

FACTUAL HISTORY

On July 13, 2009 appellant, then a 45-year-old information technology specialist, filed a traumatic injury claim (Form CA-1) alleging that on June 24, 2009 he injured his right shoulder and neck in the performance of duty. He indicated that he had developed right shoulder pain while holding a telephone to his shoulder while typing and writing.

On December 11, 2009 OWCP accepted the claim for cervical strain.³ By letter dated January 5, 2010, it accepted a recurrence of a medical condition as of September 6, 2009.

On March 11, 2016 appellant submitted a notice of recurrence (Form CA-2a) claiming disability commencing February 1, 2016. On the Form CA-2a he wrote that his condition never completely resolved and was gradually worsening, with cramps in his left shoulder and neck area. Appellant also reported that he had stiffness in his right shoulder and neck, with left upper arm muscle spasms.

By letter dated April 21, 2016, OWCP requested that appellant submit additional evidence to support his recurrence claim. On May 2, 2016 appellant submitted a February 25, 2016 note from Dr. Derek Kram, a Board-certified orthopedic surgeon. Dr. Kram indicated that appellant was seen on February 18 and 25, 2016. He diagnosed cervical strain, degenerative disc disease, and bilateral shoulder radiculopathy. Dr. Kram related that appellant reported pain one week prior to treatment. Appellant also submitted an April 13, 2016 report from Dr. Natalie Vassall, a Board-certified internist. Dr. Vassall reported that appellant had a flare-up of low back pain, and was requesting light-duty work.

By decision dated June 2, 2016, OWCP denied the claim for a recurrence of disability. It found that the medical evidence was insufficient to establish the claim.

On June 22, 2016 appellant requested a hearing before an OWCP hearing representative. A hearing was held on February 9, 2017.

Appellant submitted a July 12, 2016 report from Dr. Kram. Dr. Kram wrote that appellant had been under his care since July 31, 2009, and he discussed appellant's treatment history. He wrote that appellant was seen on September 30, 2011, and was not seen again until February 18, 2016. As to February 18, 2016 Dr. Kram indicated that appellant reported neck and bilateral shoulder pain for the prior three weeks. He wrote that, at that time, the impression was cervical strain with cervical degenerative disc disease and bilateral radicular symptoms "status post a prior work-related injury." Dr. Kram indicated that appellant was treated with a Medrol (methylprednisolone) dose pack and physical therapy, and was last seen on April 21, 2016.

By decision dated April 18, 2017, OWCP's hearing representative affirmed the June 2, 2016 OWCP decision. She found the medical evidence failed to establish a recurrence of disability as of February 1, 2016 causally related to the June 24, 2009 employment injury.

³ The record does not reflect that appellant received wage-loss compensation on the supplemental or periodic rolls as a result of this injury.

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 or new exposure to the work environment that caused the illness.⁴

An employee who claims a recurrence of disability due to an accepted employment injury has the burden of proof to establish by the weight of substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee 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 supports that conclusion with sound reasoning.⁵ Where no such rationale is present, medical evidence is of diminished value.⁶

ANALYSIS

In the present case, OWCP accepted a cervical strain as a result of the employment incident on June 24, 2009. Appellant had indicated that he held a telephone with his right shoulder, while using his hands to type and write. He returned to work on July 7, 2009, and now has claimed a recurrence of disability commencing February 1, 2016.

To establish the claim, there must be probative medical evidence that appellant had a disabling, employment-related condition as of February 1, 2016. When a physician's statements consist only of a repetition of the employee's complaints that excessive pain caused an inability to work, without making an objective finding of disability, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁷ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁸

Dr. Kram indicated that appellant was seen on February 18, 2016, with complaints of neck and shoulder pain for the prior three weeks.⁹ He did not discuss disability for work as of February 1, 2016. Moreover, Dr. Kram did not explain how any condition on February 1 or 18,

⁴ 20 C.F.R. § 10.5(x); *R.S.*, 58 ECAB 362 (2007).

⁵ *I.J.*, 59 ECAB 408 (2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁶ *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁷ *See A.C.*, Docket No. 17-0384 (issued September 11, 2017).

⁸ *S.P.*, Docket No. 16-1384 (issued February 1, 2017).

⁹ *Supra* note 7.

2016 was causally related to the June 24, 2009 employment injury. He briefly referred to status post “prior work injury” without further explanation.¹⁰

As to the accepted diagnosis of cervical strain, Dr. Kram did not explain why he opined that appellant continued to have an employment-related strain. He noted that he had not treated appellant since 2011, and provides no indication of how there was a spontaneous change in an employment-related cervical strain resulting in disability. Dr. Kram did not provide adequate bridging evidence to show a spontaneous worsening of the accepted conditions, or that he required further medical treatment.¹¹

With respect to a diagnosis of cervical degenerative disc disease or shoulder radiculopathy, these are not accepted conditions. Dr. Kram did not provide medical rationale explaining how these conditions were causally related to the June 24, 2009 employment injury.¹²

It is appellant’s burden of proof to establish the claim for compensation. The Board finds appellant did not meet his burden of proof in this case.

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

Appellant has failed to establish a recurrence of disability commencing February 1, 2016 causally related to his June 24, 2009 employment injury.

¹⁰ *Supra* note 8.

¹¹ *J.F.*, Docket No. 16-1915 (issued March 10, 2017).

¹² *See L.R.*, Docket No. 16-0520 (issued June 15, 2016); *L.F.*, Docket No. 14-1817 (issued February 2, 2013).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 18, 2017 is affirmed.

Issued: November 20, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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