

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

_____)	
B.C., Appellant)	
)	
and)	Docket No. 17-1208
)	Issued: August 15, 2018
DEPARTMENT OF THE ARMY, MEDICAL)	
COMMAND, Fort Shafter, HI, Employer)	
_____)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

On May 11, 2017 appellant filed a timely appeal from an April 6, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The appeal was assigned Docket No. 17-1208.

OWCP accepted that on April 3, 2013 appellant, then a 34-year-old diagnostic radiologic technologist, sustained a lumbar sprain while he was turning a patient to his side. On April 15, 2013 appellant was limited to four hours of work per day and released to eight hours of work per day on July 17, 2013. OWCP paid appellant intermittent wage-loss compensation on the supplemental rolls through July 2, 2014.

On April 30, 2014 appellant's physician restricted him from work and subsequently released him to work on July 3, 2014 for four hours per day. Appellant filed claims for compensation (Form CA-7) for leave without pay for total disability from May 1 through July 2, 2014, and for four hours of lost wages per day from July 3 through November 14, 2014. He

¹ Appellant also filed a timely request for oral argument in this case. By order dated October 12, 2017, the Board denied appellant's request for oral argument as oral argument would further delay issuance of a Board decision and not serve a useful purpose. *Order Denying Request for Oral Argument*, Docket No. 17-1208 (issued October 12, 2017).

submitted medical reports from his treating physicians in support of his disability claim. OWCP referred appellant for a second opinion medical examination on July 1, 2014 and an impartial medical examination February 19, 2015 to assess his employment-related injury and disability.

By decision dated June 25, 2015, OWCP denied appellant's claim for wage-loss compensation for the period May 1 through November 14, 2014, finding that the medical evidence failed to establish that he was disabled for the specific period claimed.

On July 14, 2015 appellant requested an oral hearing before an OWCP hearing representative. By decision dated December 21, 2015, an OWCP hearing representative affirmed the June 25, 2015 decision, finding that the medical evidence failed to establish a recurrence of disability. The hearing representative noted that, if appellant wished to consider his degenerative or spondylosis conditions as injury related, he should address those concerns to OWCP.

By letter dated January 5, 2016, appellant requested OWCP to expand his claim to include the additional conditions of acquired spondylolisthesis and accelerated degenerative changes in the L5-S1 disc space, nerve roots, and foramina as evidenced by the medical reports of record.

On May 5, 2016 an OWCP district medical adviser (DMA) reviewed the case file for an opinion on the nature and extent of appellant's employment-related injury. He found that appellant's work injury resulted in a permanent aggravation of preexisting, but asymptomatic, degenerative joint/degenerative disc disease L5-S1 with degenerative retrolisthesis. The DMA further found that the evidence in the case file did not support that appellant was temporarily totally disabled from work on May 4, 2014 when placed on disability by his attending physician.

On May 11, 2016 appellant requested reconsideration of the December 21, 2015 decision denying his disability compensation from May through November 2014.

By decision dated May 16, 2016, OWCP accepted appellant's claim for a recurrence of disability effective July 3, 2014. It accepted the additional conditions of degenerative disc disease at L5-S1 with degenerative retrolisthesis or aggravated spondylolisthesis of the lumbar spine.² OWCP further noted that the period of disability from July 2, 2014 to the present was payable.

On July 11, 2016 OWCP notified appellant that on May 16, 2016 a formal decision was issued to expand his claim and to authorize surgery for the newly accepted work-related aggravated degenerative disc disease at L5-S1 with degenerative retrolisthesis/aggravated spondylolisthesis of the lumbar spine condition. It noted that the letter also authorized disability beginning July 2, 2014 to the present. However, OWCP informed appellant that a decision had already been issued on compensation which he was currently appealing. Therefore, the decision dated May 16, 2016 authorizing wage-loss compensation was rescinded because a formal decision with appeal rights was issued on December 21, 2015, and appellant had exercised his appeal rights. OWCP concluded that his reconsideration of the December 21, 2015 decision was currently under review.

By decision dated July 21, 2016, OWCP denied modification of the December 21, 2015 decision, finding that the medical evidence of record failed to establish a recurrence of disability

² On June 20, 2016 OWCP approved L5-S1 lumbar spine surgery.

from May 1 through November 14, 2014. It noted that a formal decision was issued on May 16, 2016 accepting appellant's recurrence of disability beginning on July 3, 2014 which was rescinded on July 11, 2016.

On November 5, 2016 appellant requested reconsideration of the July 21, 2016 OWCP decision.

By decision dated April 6, 2017, OWCP affirmed the July 21, 2016 decision, finding that the medical evidence of record failed to establish that he was totally disabled from May 1 to July 2, 2014 and partially disabled for four hours per day from July 3 to November 14, 2014. The Board notes that on May 16, 2016 OWCP accepted appellant's claim for a recurrence of disability beginning July 2, 2014. By letter of July 11, 2016 it rescinded the acceptance of appellant's recurrence claim because a previously issued December 21, 2015 decision had denied his claim for wage-loss compensation.

The Board finds that OWCP's July 11, 2016 letter constituted rescission of the acceptance of a claim.³ As OWCP rescinded the acceptance of appellant's claim for a recurrence of disability, it must follow its established procedures for rescission.⁴ Its procedures require a proposed and final decision rescinding the original finding.⁵ These procedures further provide that a rescission decision should contain a brief background of the claim, discuss the evidence on which the original decision was based, and explain why OWCP finds that the decision should be rescinded. OWCP did not follow the specific procedures for a rescission decision, failed to provide a proposed decision rescinding the original finding, and did not inform appellant correctly and accurately of the basis of its rescission decision.⁶ Consequently, it has not met its burden of proof to rescind acceptance of appellant's claim for a recurrence of disability.⁷

The case must be remanded to OWCP for a proper decision under its procedures with regard to any rescission proposed by OWCP regarding the acceptance of appellant's claim for a

³ See *D.V.*, Docket No. 11-1629 (issued February 3, 2012).

⁴ *L.M.*, Docket No. 16-1464 (issued November 1, 2017).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.19(b) (February 2013).

⁶ *S.R.*, Docket No. 12-1404 (issued December 11, 2012).

⁷ See *S.R.*, Docket No. 09-2332 (issued August 16, 2010) (once OWCP accepts a claim, it has the burden of justifying the termination or modification of compensation benefits; this holds true where OWCP later decides that it erroneously accepted a claim).

recurrence of disability.⁸ Following this and such other development as deemed necessary, OWCP shall issue an appropriate final decision on appellant's recurrence of disability claim.⁹

IT IS HEREBY ORDERED THAT the April 6, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: August 15, 2018
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

⁸ See *Y.S.*, Docket No. 10-2325 (issued August 23, 2011); *John M. Pittman*, 7 ECAB 514 (1955).

⁹ As appellant filed a claim for wage-loss compensation beginning May 1, 2014, OWCP should issue an appropriate decision addressing recurrence of disability beginning on that date, as well as rescission of appellant's claim for disability beginning July 2, 2014. *Supra* note 5 at Chapter 2.1400.19(e).