

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

H.D., Appellant)
and) Docket No. 17-1165
DEPARTMENT OF HOMELAND SECURITY,) Issued: September 8, 2017
IMMIGRATION & CUSTOMS)
ENFORCEMENT, Houston, TX, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 5, 2017 appellant filed a timely appeal from an April 18, 2017 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 has established a recurrence of a medical condition causally related to a February 19, 1998 employment injury.

On appeal appellant requests medical treatment for the accepted right shoulder condition.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board with regard to appellant's claim for a schedule award.² The facts of the prior appeal are incorporated herein by reference. The relevant facts follow.

On February 20, 1998 appellant, then a 45-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that he injured his right knee and right shoulder while moving heavy boxes at work. On June 9, 1998 OWCP accepted right shoulder strain and right knee strain. Appellant was informed at that time that he was entitled to medical treatment and expenses for the accepted conditions.³

Appellant filed a schedule award claim (Form CA-7) on March 10, 1999. On November 17, 1999 OWCP was granted a schedule award for seven percent permanent impairment of the right upper extremity. On May 16, 2000 OWCP granted a schedule award for five percent permanent impairment of the right lower extremity.

On July 11, 2000 appellant appealed to the Board from the May 16, 2000 right lower extremity schedule award. By decision dated June 25, 2001, the Board remanded the case for further development regarding the degree of appellant's right lower extremity impairment.⁴ Following referral for a second opinion impairment evaluation and review by an OWCP medical adviser, in a February 7, 2002 decision, OWCP granted appellant an additional 20 percent permanent impairment of the right lower extremity.

The record is thereafter silent until October 20, 2016 when appellant telephoned OWCP to inquire about his claim and requested his case record from the Federal Records Center that day.

On February 4, 2017 appellant filed a recurrence claim (Form CA-2a). He indicated that he was claiming a recurrence for medical treatment only, noting that he had performed his usual duties in continuous pain which continued into retirement because his shoulder injury never healed properly.⁵ Appellant attached a September 8, 2016 magnetic resonance imaging (MRI) scan of the right shoulder that demonstrated a full-thickness tear of the supraspinatus tendon, tendinitis, severe acromioclavicular joint arthropathy, and complex tearing throughout the anterior labrum with arthritis and chondromalacia.

² Docket No. 00-2229 (issued June 25, 2001).

³ The Board notes that, at the time of the February 19, 1998 employment injury, appellant was employed by the Immigration & Naturalization Service (INS), a division of the Department of Justice. Following creation of the Department of Homeland Security (DHS) in 2002, INS was transferred to DHS. Appellant thereafter was employed by Immigration & Customs Enforcement, a division of DHS.

⁴ *Supra* note 2.

⁵ The CA-2a claim form includes no information from the employing establishment. It does not indicate when appellant retired.

By letter dated February 23, 2017, OWCP informed appellant of the evidence needed to support his claim for additional medical treatment for the accepted conditions. Appellant was asked to furnish copies of all medical records regarding his work-related condition and a narrative medical report from his treating physician that included an opinion, supported by medical rationale, regarding the relationship between his current medical condition and need for treatment and the original employment injury. Appellant was afforded 30 days to respond.

In an OWCP development questionnaire dated March 6, 2017, appellant maintained that he had continuous right shoulder pain following the work injury in 1998, which did not heal, (stet) because he did not have surgery. He listed the name of his physician, but provided no additional medical evidence.⁶

In an April 18, 2017 decision, OWCP denied appellant's claim for recurrence of medical condition as the evidence was insufficient to establish the need for additional medical treatment due to the worsening of the employment-related injury.

LEGAL PRECEDENT

A claimant has the burden of proof to establish a recurrence of a medical condition causally related to an accepted employment injury.⁷ To meet this burden, the claimant 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.⁸ Where no such rationale is present, the medical evidence is of diminished probative value.⁹

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."¹⁰

ANALYSIS

The Board finds that appellant has not established a recurrence of a medical condition causally related to the February 19, 1998 employment injury.

⁶ On March 6, 2017 appellant filed an additional schedule award claim. By letter dated March 22, 2017, OWCP informed appellant of the evidence needed to support his schedule award claim. It has not issued a decision on appellant's schedule award claim at the time the present appeal was filed.

⁷ See V.P., Docket No. 16-0614 (issued May 18, 2016).

⁸ See Ronald A. Eldridge, 53 ECAB 218 (2001).

⁹ T.M., Docket No. 16-1456 (issued January 10, 2017).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrence of Medical Condition/Care*, Chapter 2.1500.4b (June 2013).

OWCP accepted appellant's claim for right knee and right shoulder strains. The record does not indicate that appellant stopped work and, although he indicated that he had retired, it does not contain a date of retirement. OWCP granted schedule awards for 7 percent permanent impairment of the right upper extremity and 25 percent permanent impairment of the right lower extremity.

On the notice of recurrence claim form, filed by appellant on February 4, 2017, he indicated that he needed treatment for his right shoulder injury. In support of his claim for recurrence of a medical condition, appellant submitted a September 8, 2016 MRI scan of the right shoulder that demonstrated a full-thickness tear of the supraspinatus tendon. This report did not provide a cause of the diagnosed condition. The Board has long held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹

In a letter dated February 23, 2017, OWCP informed appellant of the specific medical evidence needed to support his claim for recurrence of a medical condition. Appellant did not furnish additional medical evidence. Thus, the record is devoid of evidence explaining how or why appellant's current right shoulder condition is causally related to the accepted February 19, 1998 employment injury. OWCP has not accepted any shoulder condition other than a right shoulder strain. Where a claimant alleges that a condition not accepted or approved by OWCP was due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.¹² Moreover, to establish that a claimed recurrence of the condition was caused by the accepted employment injury, medical evidence of bridging symptoms between the present condition and the accepted injury must support the physician's conclusion of a causal relationship.¹³ Appellant submitted no such evidence in this case. Thus, he has failed to meet his burden of proof.¹⁴

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 not established a recurrence of a medical condition causally related to a February 19, 1998 employment injury.

¹¹ *Willie M. Miller*, 53 ECAB 697 (2002); *see also T.C.*, Docket No. 16-1652 (issued May 9, 2017) (where the Board found that the diagnostic studies of record, including MRI scans that did not offer an opinion regarding the cause of an employee's condition were of limited probative value on the issue of causal relationship).

¹² *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹³ *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹⁴ *See supra* note 12.

ORDER

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

Issued: September 8, 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