rotator cuff syndrome of the shoulder.

The evidence of record documents that appellant received physical therapy through December 12, 2006. The record also indicates that appellant was seen by Dr. Thaddeus W. Hume, a Board-certified orthopedic surgeon, on September 4, 2008. However, the progress note is illegible.

On December 12, 2014 appellant claimed a recurrence of medical condition (Form CA-2a). She did not indicate a date of recurrence. A supervisor indicated that the claimed date of recurrence was unknown, and that the supervisor was unsure why appellant was filing a recurrence claim.

On February 12, 2015 OWCP received a report dated September 26, 2014 from Dr. Phong H. Nguyen, Board-certified in family practice, who was appellant's treating physician. He related that he had examined appellant and found that she continued to have bilateral shoulder and knee pain. Only the first page of this report was submitted to OWCP.

By letter dated April 2, 2015, OWCP informed appellant that she had not submitted sufficient evidence to establish a recurrence. It noted that the only evidence received in support of her recurrence was the September 26, 2014 report of Dr. Nguyen. OWCP informed appellant of the evidence required to establish a recurrence and afforded her 30 days to submit additional medical evidence, as well as to respond to OWCP's inquiries. Appellant did not respond.

By decision dated May 15, 2015, OWCP denied appellant's claim for a recurrence of medical condition. It found that appellant did not submit sufficient medical evidence and did not respond to OWCP's inquiries.

On August 21, 2015 appellant requested reconsideration of OWCP's May 15, 2015 decision. With her request, appellant attached a narrative statement, stating that her gap in medical treatment for her shoulders was due to a misunderstanding. She also replied to OWCP's inquiries, noting that her shoulder conditions were ongoing. Appellant stated that there had been a significant gap in treatment because she had been taking medications for her conditions.

By decision dated August 31, 2015, OWCP reviewed the merits of appellant's claim, but denied modification of its prior claim. It found that appellant had not submitted any additional medical evidence on reconsideration, and that her claim remained closed for medical care.

On February 9, 2016 appellant requested reconsideration of OWCP's August 31, 2015 decision. With her request, she submitted a report dated November 6, 2015 from Dr. Donald Dean Dominy III, a Board-certified orthopedic surgeon. He diagnosed bilateral shoulder osteoarthritis and recommended total shoulder replacement.

By decision dated February 25, 2016, OWCP reviewed the merits of appellant's claim, but denied modification of its prior decision. It noted that appellant's claim was not accepted for osteoarthritis and that Dr. Dominy had not provided an opinion as to how this degenerative condition was related to the accepted work-related conditions.

On November 18, 2016 appellant again requested reconsideration. With her request, she resubmitted a report dated August 2, 2005 from Dr. Nguyen. She also submitted a narrative statement noting that she had visited physicians for her condition as far back as 1992, and that she was never released from medical care.

In the August 2, 2005 report, Dr. Nguyen diagnosed tendinitis and grade 1 rotator cuff tear. He opined that these conditions were caused by appellant's repetitive motions of the arms, shoulders, and by heavy lifting required by her federal employment.

By decision dated February 24, 2017, OWCP reviewed the merits of appellant's claim, but denied modification of its prior decision. It found that she had submitted new factual information not previously considered, but that appellant had not submitted any new medical evidence in support of her claim for recurrence.

LEGAL PRECEDENT

FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.²

Recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment.³

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting causal relationship between the employee's current condition and the original injury in order to meet his or her burden of proof.⁴

An employee has the burden of proof to establish a recurrence of a medical condition that is causally related to an accepted employment injury. To meet this burden, the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports the conclusion with sound medical rationale.⁵

² 5 U.S.C. § 8103(a).

³ 20 C.F.R. § 10.5(y).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013); *see also* J.M., Docket No. 09-2041 (issued May 6, 2010).

⁵ *See K.T.*, Docket No. 15-1758 (issued May 24, 2016).

ANALYSIS

The Board finds that appellant has not established a recurrence of a medical condition on December 12, 2014 causally related to her accepted employment injury.

OWCP accepted that appellant sustained bilateral sprain/strain of the rotator cuff and bilateral rotator cuff syndrome of the shoulder in the performance of duty in 2001. The record indicates that appellant has not worked since July 30, 2001. On December 12, 2014 appellant claimed a recurrence of medical condition. She did not indicate a date of recurrence. OWCP denied her recurrence claim in decisions dated May 15 and August 31, 2015; March 16, 2016; and February 24, 2017.

In a report dated August 2, 2005, Dr. Nguyen diagnosed tendinitis and a grade 1 rotator cuff tear. He opined that these conditions were caused by repetitive motions of the arms, shoulders, and by heavy lifting, related to appellant's federal employment. In a report dated September 26, 2014, Dr. Nguyen examined her and noted that she continued to have bilateral shoulder and knee pain. As for Dr. Nguyen's assessment of pain in the report of September 26, 2014, the Board has held that an assessment of "pain" is a symptom, not a compensable medical diagnosis.⁶ Regarding the resubmission of Dr. Nguyen's August 2, 2005 report, that report is not contemporaneous with appellant's claim for recurrence and has no probative value as to her claim for recurrence.⁷ As such, these reports from Dr. Nguyen are insufficient to establish appellant's claim for recurrence of medical treatment.

On November 6, 2015 Dr. Dominy diagnosed bilateral shoulder osteoarthritis and recommended total shoulder replacement. The Board notes that OWCP has not accepted appellant's claim for osteoarthritis. For conditions not accepted by OWCP as being employment related, it is the employee's burden of proof to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.⁸ Dr. Dominy did not offer any opinion or medical rationale causally relating the diagnosis of bilateral shoulder osteoarthritis to appellant's accepted employment injuries. His report is therefore insufficient to establish appellant's claim for recurrence of a medical condition.

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 failed to meet her burden of proof to establish a recurrence of a medical condition on December 12, 2014 related to her accepted employment injury.

⁶ *C.F.*, Docket No. 08-1102 (issued October 10, 2008); *Robert Broome*, 55 ECAB 339 (2004).

⁷ *See M.B.*, Docket No. 16-0077 (issued June 1, 2016); *see also A.P.*, Docket No. 14-1409 (issued June 17, 2015).

⁸ *T.M.*, Docket No. 16-1456 (issued January 10, 2017); *E.C.*, Docket No. 10-1554 (issued April 1, 2011); *Alice J. Tysinger*, 51 ECAB 638 (2000).

ORDER

IT IS HEREBY ORDERED THAT the February 24, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 11, 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