

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

T.M., Appellant)

and)

**DEPARTMENT OF THE NAVY, MARINE
CORPS LOGISTIC BASE, Albany, GA,
Employer**)

**Docket No. 16-1456
Issued: January 10, 2017**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 1, 2016 appellant filed a timely appeal from a June 24, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 established a recurrence of a medical condition beginning December 6, 2012 causally related to his accepted employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as outlined in the Board's prior decisions are incorporated herein by reference. The facts relevant to this appeal are set forth below.

On September 8, 2001 appellant, then a 46-year-old heavy mobile mechanic, filed a traumatic injury claim (Form CA-1) alleging that on August 6, 2001 he injured his left lower back and leg in the performance of duty. OWCP accepted the claim, assigned File No. xxxxxx248, for lumbar strain.³ Appellant's attending physician released him to resume his usual employment beginning April 29, 2002.

Appellant filed a recurrence of disability claim (Form CA-2a) beginning July 2004 causally related to his August 6, 2001 work injury. However, as he cited new work factors, OWCP adjudicated the claim as a new injury, assigned File No. xxxxxx141.

In a decision dated December 30, 2009, the Board affirmed OWCP's nonmerit decisions dated June 19, August 20, and October 15, 2008 denying appellant's request for a review of the written record and a July 16, 2008 decision denying his request for reconsideration as untimely filed and failed to demonstrate clear evidence of error.⁴

Appellant continued to request reviews of the written record, which OWCP denied in decisions dated September 27, 2011, and June 11, July 26, and September 26, 2012, finding that there was no final decision from which he could receive a review of the written record.

On August 8, 2012 appellant requested reconsideration of an August 19, 2002 schedule award decision.⁵ By decision dated September 21, 2012, OWCP denied appellant's request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.

In a decision dated November 6, 2012, OWCP denied appellant's request for continued physical therapy due to his August 6, 2001 work injury.⁶ It noted that Dr. Jeffrey A. Fried, an

² Docket No. 09-0321 (issued December 30, 2009).

³ In a decision dated August 19, 2002, OWCP denied appellant's claim for a schedule award. On September 3, 2002 appellant requested a review of the written record. On January 23, 2003 an OWCP hearing representative affirmed the August 19, 2002 decision.

⁴ *Supra* note 2. On May 13, 2008 appellant requested a review of the written record before an OWCP hearing representative. By decision dated June 19, 2008, OWCP denied his request for a review of the written record, noting that it had issued a decision based on a review of the written record on January 23, 2003 and thus he was not entitled to a second review of the written record as a matter of right. On July 10, 2008 appellant requested reconsideration of the January 23, 2003 decision. By decision dated July 16, 2008, OWCP denied his request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error. Appellant again requested reviews of the written record. On August 20 and October 15, 2008 OWCP denied these requests for a review of the written record.

⁵ By decisions dated August 19, 2002 and January 23, 2003, OWCP found that appellant had not established permanent impairment due to his accepted condition of lumbar sprain.

⁶ By decision dated January 31, 2013, an OWCP hearing representative affirmed the November 6, 2012 decision denying authorization for physical therapy.

attending Board-certified orthopedic surgeon, failed to adequately explain how the condition of spondylolisthesis was due to his lumbar sprain.

On November 16, 2012 OWCP referred appellant to Dr. Douglas P. Hein, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether he had a need for medical benefits causally related to his August 6, 2001 employment injury.

In a report dated December 5, 2012, Dr. Hein discussed appellant's work injury and the results of diagnostic studies. He advised that the accepted condition of lumbar strain resulting from the 2001 work injury had entirely resolved. Dr. Hein opined that appellant had degenerative changes at L4-5 and L5-S1 that predated his injury and that the spondylolisthesis at L4-5 was "a normal progression of that disease."

In a decision dated February 13, 2013, OWCP terminated appellant's medical benefits and any future wage-loss compensation effective that date. It found that the opinion of Dr. Hein represented the weight of the medical evidence and established that he had no residuals of his August 6, 2001 work injury.

In a report dated January 16, 2013, received by OWCP on May 20, 2013, Dr. Fried advised that appellant's low back strain from his August 6, 2001 employment injury had "not resolved and he has instability of the back resulting in spondylolisthesis at L5-S1."⁷ He indicated that appellant might require a spinal fusion.

On April 15, 2013 appellant requested both a review of the written record and reconsideration. In a decision dated May 10, 2013, OWCP denied his request for a review of the written record as it had not been requested within 30 days of the February 13, 2013 decision. By decision dated August 9, 2013, OWCP denied modification of its February 13, 2013 termination decision. It found that appellant had failed to submit medical evidence sufficient to overcome the opinion of Dr. Hein that he had no residuals of his accepted lumbar strain.

A magnetic resonance imaging (MRI) scan dated September 17, 2013 revealed anterolisthesis of L4 over L5 as a result of advanced facet arthrosis and mild-to-moderate bilateral neural foraminal stenosis at L2 through L5.⁸

Appellant appealed to the Board. In a decision dated December 11, 2013, the Board affirmed the May 10, 2013 decision denying his request for a review of the written record and the August 9, 2013 decision which denied modification of the termination of benefits.⁹ The Board found that Dr. Hein's opinion constituted the weight of the evidence and demonstrated that appellant did not require further medical treatment. The Board considered Dr. Fried's

⁷ In a report dated July 17, 2013, Dr. Fried opined that appellant had 28 percent whole person permanent impairment as a result of cervical radiculitis.

⁸ On July 17, 2013 Dr. Fried diagnosed cervical disc displacement, acquired spondylolisthesis, right carpal tunnel syndrome, right contracture of the little finger, bursitis of the left elbow, and right shoulder joint pain. He advised that appellant had 23 percent whole person permanent impairment due to cervical radiculitis.

⁹ Docket No. 13-1953 (issued December 11, 2013).

January 16, 2013 opinion that his lumbar sprain had not resolved but found that it was unsupported by medical rationale.

On December 7, 2013 appellant filed a recurrence claim (Form CA-2a) alleging that he experienced the need for further medical treatment beginning December 6, 2012 causally related to his August 6, 2001 employment injury.

In a response dated March 21, 2014, OWCP informed appellant that it would not take action on his claim of recurrence of a medical condition as it had previously terminated his compensation and medical benefits.¹⁰

In a report dated December 15, 2014, Dr. John D. Marshall, who specializes in family medicine, evaluated appellant for pain in his arms and neck. He diagnosed cervical disc displacement, spondylolisthesis, and a left rotator cuff tear.

Dr. Fried, in a report dated March 19, 2015, reviewed appellant's history of an August 6, 2001 injury and noted that he injured his rotator cuff. He related:

“In addition, [appellant] had no symptomatic back condition prior to his injury. He has had continued back and leg pain and was found to have spondylolisthesis and it is my opinion that he had previous quiescent back condition, which was aggravated by the accident and has not returned to its baseline state. Therefore, I believe the spondylolisthesis should be considered a work-related condition.”

On May 22, 2015 appellant requested reconsideration. By decision dated June 25, 2015, OWCP denied his request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error. It noted that its last merit decision was issued December 11, 2013 and appellant's request for reconsideration was not received until May 22, 2015.

By decision dated November 5, 2015, the Board affirmed OWCP's June 25, 2015 decision.¹¹ The Board discussed appellant's contention that OWCP should issue a decision regarding his recurrence claim, but indicated that it had no jurisdiction over this issue. The Board found that the underlying issue was whether OWCP properly terminated his entitlement to medical benefits as he had no further residuals of his lumbar strain.

In correspondence dated January 13, 2016, OWCP discussed appellant's December 7, 2013 notice of a recurrence of a medical condition and advised him that he needed to submit supporting factual and medical evidence, including a report from his attending physician addressing the relationship between any current condition and his accepted work injury.

Appellant, in a statement dated January 11, 2016, asserted that Dr. Hein performed a brief examination and did not consider all of the medical evidence. He described his history of

¹⁰ Appellant appealed the March 21, 2014 correspondence to the Board. On November 12, 2014 the Board dismissed the appeal after finding that the March 21, 2014 letter was informational in nature rather than a final adverse decision.¹⁰ The Board thus found that there was no final decision over which it had jurisdiction.

¹¹ Docket No. 15-1571 (issued November 5, 2015).

multiple work injuries and advised that he currently received disability benefits from the Social Security Administration.

In a January 27, 2016 report, Dr. Fried indicated that on October 6, 2001 appellant injured his back pulling a wheel off a trailer. He advised that a lumbar spine MRI study obtained after his injury showed spondylosis, but that his condition “had progressed and the last MRI scan done on March 6, 2009 showed L4-5 spondylolisthesis grade 1 with disc bulge. Appellant also has had progression of his condition in his back since the accident and his accident occurred as an aggravation of his preexisting spondylosis and now has resulted in spondylolisthesis at L4-5.”

By decision dated June 24, 2016, OWCP found that appellant had not established a recurrence of disability. It determined that Dr. Fried’s January 27, 2016 report was not rationalized and failed to explain why appellant’s current condition was related to the August 6, 2001 employment injury.

LEGAL PRECEDENT

Appellant has the burden of proof to establish that he sustained a recurrence of a medical condition causally related to his accepted employment injury.¹² To meet his burden, he must furnish medical evidence from a 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 that conclusion with sound medical reasoning.¹³ Where no such rationale is present, the medical evidence is of diminished probative value.¹⁴

OWCP’s procedures define a recurrence of medical condition as follows:

“This term is defined as the documented need for further medical treatment after release from treatment of the accepted condition when there is no work stoppage. Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment.”¹⁵

ANALYSIS

OWCP accepted that appellant sustained lumbar strain as a result of an August 6, 2001 employment injury. It terminated his medical benefits effective February 13, 2013. The Board affirmed OWCP’s termination of appellant’s medical benefits in a decision dated December 11, 2013. The Board found that the opinion of Dr. Hein, the second opinion examiner, represented the weight of the evidence and established that appellant had no residuals of his accepted condition requiring medical treatment. The Board also found that the January 16,

¹² See *V.P.*, Docket No. 16-0614 (issued May 18, 2016).

¹³ See *Ronald A. Eldridge*, 53 ECAB 218 (2001).

¹⁴ *Mary A. Ceglia*, 55 ECAB 626 (2004); *Albert C. Brown*, 52 ECAB 152 (2000).

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013).

2013 report from Dr. Fried was not rationalized and was thus insufficient to show that he needed additional medical treatment for his lumbar sprain.

Appellant, on December 7, 2016, filed a claim for a recurrence of a medical condition beginning December 6, 2012 due to his August 6, 2001 work injury. In its June 24, 2016 decision, OWCP found that appellant had not established a recurrence of disability. The issue, however, is whether appellant met his burden of proof to show that he required additional medical treatment due to his accepted August 6, 2001 employment injury after February 13, 2013, the date OWCP terminated his medical benefits.

The Board finds that appellant has not met his burden of proof to establish a recurrence of a medical condition beginning February 13, 2013. On December 15, 2014 Dr. Marshall noted that appellant complained of bilateral neck and arm pain. He diagnosed cervical disc displacement, spondylolisthesis, and a left rotator cuff tear. Dr. Marshall, however, did not address causation and thus his opinion is of little probative value. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹⁶

On March 19, 2015 Dr. Fried discussed appellant's history of an August 6, 2001 injury. He advised that he had no back symptoms before his injury but now had back and leg pain with spondylolisthesis. Dr. Fried opined that the work injury aggravated a preexisting condition and that the aggravation had not resolved. He noted that the spondylolisthesis "should be considered a work-related condition." A medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.¹⁷ Additionally, OWCP did not accept spondylolisthesis as causally related to the August 6, 2001 work injury. Where appellant claims that a condition not accepted or approved by OWCP resulted from his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.¹⁸ Dr. Fried did not provide adequate rationale for his opinion that the work injury aggravated a preexisting condition and thus his report is of little probative value.¹⁹

Dr. Fried, in a January 27, 2016 report, discussed appellant's history of an injury to his back on August 6, 2001. He related that MRI studies showed progression of spondylolisthesis from after the 2001 injury until 2009. Dr. Fried opined that the work injury aggravated preexisting spondylolisthesis that had progressed to spondylolisthesis at L4-5. He did not, however, explain why the progression of spondylolisthesis on MRI study resulted from the injury rather than age or other causes. A physician must provide an opinion on whether the employment incident described caused or contributed to the claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion

¹⁶ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

¹⁷ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

¹⁸ *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

¹⁹ *Willa M. Frazier*, 55 ECAB 379 (2004); *Jimmy H. Duckett*, 52 ECAB 332 (2001).

reached is sound, logical, and rational.²⁰ The Board finds that Dr. Fried failed to provide a supported medical opinion.

As discussed, appellant has the burden of proof to submit reasoned medical evidence supporting his claim that he requires further medical treatment as a result of his accepted employment injury.²¹ He failed to provide such evidence and thus did not 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established a recurrence of a medical condition beginning December 6, 2012 causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 10, 2017
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

²⁰ See *John W. Montoya*, 54 ECAB 306 (2003).

²¹ See *supra* note 12.