United States Department of Labor
Employees' Compensation Appeals Board

M.J., Appellant	)	
and	)	**Docket No. 16-1375**
	)	**Issued: January 3, 2017**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Burbank, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 22, 2016 appellant filed a timely appeal from a May 10, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 met his burden of proof to establish a recurrence of total disability for the period November 7, 2014 through March 24, 2015, caused by an August 3, 2014 employment injury.

On appeal appellant generally asserts that he was totally disabled during this period.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 3, 2014 appellant, then a 54-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that he injured his left arm that day while running bags at work. He accepted a limited-duty assignment on September 12, 2014 for the hours 5:00 a.m. to 12:30 p.m. The duties were working in divestiture where appellant would remind passengers in line of items they should remove, check boarding passes, direct passengers to appropriate areas, and answer questions. He would also work at the walk-through metal detector where he would stand in front of the detector and director passengers to pass through the monitor. On September 8, 2014 OWCP accepted sprain of shoulder and upper arm, supraspinatus, left.[2]

A September 28, 2014 magnetic resonance imaging (MRI) scan of the left shoulder demonstrated a full-thickness tear of the supraspinatus tendon.

By report dated October 14, 2014, Dr. Marc J. Friedman, a Board-certified orthopedic surgeon, noted the history of injury and appellant's complaint of constant left shoulder pain. He related that appellant was working modified duty for eight hours a day, five days a week and indicated that his job duties involved luggage screening, bag checking, and passenger screening, which required standing, walking, bending, kneeling, squatting, lifting, carrying, pushing, pulling, reaching at and above shoulder level, twisting, turning, and constant repetitive use of the hands. Following physical examination, Dr. Friedman diagnosed left shoulder pain and rotator cuff tear. He advised that appellant could continue modified duty with no over shoulder work and lifting greater than 10 pounds.

On November 21, 2014 appellant filed a claim for compensation (Form CA-7) for the period November 7 to 15, 2014. He submitted form reports dated November 4 and December 11, 2014, in which Dr. Friedman advised that appellant could not work from October 30, 2014, "pending authorization for surgery."

By letter dated December 17, 2014, OWCP advised appellant that to support the claimed disability he should submit a narrative report from his physician with objective findings explaining why he could not perform his modified job duties.

On December 22, 2014 OWCP authorized left shoulder arthroscopic surgery.[3]

Appellant thereafter submitted an October 14, 2014 form report from Dr. Friedman, in which the physician advised that appellant could perform modified duty with lifting restricted to 10 pounds, no forceful pushing or pulling, and no work above the shoulder. In treatment notes and form reports dated October 30, 2014 to January 8, 2015, Dr. Friedman noted appellant's

[2] In reports dated August 4 to October 13, 2014, Dr. J. Jason Toth, Board-certified in emergency medicine, advised that appellant could return to modified duty with no use of left shoulder, and no overhead work. He initially provided a 10-pound lifting restriction, which he raised to 25 pounds on August 28, 2014. On October 9, 2014 Dr. Toth reported medications of 600 milligrams (mg) of Ibuprofen every eight hours and #20 Norco at bedtime.

[3] On March 3, 2015 OWCP also authorized left shoulder arthroscopic surgery and arthroscopic repair of rotator cuff.

complaint of increasing shoulder pain. He reiterated his diagnoses and advised that appellant was totally disabled.

In correspondence dated January 14, 2015, the employing establishment challenged appellant's disability claim. It noted that he was performing limited duty until October 30, 2014 when Dr. Friedman placed appellant in total disability status. The employing establishment maintained that there was no objective basis to find appellant totally disabled from his modified duties.

Appellant continued to submit claims for compensation.

By decision dated February 2, 2015, a hearing representative of OWCP denied appellant's claim for wage-loss compensation beginning November 7, 2014 and continuing because the medical evidence did not support the claimed disability.

Appellant timely requested a hearing before a hearing representative of OWCP's Branch of Hearings and Review. On March 4, 2015 he changed his request to a review of the written record.

On a February 23, 2015 certificate of disability form, Dr. Friedman advised that appellant was unable to work from October 30, 2014 due to increased pain and discomfort in his left shoulder and that he needed surgery. He also submitted treatment notes dated January 6, February 24, and March 19, 2015, in which he repeated appellant's complaint of left shoulder pain which, the physician advised, had increased to the point where appellant could not work. Dr. Friedman noted that appellant attempted to work with restrictions, but was placed on total disability due to a significant increase in pain with any use of his shoulder.[4]

On March 25, 2015 Dr. Friedman performed left shoulder arthroscopic rotator cuff repair with subacromial decompression. Postoperative diagnoses included a full-thickness rotator cuff tear. OWCP paid disability compensation beginning March 25, 2015.

Dr. Friedman provided follow-up care. On April 23 and May 21, 2015 he noted appellant's complaint of some left upper extremity radicular complaints with occasional neck pain. Dr. Friedman diagnosed left shoulder pain, status post arthroscopic rotator cuff repair, and rule-out C6 radiculitis.

In a June 5, 2015 report, Dr. Z. Elizabeth Bloze, a Board-certified physiatrist and associate of Dr. Friedman, noted the history of injury and March 25, 2015 surgery. She reported complaints of left shoulder pain and tingling in appellant's arm. Electrodiagnostic studies done by Dr. Bloze that day demonstrated moderate C6 sensory dysfunction without denervation and no evidence of left cervical radiculopathy or injury to the left suprascapular, axillary, or long thoracic nerve.[5] She advised that the left cervical radiculopathy was also the result of the October 2014 work injury. Dr. Bloze recommended cervical MRI scan.

[4] Dr. Stanford C. Lee, Board-certified in emergency medicine, performed a preoperative examination on March 19, 2015. He advised that appellant was medically cleared for surgery.

[5] A copy of the study report is found in the case record.

On July 2, 2015 Dr. Friedman advised that appellant could return to modified duty on July 6, 2015 with no lifting, carrying, forceful pushing or pulling, or work above the shoulder with the left upper extremity, and no repetitive movement of the neck. Appellant accepted a modified position on July 6, 2015.

In correspondence dated July 24, 2015, Dr. Friedman advised that on October 3, 2014 appellant was placed on total disability due to the August 3, 2014 employment injury, which resulted in a rotator cuff tear for which he took strong pain medication that made him unable to drive a motor vehicle or take any type of public transportation before 5:00 a.m. to get to work. He concluded that following surgery appellant continued to suffer from pain, stiffness, burning, spasms, and aching.[6] On September 15, 2015 Dr. Friedman again advised that appellant was unable to drive a motor vehicle or take any type of transportation to arrive at work in a timely manner. He further opined that appellant's left cervical radiculopathy was a result of the October 2014 employment injury.

Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, evaluated appellant on October 1, 2015. He described the August 3, 2014 employment injury and appellant's medical history. Current complaints included constant pain at the base of appellant's neck, headaches, and occasional pain in the left shoulder and arm. Dr. Tauber reviewed some medical records and provided findings. He diagnosed status post arthroscopic rotator cuff repair with subacromial decompression and possible adhesive capsulitis, and cervical radiculopathy with C5-6 disc protrusion. Regarding the period November 7, 2014 through March 24, 2015, Dr. Tauber advised that as a transportation security officer, appellant would have to lift luggage along with pushing, pulling, and grasping, which, he opined, were clearly inappropriate activities for an individual with a rotator cuff tear. He asserted that appellant's cervical condition was also work related because appellant had to carry out repetitive lifting of heavy luggage and had to wand-search passengers. Dr. Tauber also provided an impairment rating for appellant's left shoulder.

On October 8, 2015 Dr. Friedman indicated that he had nothing further to add in support of his position regarding appellant's period of total disability.

Counsel submitted a brief to the Branch of Hearings and Review on November 10, 2015.[7] He asserted that the February 2, 2015 decision denying disability compensation for the period November 7, 2014 through March 24, 2015 should be reversed, based on the medical evidence of record. Counsel further maintained that the claim should be expanded to include full-thickness tear of the supraspinatus tendon and adhesive capsulitis of the left shoulder and cervical radiculopathy with disc protrusion at C5-6. In support of his assertions, he submitted duplicates of reports previously of record: the medication list from Dr. Toth dated October 9, 2014, reports from Dr. Friedman dated October 30, 2014 to September 15, 2015, Dr. Friedman's operative report of March 25, 2015, the July 28, 2015 report of the MRI scan of the cervical spine, and Dr. Tauber's October 1, 2015 report.

By decision dated January 4, 2016, an OWCP hearing representative affirmed the February 2, 2015 decision. He noted that Dr. Tauber's description of appellant's modified duties

[6] A July 28, 2015 MRI scan of the cervical spine demonstrated disc bulges at C5-6, C6-7, and C7-T1.

[7] Counsel's representation ended on November 10, 2015.

was inaccurate, that Dr. Friedman had not explained why appellant's pain precluded him from his modified duties, or why the pain medication precluded him from driving or taking public transportation. The hearing representative advised that appellant should file an occupational disease claim for his cervical condition, and ordered that this claim should be expanded to include a torn left supraspinatus tendon. On January 6, 2016 OWCP expanded the claim to include a torn left supraspinatus tendon.

In a January 5, 2016 report, Dr. H. Leon Brooks, a Board-certified orthopedic surgeon and associate of Dr. Friedman, who cosigned the report, described appellant's medical and surgical history. He noted appellant's current complaints of left shoulder and radiating neck pain. Dr. Brooks described examination findings and provided an impairment rating. He concluded that appellant could return to regular duties with the restriction of no repeated activities at or above shoulder level.

On February 12, 2016 appellant requested reconsideration. He advised that he did not stop work immediately after the August 3, 2014 employment injury. Appellant continued to work modified duty, but missed intermittent periods for medical appointments. He provided copies of his earning and leave statements covering the period July 27 to September 20, 2014. Appellant explained that the modified duties he was performing when he stopped work exceeded those described, indicating that he had to twist and turn his neck and would inadvertently extend his arms to assist passengers. He also maintained that he could not work due to increased discomfort and pain and was under the influence of medication. Appellant attached a number of medical reports previously of record.

In a merit decision dated May 10, 2016, OWCP denied modification of the prior decision. It noted that there was no evidence to show that appellant was made to work beyond the restrictions provided by Dr. Toth and initially by Dr. Friedman. OWCP found that Dr. Friedman had not provided a rationalized explanation as to why pain medications kept appellant from modified duties, and that a pending authorization for surgery did not establish disability from work. It concluded that appellant should consider filing a separate occupational disease claim for his neck condition.[8]

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.[9] This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her 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

[8] The Board notes that, following this decision on appeal to the Board, appellant filed a schedule award claim (Form CA-7) that is under development by OWCP.

[9] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

requirements of such an assignment are altered so that they exceed his or her established physical limitations.[10]

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 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.[11]

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.[12]

ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish a recurrence of total disability for the period November 7, 2014 through March 24, 2015, due to his August 3, 2014 employment injury. The accepted conditions were sprain of shoulder and upper arm, supraspinatus, left, and complete rotator cuff tear, supraspinatus, left shoulder.

Following the August 3, 2014 employment injury, appellant missed intermittent periods for medical treatment until he stopped work on November 7, 2014 and claimed wage-loss compensation. Although he argued that the modified duties he was performing when he stopped work exceeded his restrictions, he has submitted no evidence corroborating this assertion.

Medical opinion evidence submitted by appellant to support a claim for compensation should reflect a correct history and should offer a medically sound explanation by the physician of how the modified duties he was performing could no longer be performed beginning November 7, 2014 due to the accepted condition.[13] Appellant submitted no such evidence in this case.

Following the August 3, 2014 employment injury, appellant was initially treated by Dr. Toth who advised that he could return to modified duty with no use of the left shoulder and no overhead work. He prescribed 600 mg of Ibuprofen every eight hours and #20 Norco at bedtime.[14] In October 2014 appellant began treatment with Dr. Friedman.

[10] *Id.*

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

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

[13] *Id.*

[14] *Supra* note 2.

Dr. Friedman initially advised that appellant could continue modified duty, but in form reports beginning November 4, 2014, he advised that appellant could not work, initially noting "pending authorization for surgery." He later advised that appellant was totally disabled beginning October 30, 2014 due to increased left shoulder pain and discomfort and that the pain medication he took rendered him unable to drive or take public transportation before 5:00 a.m. in order to get to work. There is, however, no evidence of the medication Dr. Friedman prescribed appellant, and he did not reflect specific knowledge of the limited duties appellant was performing after the August 3, 2014 employment injury.

To meet appellant's burden of proof, the medical evidence submitted should reflect a correct history, and the physician should offer a medically sound explanation of how the specific duties appellant performed in his modified position caused or aggravated the claimed condition such that he became totally disabled. The opinion must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.[15] Medical form reports and narrative statements merely asserting causal relationship cannot discharge appellant's burden of proof.[16] The medical evidence must also include rationale explaining how the physician reached his or her opinion.[17] The Board concludes that that Dr. Friedman's opinion is of insufficient rationale to establish that appellant was totally disabled from his modified duties from November 7, 2014 through March 24, 2015, until his surgery on March 25, 2015.

Appellant was also seen in consultation by Dr. Tauber on October 1, 2015. Dr. Tauber too exhibited no knowledge of appellant's modified duties, and instead advised that he had to lift, pull, push, and grasp luggage. Thus, his opinion was based on an incorrect history and the Board has long held that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.[18] Dr. Tauber's opinion is therefore insufficient to meet appellant's burden of proof.

As noted above, appellant's burden requires that he furnish 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 who supports that conclusion with sound medical reasoning.[19] Where no such rationale is present, the medical evidence is of diminished probative value.[20] As appellant failed to submit sufficient medical evidence to establish a recurrence of disability for the period November 7, 2014 through

[15] *See J.J.*, Docket No. 09-27 (issued February 10, 2009).

[16] *Sedi L. Graham*, 57 ECAB 494 (2006).

[17] *Beverly A. Spencer*, 55 ECAB 501 (2004).

[18] *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[19] *Supra* note 12.

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

March 24, 2015 causally related to the accepted August 13, 2014 left shoulder injury, he has failed to meet his burden of proof.[21]

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 did not meet his burden of proof to establish a recurrence of total disability for the period November 7, 2014 through March 24, 2015, caused by an August 3, 2014 employment injury.

ORDER

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

Issued: January 3, 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

[21] *Id.*