

ISSUE

The issue is whether appellant met his burden of proof to establish a recurrence of disability commencing January 21, 2017 causally related to the accepted February 17, 2014 employment injury.

FACTUAL HISTORY

On March 17, 2014 appellant, then a 46-year-old mail city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed neck pain, and shoulder and arm numbness due to factors of his federal employment including repetitively carrying a mail satchel on his shoulder. He noted that he first became aware of his condition and realized it was causally related to his employment on February 17, 2014. After initially denying the claim, by decision dated May 1, 2015, OWCP accepted the conditions of aggravation of degenerative disc disease/disc herniation at C5-6 level and aggravation of diffuse cervical spondylosis.

Appellant had a prior work injury which had resulted in a sustained period of total disability. On January 13, 2015 he sustained a work-related right knee injury which was accepted by OWCP for effusion of joint and a right lower leg and right medial meniscus tear, in a claim in which OWCP assigned File No. xxxxx2884. On May 8, 2015 appellant had right knee arthroscopic surgery. He received continuation of pay from February 2 to March 18, 2015 and OWCP paid him compensation for total disability from March 19, 2015 to January 6, 2017. Appellant returned to a part-time limited-duty position on January 7, 2017 and OWCP paid him compensation working partial shifts through January 20, 2017. No claim for disability under File No. xxxxx2884 was requested beyond January 20, 2017.

Appellant submitted wage-loss compensation claims (Form CA-7) for partial disability for January 21, 24, and 25, 2017 and total disability commencing January 26, 2017.

In a duty status report (Form CA-17) dated January 25, 2017, Dr. Francis X. Rocket, a Board-certified neurologist, noted clinical findings of a marked restriction of range of motion of appellant's cervical spine. He noted that appellant could not perform his regular work duties, but could work: subject to lifting and carrying continuously up to 15 pounds and 20 pounds intermittently for four hours a day; intermittent sitting and standing for six hours a day; walking for six hours a day; no climbing, intermittent kneeling for one hour a day; intermittent bending/stooping for two hours a day; no twisting, pushing, or pulling intermittently for two hours a day; intermittent simple grasping for eight hours a day; intermittent fine manipulation for six hours a day; and driving for one hour a day.

On February 15, 2017 Dr. Michael W. Groff, a Board-certified neurosurgeon, treated appellant in follow-up for cervical spondylitic myelopathy. He noted that appellant reported dropping items and some bowel urgency. Dr. Groff noted an electromyogram (EMG) revealed C6 and C7 denervation. He indicated that appellant returned to work for three hours per day with restrictions of lifting limited to 15 pounds.

On March 8, 2017 the employing establishment offered appellant a light-duty position as a city carrier effective March 8, 2017. The duties of the modified assignment were handling

unendorsed bulk business mail, picking up and delivering express mail, answering the telephone, and “loop mail.” The physical requirements of the offered position were standing up to two hours a day, walking up to one hour a day, lifting up to 15 pounds for three hours a day, and reaching above the shoulder for two hours a day.

On March 10, 2017 appellant refused to accept the offered position noting that he was not medically cleared under File No. xxxxxx2884 pursuant to the Form CA-17 dated January 25, 2017. He further noted that the Social Security Administration had deemed him unemployable.

In a March 26, 2017 letter, OWCP acknowledged receipt of appellant’s claim for ongoing wage-loss compensation for the period commencing January 26, 2017 due to a material change/worsening of his accepted employment injury. It indicated that his claim would be developed as a recurrence of disability and requested that he submit additional factual and medical evidence necessary to establish his claim.

On November 15, 2016 Dr. Jeffrey L. Zilberfarb, a Board-certified orthopedist, treated appellant for bilateral shoulder pain, radicular neck pain, and a C5-6 disc herniation which he attributed to an injury sustained while at work. He diagnosed spondylosis without myelopathy of the cervical region and impingement syndrome of both shoulders.

On April 11, 2017 Dr. Zilberfarb treated appellant for right knee pain and bilateral shoulder rotator cuff tendinitis. He noted that appellant remained off work as a mail carrier. Dr. Zilberfarb advised that his C5-6 right disc herniation was being treated conservatively. Findings on examination revealed mildly positive impingement sign bilaterally. Dr. Zilberfarb diagnosed older cervical disc degeneration, mid-cervical region, impingement syndrome of the right shoulder, and primary osteoarthritis of the right knee. Appellant requested to remain off work on disability. Dr. Zilberfarb opined that appellant was unable to return to work as a mail carrier on a permanent basis due to his cervical spine disc herniation and right knee osteoarthritis. Appellant underwent physical therapy from November 18, 2016 to March 17, 2017.

An April 11, 2017 right knee x-ray scan revealed mild narrowing of the medial tibiofemoral compartment.

Appellant submitted wage-loss compensation claims (Form CA-7) for total disability for the period March 4 to 17, 2017.

In a statement dated March 26, 2017, appellant indicated that he had sustained a right knee injury on January 13, 2015, File No. xxxxx2884, and underwent arthroscopic surgery on May 8, 2015. He noted that he had received compensation under File No. xxxxx2884 when he returned to work for three weeks in January 2017.

Appellant saw Dr. Rocket on January 25, 2017 who prepared a duty status report (Form CA-17) noting that he was not permitted to twist or reach above the shoulder.

In a letter dated April 19, 2017, the employing establishment indicated that appellant was cleared for limited-duty work on both claims, File No. xxxxx2884 for his knee and File No.

xxxxx8884 for his cervical condition pursuant to the duty status report (Form CA-17) dated January 25, 2017. Appellant was offered a modified-duty assignment which he refused noting "Not medically cleared claim # xxx8884 per CA 17." Appellant's supervisor modified the original job offer to exclude reaching above the shoulder and appellant refused the position stating "I don't believe I can perform these duties with my medical restrictions without aggravating my condition." The supervisor requested that OWCP review the job offer to determine whether the offer was consistent with appellant's restrictions.

By decision dated May 3, 2017, OWCP denied appellant's claim for a recurrence of disability commencing January 21, 2017. It found that the evidence of record did not establish that he was disabled due to a material change or worsening of his accepted work-related condition.

Appellant submitted a job offer dated March 16, 2017 under File No. xxxxx2884, for a modified city carrier position effective March 16, 2017. On March 30, 2017 he declined the position and noted that he did not believe he could perform the duties within his medical restrictions without aggravating his condition.

Appellant submitted additional wage-loss compensation claims (Form CA-7) for total disability for the periods April 15 to May 12, 2017 and May 27 to June 9, 2017.

On May 9, 2017 appellant requested an oral hearing before an OWCP hearing representative which was held on September 29, 2017. In a statement dated May 8, 2017, he noted that he had been out of work for several years and noted his symptoms in his two claim files.

On August 15, 2017 Dr. Zilberfarb diagnosed right knee osteoarthritis and left knee pain. Radiographs of both knees revealed mild degenerative changes.

On August 15, 2017 appellant underwent an x-ray of the left knee which revealed arthritic narrowing of weight bearing cartilages of medial and lateral joint compartments with mild joint effusion.

On September 11, 2017 Dr. Rocket treated appellant for right-sided neck pain radiating down the right arm with numbness affecting the fingers on the right hand. He diagnosed C4-5 and C5-6 herniated discs and degenerative changes of the spine. Findings on examination revealed limited range of motion of the neck, atrophy of the right thigh and calf, and absent deep tendon reflexes in the right upper extremity. Dr. Rocket opined that appellant was unable to bear weight on his shoulders without worsening neck pain bilaterally, he could not perform twisting movements with his head and neck, he could not work overhead, and could not push or pull more than 50 pounds at a time. He indicated that appellant was capable of sedentary work.

On October 4, 2017 Dr. Rocket noted that appellant was off work due to bilateral neck pain from January 2015 to February 7, 2017. Appellant reported returning to work for three hours per day which included bending, lifting, and twisting. He indicated, however, that he was unable to continue to work after three weeks and has been out of work since this time. Dr. Rocket advised that the symptoms that occurred while appellant attempted to return to work were related to his previous work-related injuries caused by repetitive lifting of a mail carrier bag. He diagnosed

foraminal compression due to osteophyte and disc disease at C4-5 and C5-6. Appellant reported being unable to continue to work because of progression and worsening of his symptoms.

By decision dated November 2, 2017, an OWCP hearing representative affirmed the decision dated May 3, 2017.

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³ This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed the established physical limitations.⁴

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.⁵ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the disabling condition is causally related to the employment injury. The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.⁶

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.⁷ Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the

³ 20 C.F.R. § 10.5(x); *S.W.*, Docket No. 18-1489 (issued June 25, 2019).

⁴ *Id.*

⁵ *J.B.*, Docket Nos. 18-1752, 19-0792 (issued May 6, 2019).

⁶ *L.F.*, Docket No. 14-1817 (issued February 2, 2015); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (January 2013).

⁷ *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

⁸ *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability commencing January 21, 2017 causally related to the accepted February 17, 2014 employment injury.

In a duty status report (Form CA-17) dated January 25, 2017, Dr. Rocket noted clinical findings of marked restriction of range of motion of the cervical spine. He noted that appellant could not perform his regular work duties, but could work subject to restrictions. Similarly, on September 11, 2017 Dr. Rocket noted that appellant presented with right-sided neck pain radiating down the right arm with numbness affecting the fingers on the right hand. He diagnosed C4-5 and C5-6 herniated discs and degenerative changes of the spine. Dr. Rocket opined that appellant was unable to bear weight on his shoulders without worsening neck pain bilaterally, he could not perform twisting movements with his head and neck, he could not work overhead, or push and pull more than 50 pounds at a time, and was only capable of sedentary work. Likewise, on October 4, 2017, he diagnosed foraminal compression due to osteophyte and disc disease at C4-5 and C5-6. Dr. Rocket noted that appellant was out of work due to bilateral neck pain from January 2015 to February 7, 2017. Appellant returned to work for three hours a day in January 2017 and his work involved bending, lifting, and twisting, but he was unable to continue this job after three weeks and has claimed total disability thereafter. Dr. Rocket advised that the symptoms that occurred while appellant attempted to return to work were related to his previous work-related injuries caused by repetitive lifting of mail carrier bags. Although Dr. Rocket noted that appellant experienced bilateral neck pain and was off work due to disc disease at C4-5 and C5-6, he failed to provide medical reasoning to explain why the current condition or disability was causally related to the employment injury of February 19, 2014. Such rationale is particularly important as appellant stopped work on February 2, 2015 due to an unrelated right knee condition, underwent right knee arthroscopic surgery on May 1, 2015, and returned in January 2017 for three weeks part time with restrictions due to his right knee condition. Dr. Rocket failed to provide an explanation as to how carrying a mail satchel two years earlier would cause or contribute to his current cervical spine symptoms and disability beginning January 21, 2017, especially in light of his prior period of disability. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹⁰

On February 15, 2017 Dr. Groff treated appellant in follow-up for cervical spondylitic myelopathy. Appellant reported difficulty dropping items and some bowel urgency. Dr. Groff noted appellant returned to work three hours a day with lifting limited to 15 pounds and believed this work schedule was suitable. Dr. Groff failed to provide a rationalized opinion explaining the

⁹ *L.D., id.*; see also *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁰ See *Jimmie H. Duckett*, 52 ECAB 332 (2001).

reasons why the claimed recurrent disability and need for part-time work was causally related to the accepted employment injury of February 19, 2014.¹¹

In reports dated April 11 and August 15, 2017, Dr. Zilberfarb treated appellant for right knee pain and bilateral shoulder rotator cuff tendinitis. He noted that appellant remained out of work as a mail carrier. Dr. Zilberfarb diagnosed older cervical disc degeneration, mid-cervical region, impingement syndrome of the right shoulder, and primary osteoarthritis of the right knee. He noted that appellant would like to remain out of work on disability and he agreed that he would not be able to go back to work as a mail carrier on a permanent basis due to his neck disc herniation and right knee osteoarthritis. However, Dr. Zilberfarb did not specifically address whether appellant had a recurrence of disability on January 21, 2017 causally related to the accepted employment conditions or otherwise provide medical reasoning explaining why any current condition or disability was due to the accepted February 19, 2014 injury.¹² There was no explanation as to how carrying a mail satchel two years prior would continue to be contributory to the progression of his cervical spine conditions warranting disability in 2017. There is no evidence that appellant's recurrent disability was due to the accepted February 19, 2014 employment injury.

Appellant also submitted diagnostic test results into the record of the case. However, the Board has held that reports of diagnostic tests lack probative value as they fail to provide an opinion on the causal relationship between his employment duties and the diagnosed conditions.¹³

Appellant also submitted reports from a physical therapist dated March 22 to May 19, 2017. The Board has held that treatment notes signed by a physical therapist¹⁴ are not considered medical evidence as these providers are not a physician under FECA¹⁵ and are not competent to render a medical opinion under FECA. Thus, this evidence is insufficient to meet appellant's burden of proof.

On appeal appellant asserts that on January 25, 2017 Dr. Rockett advised that he could not work three hours a day due to his medical restrictions. He asserts that he was entitled to receive compensation during this time because he was disabled due to his accepted work-related condition. However, as noted above, the medical evidence submitted does not contain a rationalized medical

¹¹ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹² *Id.*

¹³ *K.S.*, Docket No. 18-1781 (issued April 8, 2019); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

¹⁴ *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (reports of a physician assistant have no probative value as medical evidence).

¹⁵ *See V.G.*, Docket No. 19-0908 (issued October 25, 2019) (physical therapists are not considered physicians as defined under FECA and their reports are of no probative value); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under the FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

opinion explaining how and why appellant's claimed recurrent condition or recurrence of disability on January 21, 2017 was due to the February 19, 2014 employment injury. As such, the Board finds that she has not met her 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(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 disability commencing January 21, 2017 causally related to the accepted February 17, 2014 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 2, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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