

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

_____)	
A.S., Appellant)	
)	
and)	Docket No. 18-1810
)	Issued: December 3, 2019
DEPARTMENT OF THE NAVY, NORFOLK)	
NAVAL SHIPYARD, Portsmouth, VA, Employer)	
_____)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 28, 2018 appellant filed a timely appeal from an April 6, 2018 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of total disability, commencing July 11, 2016, causally related to his accepted March 9, 2010 employment injury.

FACTUAL HISTORY

On March 26, 2010 appellant, then a 44-year-old marine machine mechanic, filed a traumatic injury claim (Form CA-1) alleging that on March 9, 2010 he sprained his left hip while in the performance of duty. He did not stop work. OWCP accepted the claim for a left hip strain. It subsequently expanded acceptance of the claim to include aseptic necrosis of the head and neck of the left femur. Appellant performed modified employment subsequent to his injury.

On December 8, 2010 appellant underwent a left hip cord decompression. OWCP paid him wage-loss compensation on the supplemental rolls for intermittent disability from March 29, 2010 to January 17, 2012.

On August 16, 2016 appellant filed a notice of recurrence (Form CA-2a) claiming disability beginning March 17, 2014 causally related to his accepted employment injury. He advised that he had stopped work following the recurrence of disability on July 11, 2016. Appellant related that he had undergone a cord depression of the hips bilaterally, a left total hip replacement, and cervical discectomy. The employing establishment specified that he had performed modified employment duties subsequent to his March 9, 2010 employment injury.

In a development letter dated February 23, 2018, OWCP advised appellant of the definition of a recurrence of disability and the type of evidence necessary to establish an employment-related recurrence of disability. It afforded him 30 days to submit additional evidence.

Thereafter, appellant submitted an April 27, 2016 report from Dr. Anthony T. Carter, a Board-certified orthopedic surgeon. Dr. Carter evaluated him for pain in his bilateral hips. He related, “[Appellant] states that his symptoms were of gradual onset over a period of months. There is a history of [avascular necrosis] involving both hips several years ago, which required total hip replacement.” Dr. Carter diagnosed instability of the left hip joint and avascular necrosis and recommended surgery.

On July 12, 2016 Dr. Carter performed a revision of appellant’s left hip replacement due to instability secondary to a mal-positioned cup.

By decision dated April 6, 2018, OWCP found that appellant had not established a recurrence of total disability causally related to his accepted employment 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 resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work

environment.³ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations.⁴ A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.⁵

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁶

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the 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 a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁷ Where no such rationale is present, the medical evidence is of diminished probative value.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of total disability, commencing July 11, 2016, causally related to his accepted March 9, 2010 employment injury.

Appellant alleged that he sustained a recurrence of disability beginning March 17, 2014 due to his March 9, 2010 employment injury; however, he did not stop work until July 11, 2016. He performed modified employment duties after his employment injury. Appellant has not contended that he sustained a recurrence of disability because the employing establishment withdrew his limited-duty position. The issue, consequently, is whether he has met his burden of

³ 20 C.F.R. § 10.5(x); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

⁴ *Id.*; see also *W.K.*, Docket No. 19-0558 (issued September 10, 2019).

⁵ *Supra* note 3.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018); *Kenneth R. Love*, 50 ECAB 193 (1998).

⁷ *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

⁸ *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

proof to provide medical evidence to establish a recurrence of total disability beginning July 11, 2016 due to a worsening of his accepted employment-related condition.⁹

Appellant failed to submit a detailed statement regarding his alleged recurrence of disability or medical evidence sufficient to show that he was totally disabled from employment beginning July 11, 2016. In support of his claim, he submitted an April 27, 2016 report from Dr. Carter. Dr. Carter reviewed appellant's symptoms of hip pain bilaterally that began over a period of months and noted that he had a history of avascular necrosis necessitating a total hip replacement. He diagnosed left hip joint instability and avascular necrosis. Dr. Carter did not, however, address the relevant issue of whether appellant had sustained an employment-related recurrence of disability and, thus, his report is of no probative value regarding the relevant issue.¹⁰

On July 12, 2016 Dr. Carter performed a revision of appellant's left hip replacement due to instability secondary to a mal-positioned cup. As the operative report does not address disability or causation, it is insufficient to meet appellant's burden of proof.¹¹

On appeal appellant contends that he had undergone a left core decompression and left total knee replacement. He indicates that he began having similar symptoms and Dr. Carter advised that he required a revision of his hip surgery. Appellant notes that he provided documentation to the employing establishment. He describes his employment injury and subsequent medical treatment received. None of the medical evidence provided, however, contains a discussion regarding how his accepted employment injury caused total disability during the claimed period.¹² Appellant, therefore, has not met his burden of proof to establish an employment-related recurrence of disability.¹³

Appellant may submit new evidence 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 total disability, commencing July 11, 2016, causally related to his accepted March 9, 2010 employment injury.

⁹ *L.S.*, Docket No. 18-1494 (issued April 12, 2019).

¹⁰ *D.B.*, Docket No. 19-0481 (issued August 20, 2019).

¹¹ *See T.L.*, Docket No. 18-0536 (issued November 27, 2018).

¹² *L.O.*, Docket No. 19-0953 (issued October 7, 2019).

¹³ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 6, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 3, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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