

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

D.H., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Macon, MS, Employer)

**Docket No. 18-1159
Issued: February 15, 2019**

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 May 17, 2018 appellant filed a timely appeal from a March 5, 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability commencing December 7, 2017 causally related to her accepted January 28, 2015 employment injury.

FACTUAL HISTORY

On January 28, 2015 appellant, then a 45-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day she injured her right shoulder when she tripped over

¹ 5 U.S.C. § 8101 *et seq.*

a curb and fell into a cluster box while in the performance of duty. On February 27, 2015 OWCP accepted the claim for closed fracture of the right humerus. It paid wage-loss compensation on the supplemental rolls from March 21 through April 4, 2015 and on the periodic rolls from April 5 through August 22, 2015.

In a January 26, 2016 return to work note, Dr. R. Allen Butler, a Board-certified orthopedic surgeon, released appellant to full duty. She returned to full-duty work on January 27, 2016.

On December 8, 2017 appellant filed a notice of recurrence (Form CA-2a) alleging total disability commencing December 7, 2017. She explained that for the past two weeks her right arm was painful and felt tight.

By development letter dated December 20, 2017, OWCP informed appellant of the definition of a recurrence and advised her of the type of evidence required to establish a recurrence claim. It afforded her 30 days to submit the necessary evidence.

In a statement received by OWCP on January 2, 2018, appellant explained that on December 4, 2017, her treating physician took an x-ray, which revealed necrosis of her right humerus bone.

OWCP received a December 8, 2017 report from Brandy Blanton, a nurse practitioner. Ms. Blanton indicated that she had consulted Dr. Butler as to whether appellant's avascular necrosis of the humerus bone was work related and he had related that the condition was related to appellant's previous right shoulder injury.

In a December 21, 2017 report, Dr. Butler related that appellant was seen for follow-up due to right shoulder pain. His diagnoses included a chronic fracture of the upper end of the right humerus from January 28, 2015. Dr. Butler also diagnosed pain in the right shoulder, impingement syndrome of the right shoulder, and idiopathic aseptic necrosis of the right humerus. He opined that appellant's "condition is related to previous work injury." Dr. Butler concluded that appellant would be unable to return to work for an undetermined period of time. He examined her on January 23, 2018 and repeated his diagnoses.

By decision dated March 5, 2018, OWCP denied appellant's claim for a recurrence of disability. It determined that she had not established that she was disabled due to a material change or worsening of her accepted work-related conditions. OWCP explained that appellant was released to full-duty work on January 27, 2016 and that the medical evidence of record did not demonstrate with clinical findings that the accepted condition worsened/changed to cause a recurrence of disability.

LEGAL PRECEDENT

OWCP's implementing regulations define a recurrence of disability as "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 injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”²

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish that the recurrence is causally related to the original injury.³ This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the condition is causally related to the employment injury.⁴ The physician’s opinion must be based on a complete and accurate factual and medical history and supported by sound medical reasoning.⁵

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to claimant’s own intentional misconduct.⁶ Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁷

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing December 7, 2017 causally related to her accepted January 28, 2015 employment injury.

The record contains a December 8, 2017 note from a nurse practitioner, Ms. Blanton. While she noted that Dr. Butler had indicated that the avascular necrosis in the humerus was work related, he did not countersign on the note. Health care providers such as nurses, acupuncturists, physician assistants, and physical therapists are not considered physicians as defined under FECA.

² 20 C.F.R. § 10.5(x).

³ *Id.* at § 10.104(b); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 and 2.1500.6 (June 2013).

⁴ *See S.S.*, 59 ECAB 315, 318-19 (2008).

⁵ *Id.* at 319.

⁶ *Mary Poller*, 55 ECAB 483 (2004).

⁷ *Y.P.*, Docket No. 17-0859 (issued December 4, 2018).

⁸ *Id.*

Thus, their opinions regarding causal relationship do not constitute rationalized medical opinions and are of no probative value.⁹

In a December 21, 2017 report, Dr. Butler related that appellant was seen for right shoulder pain and that she would be disabled from work for an indefinite period of time. His diagnoses included a chronic fracture of the upper end of the right humerus, which occurred on January 28, 2015. However, Dr. Butler did not provide rationale for his opinion which explained, with objective findings, why appellant's accepted fracture of the right humerus caused a recurrence of disability as of December 7, 2017. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition or period of disability was related to the employment incident or injury.¹⁰

In his report of January 23, 2018, Dr. Butler provided diagnoses which included the additional conditions of impingement syndrome of the right shoulder and idiopathic aseptic necrosis of the right humerus. He merely noted, however, that appellant's diagnosed conditions were "attached to this encounter." Dr. Butler again failed to provide medical rationale for explaining how the diagnosed conditions or disability was causally related to the accepted employment injury.¹¹

The Board finds that the medical evidence submitted failed to establish total disability commencing December 7, 2017 due to residuals of the accepted injury. Thus, the Board finds that appellant has not met her burden of proof to establish by the weight of the reliable, probative, and substantial evidence, a change in the nature and extent of the injury-related condition resulting in her inability to perform her employment duties.¹²

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 her burden of proof to establish a recurrence of disability commencing on December 7, 2017 causally related to the accepted January 28, 2015 employment injury.

⁹ Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under 5 U.S.C. § 8101(2). Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. However, a report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. *See M.F.*, Docket No. 17-1973 (issued December 31, 2018).

¹⁰ *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹¹ *Id.*

¹² *See J.D.*, Docket No. 18-0616 (issued January 11, 2019).

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 15, 2019
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