United States Department of Labor
Employees' Compensation Appeals Board

T.B., Appellant	)	
and	)	**Docket No. 18-0762**
	)	**Issued: November 2, 2018**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS AFFAIRS HOSPITAL, Indianapolis, IN, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 26, 2018 appellant filed a timely appeal from a February 14, 2018 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 has met his burden of proof to establish a recurrence of the need for medical treatment on or after March 11, 2014, causally related to a September 21, 1992 employment injury.

FACTUAL HISTORY

On September 21, 1992 appellant, then a 44-year-old carpenter, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury while at work on September 21, 1992. He

[1] 5 U.S.C. § 8101 *et seq.*

asserted that he was standing on a ladder replacing ceiling tiles when the ladder collapsed causing him to fall to the ground. Appellant stopped work that day and OWCP accepted that he sustained a lumbar strain, chronic cervical strain, and internal derangement of the left knee.[2]

On July 11, 1994 appellant returned to full-time work for the employing establishment as a police dispatcher/clerk.[3] The employing establishment terminated him on April 26, 1996 for reasons unrelated to his September 21, 1992 employment injury. Appellant periodically worked thereafter in positions with private employers, including as a musician and a custodian for a school district. He stopped working as a full-time police dispatcher/clerk in 1994 and a custodian in 1994, but continued to occasionally work as a musician on a part-time basis.[4]

In September 1997 appellant suffered a nonwork-related fall which caused a fracture of his right hip.

In an August 29, 2000 report, Dr. Vincent L. Fragomeni, an attending Board-certified orthopedic surgeon, indicated that appellant reported a dramatic improvement in his left knee symptoms after his last Synvisc injection in January 2000. Appellant reported that he experienced left knee discomfort from time to time, but that the constant pain had resolved.

In a May 27, 2003 report, Dr. James S. Cook, an attending Board-certified neurologist, noted that appellant reported increased symptoms such as numbness in his left leg and a "knotting sensation" in his right arm. He diagnosed several conditions, including failed back syndrome with current exacerbation, polyneuropathy, and carpal tunnel syndrome without current complaint.

Appellant was involved in a nonwork-related motor vehicle accident in October 2004. In December 2004 Dr. Scott A. Shapiro, an attending Board-certified neurosurgeon, performed laminectomy surgery at L3 through L5 with bilateral foraminotomies, and posterior lumbar interbody fusion at L3-4 and L4-5. The surgery was not approved by OWCP.

In a February 10, 2005 report, Dr. Shapiro indicated that he had been treating appellant since 1997 for lumbar spondylosis. He noted that appellant's 2004 motor vehicle accident aggravated his lumbar spondylosis and necessitated the lumbar surgery he performed on appellant in December 2004.

In a September 7, 2006 note, Dr. Cook indicated that appellant suffered from restless leg syndrome which exacerbated his lumbar condition and noted that he had prescribed medication for the condition.

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[2] Appellant previously sustained injury to his left knee related to his military service and he underwent several surgeries necessitated by this injury between 1967 and 1979, including arthroscopy, meniscectomy, and anterior cruciate reconstruction.

[3] Per OWCP's February 3, 1995 decision, appellant received loss of wage-earning capacity compensation on the periodic rolls based on his ability to earn wages in the position as a full-time police dispatcher/clerk.

[4] On February 7, 1999 appellant filed a notice of recurrence (Form CA-2a) claiming that in June 1997 he sustained a total recurrence of disability due to his September 21, 1992 employment injury. He asserted that increased pain and weakness in his left leg prevented him from working. By decision dated April 20, 1999, OWCP denied appellant's recurrence of disability claim because he failed to submit sufficient medical evidence in support thereof.

In mid-2007 appellant complained of radiculopathy symptoms in both legs and, in September 2007, Dr. Shapiro recommended that he undergo lumbar fusion. On December 11, 2007 Dr. Shapiro performed L2-3 extension posterior lumbar interbody fusion with laminectomy and instrumentation. The procedure was not approved by OWCP.

On December 19, 2009 appellant stopped receiving loss of wage-earning capacity compensation under FECA because, effective December 20, 2009 he elected to receive benefits from the Department of Veterans Affairs related to his left knee condition.

In a February 14, 2012 report, Dr. Rohit R. Das, an attending Board-certified neurologist, indicated that appellant's main complaint was restless leg syndrome which kept him awake at night.

On May 17, 2012 OWCP placed appellant's claim relating to his September 21, 1992 employment injury in "medical payments only" status.

On March 11, 2014 OWCP administratively closed appellant's claim relating to his September 21, 1992 employment injury because no medical treatment expenses had been incurred since April 2012.

In a March 30, 2015 report, Dr. Das noted that appellant reported that his chronic low back pain, peripheral neuropathy, and restless leg syndrome were fairly well controlled until September 2014 when he hit his head and right hand after falling off an 11-inch step at a theater. Appellant complained of right-sided neck, right shoulder, and right hand symptoms since that time. Dr. Das diagnosed cervical radiculopathy, de Quervain's tenosynovitis of the right hand, right shoulder pain, and low back pain.[5]

In a separate report dated March 30, 2015, Dr. Shashank Dave, an attending Board-certified physical medicine and rehabilitation physician, detailed his application of a corticosteroid injection in the abductor pollicis longus and flexor pollicis brevis muscles of appellant's right thumb. He provided a preprocedure and postprocedure diagnosis of de Quervain's tenosynovitis.

On June 5, 2015 appellant was seen by Dr. Dave and Dr. Shiva Gangadhar, an attending physical medicine and rehabilitation physician, and they cosigned a June 5, 2015 report detailing the visit. In the impression portion of the report, Dr. Dave and Dr. Gangadhar indicated that appellant continued to have right wrist pain which was most likely attributable to de Quervain's tenosynovitis. They advised that x-rays would be obtained of the right wrist to look for any bony abnormalities. Dr. Dave and Dr. Gangadhar noted that appellant had carpal tunnel syndrome as evidenced by diagnostic testing and clinical history, but posited that the majority of his right wrist symptoms were due to the de Quervain's tenosynovitis.

In June 8 and September 11, 2015 reports, Dr. Das noted that appellant reported that he also damaged his left hip when he fell off an 11-inch step at a theater in September 2014. Appellant reported being diagnosed with carpal tunnel syndrome after the September 2014 accident. Dr. Das

[5] Right shoulder x-rays, obtained by Dr. Das on March 30, 2015, contained an impression of interval increased loosening surrounding the proximal humeral prosthetic component of uncertain significance. The distal humeral stem appeared without surrounding lucency.

diagnosed carpal tunnel syndrome and restless leg syndrome. On October 23, 2015 he diagnosed the same conditions, noting that both were stable.

In the latter half of 2015, appellant requested reimbursement for the medical treatment he received in 2015. On July 29, 2016 he telephoned OWCP and questioned an OWCP official about several unpaid medical bills.

In an August 3, 2016 letter, OWCP advised appellant that it appeared he was seeking a resumption of medical care related to his September 21, 1992 employment injury. It noted, however, that he had requested treatment for conditions which were not accepted as related to the September 21, 1992 employment injury, including bilateral carpal tunnel syndrome and de Quervain's tenosynovitis of the right wrist. OWCP advised appellant that he might wish to file a new claim with respect to any currently nonaccepted conditions for which he sought reimbursement for medical treatment.

In an undated response, appellant indicated that he was unable to contact Dr. Das as he "was gone and no paper trail exists." He advised that he had about $8,000.00 in medical treatment expenses that he wished to have reimbursed by OWCP.

In a March 13, 2017 report, OWCP informed appellant that his claim for the September 21, 1992 injury was closed and that, if he believed he had current medical problems related to that injury, it was his responsibility to file a notice of recurrence (Form CA-2a) and to submit medical evidence establishing a causal relationship between the medical treatment and the September 21, 1992 injury.

On March 21, 2017 appellant filed a notice of recurrence (Form CA-2a) in which he checked a box denoting that he was only claiming a recurrence due to the need for medical treatment related to his September 21, 1992 employment injury.[6] Regarding the date of the first medical treatment after the claimed recurrence, appellant provided the notation "on-going." He asserted that he continuously needed medical care since September 21, 1992 due to the effects of the September 21, 1992 employment injury.

In a March 30, 2017 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of his claim for a recurrence of the need for medical treatment. It requested that he submit a physician's opinion supported by a medical explanation of the causal relationship between the medical treatment and the September 21, 1992 employment injury, without intervening cause. OWCP afforded appellant 30 days to submit the requested evidence. It did not receive any additional evidence.

By decision dated June 27, 2017, OWCP denied appellant's claim for a recurrence of the need for medical care related to his September 21, 1992 employment injury. It determined that he failed to submit a medical report with sufficient rationale to establish a causal relationship between the medical treatment and the September 21, 1992 employment injury, without intervening cause.

[6] Appellant appears to have inadvertently listed the date of his employment injury as September 22, 1993, rather than September 21, 1992.

On July 14, 2017 appellant requested a telephone hearing with a representative of OWCP's Branch of Hearings and Review. During the hearing held on December 12, 2017, he testified that he continued to need medical treatment for his accepted September 21, 1992 employment injury.

By decision dated February 14, 2018, OWCP's hearing representative affirmed OWCP's June 27, 2017 decision. She found that appellant failed to present medical evidence sufficient to establish the need for medical treatment related to his accepted September 21, 1992 employment injury. The hearing representative noted that appellant requested reimbursement for treatment of multiple conditions which were not accepted as related to his September 21, 1992 employment injury.

LEGAL PRECEDENT

The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.[7]

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.[8] An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury without intervening cause.[9] To meet this burden the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.[10] Where no such rationale is present, medical evidence is of diminished probative value.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of the need for medical treatment on or after March 11, 2014 causally related to a September 21, 1992 employment injury.

[7] 5 U.S.C. § 8103(a).

[8] 20 C.F.R. § 10.5(y).

[9] *E.R.*, Docket No. 18-0202 (issued June 5, 2018).

[10] *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

[11] *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

Appellant has the burden of proof to establish that the recurrence of the need for medical treatment was related to the effects of his September 21, 1992 employment injury without intervening cause.[12] The Board notes that appellant claimed reimbursement for medical treatment in 2015 for a wide variety of medical problems. However, the record does not contain a medical report with a rationalized medical opinion explaining that the medical treatment for which appellant claimed reimbursement was related to the effects of his September 21, 1992 employment injury without intervening cause.[13]

In a March 30, 2015 report, Dr. Das noted that appellant reported that his chronic low back pain, peripheral neuropathy, and restless leg syndrome were fairly well controlled until September 2014 when he hit his head and right hand after falling off an 11-inch step at a theater. Appellant complained of right-sided neck, right shoulder, and right hand symptoms since that time. Dr. Das diagnosed cervical radiculopathy, de Quervain's tenosynovitis of the right hand, right shoulder pain, and low back pain.

The Board finds that the submission of this report does not support appellant's claim for a recurrence of the need for medical treatment because OWCP has not accepted the conditions diagnosed by Dr. Das as related to the September 21, 1992 employment injury.[14] In addition, the report is of limited probative value in showing a recurrence of the need for medical care because the record does not otherwise contain a medical report containing a rationalized medical opinion relating these conditions to the September 21, 1992 employment injury.[15] Such medical rationale is particularly necessary in the present case because appellant suffered nonwork-related accidents, including an October 2004 motor vehicle accident and a September 2014 fall, which have been presented in the medical evidence as intervening causes for appellant's continuing problems.[16]

On June 5, 2015 appellant was seen by Dr. Dave and Dr. Gangadhar who indicated that appellant continued to have right wrist pain which was most likely attributable to de Quervain's tenosynovitis. Dr. Dave and Dr. Gangadhar noted in their June 5, 2015 report that appellant had carpal tunnel syndrome as evidenced by diagnostic testing and clinical history, but posited that the majority of his right wrist symptoms were due to the de Quervain's tenosynovitis. Although appellant now had a diagnosis of carpal tunnel syndrome, this condition has not been accepted by

[12] *See supra* note 9. The Board notes that appellant's requests for reimbursement presently in the case record pertain to medical treatment sessions from 2015, but that appellant effectively claimed a recurrence of the need for medical treatment from March 11, 2014, *i.e.,* the date that OWCP administratively closed his claim relating to his September 21, 1992 employment injury.

[13] *See supra* note 10.

[14] With respect to the reported right shoulder and low back pain, the Board has held that pain alone is a symptom, not a medical diagnosis. *See F.U.*, Docket No. 18-0078 (issued June 6, 2018). Moreover, OWCP has not accepted a right shoulder condition in connection with the present claim, and Dr. Das did not provide an opinion that the low back pain was related to appellant's September 21, 1992 employment injury.

[15] *See supra* note 10.

[16] For example, Dr. Shapiro indicated in a February 10, 2005 report that appellant's October 2004 motor vehicle aggravated his lumbar spondylosis and necessitated the lumbar surgery he performed on appellant in December 2004. In another report dated March 30, 2015, Dr. Dave detailed his application of a corticosteroid injection in appellant's right thumb to treat de Quervain's tenosynovitis. However, as noted, the condition of de Quervain's tenosynovitis has not been accepted as a work-related condition.

OWCP and there is no rationalized medical opinion in the case record relating it the September 21, 1992 employment injury.[17] In June 8, September 11, and October 23, 2015 reports, Dr. Das diagnosed carpal tunnel syndrome and restless leg syndrome. However, these reports are of no probative value on the underlying issue of this case because Dr. Das did not provide an opinion in his reports that these conditions, which have not been accepted by OWCP, were related to the September 21, 1992 employment injury.[18]

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 met his burden of proof to establish a recurrence of the need for medical treatment on or after March 11, 2014 causally related to a September 21, 1992 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2018
Washington, DC

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

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

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

[17] *See supra* note 10.

[18] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).