

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of total disability commencing September 10, 2015 causally related to the accepted August 9, 2012 employment injury.

FACTUAL HISTORY

On August 10, 2012 appellant, then a 62-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 9, 2012 he sustained injuries to his right hip, right knee, and the back of his head when he slipped and fell while in the performance of duty. He stopped work on August 10, 2012. On the reverse side of the claim form, the employing establishment indicated that the injury occurred in the performance of duty and that appellant first received medical care on August 10, 2012. OWCP accepted his claim for contusion of the face, scalp, and neck, right elbow contusion, and abdominal wall contusion. It later expanded acceptance of appellant's claim to include aggravation of right hip osteoarthritis. OWCP paid him wage-loss compensation on the supplemental rolls beginning September 24, 2012. On October 22, 2012 appellant returned to part-time, modified-duty work.

On July 17, 2013 appellant underwent OWCP-authorized right hip replacement surgery and stopped work again. He returned to part-time, modified-duty work on January 10, 2014 working approximately two to six hours per day. OWCP paid wage-loss compensation for the remaining hours of each day.

Appellant retired from federal employment, effective August 31, 2015.

In letters dated October 18, 2016 and November 9, 2017, appellant, through counsel, requested that the acceptance of his claim be expanded to include bilateral hip arthritis.

OWCP received reports dated June 9, 2016 and September 5, 2017 by Dr. Joseph Salama, a Board-certified orthopedic surgeon. Dr. Salama described that on August 9, 2012 appellant injured his right hip when he slipped and fell down at work. He recounted that appellant had undergone a successful right total hip arthroplasty and now complained of left hip pain. Dr. Salama related that appellant informed him that he was only able to work between four and half to five hours per day due to difficulty and inability to walk for long periods of time. He indicated that appellant was awaiting approval for left total hip replacement surgery and that he believed that both his hips were aggravated by the work-related injury. Upon examination of appellant's right hip, Dr. Salama observed good range of motion. Range of motion of appellant's left hip demonstrated limited internal and external rotation with pain. Dr. Salama diagnosed left hip primary arthritis and osteoarthritis and history of right hip joint total replacement. He reported that he believed appellant had "aggravated his left hip underlying arthritis from the work-related injury."

On January 29, 2018 appellant filed a notice of recurrence (Form CA-2a) alleging that he sustained a recurrence of disability due to his August 9, 2012 employment injury. He explained that the recurrence occurred because the surgeon who performed right hip surgery could not perform surgery on both hips at the same time. Appellant noted that after his right hip surgery he

had to wait before undergoing left hip surgery because he had to undergo rehabilitation. He related that he had always had continuous pain in his right and left hips. Appellant identified September 10, 2015 as the date and hour that he stopped work after the recurrence.

In an April 3, 2018 development letter, OWCP advised appellant that additional evidence was needed to establish his recurrence claim, including an attending physician's opinion supported by medical rationale explaining how his claimed recurrence of disability was due to a worsening of his original injury, without an intervening cause or new exposure. It also requested that he complete an attached questionnaire. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated July 10, 2018, OWCP denied appellant's recurrence of disability claim, finding that the medical evidence of record was insufficient to establish a recurrence of disability due to his accepted August 9, 2012 employment injury. It determined that he had not submitted medical evidence to establish that he experienced an increase of disability or objective worsening of his August 9, 2012 employment injury.

On July 16, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on December 13, 2018. Appellant testified that, after he underwent his right hip replacement surgery, his left hip began to have problems.

By decision dated February 27, 2019, the hearing representative affirmed the July 10, 2018 denial, finding that the evidence of record was insufficient to establish appellant's claim for recurrence of disability.

LEGAL PRECEDENT

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.³

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury. Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁴

³ *M.S.*, Docket No. 19-0609 (issued September 23, 2019); *S.H.*, Docket No. 18-1398 (issued March 12, 2019); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

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.⁵ This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or 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 such that they exceed the employee's physical limitations.⁶

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability commencing September 10, 2015 causally related to the accepted August 9, 2012 employment injury.

OWCP accepted appellant's traumatic injury claim for contusions of the face, scalp, neck, right elbow, and abdominal wall and aggravation of right hip osteoarthritis. As appellant has not alleged a change in the nature and extent of his modified-duty job requirements, he must, therefore, provide medical evidence establishing that he was disabled due to a worsening of his accepted August 9, 2012 employment injury.⁸

In reports dated June 9, 2016 and September 5, 2017, Dr. Salama noted appellant's August 9, 2012 employment injury and subsequent right hip surgery. He related that appellant now complained of left hip pain and was waiting approval for left total hip replacement surgery. Dr. Salama conducted an examination and diagnosed left hip primary arthritis and osteoarthritis and history of right hip joint total replacement. He opined that appellant had aggravated his left hip underlying arthritis from the work-related injury. Dr. Salama did not, however, specifically address the relevant issue of whether appellant was disabled from employment due to his accepted August 9, 2012 employment injury. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.⁹ As such, Dr. Salama's medical reports are insufficient to establish appellant's claim.

⁵ 20 C.F.R. § 10.5(x).

⁶ *Id.*

⁷ *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, *supra* note 4; *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *Supra* note 4.

⁹ *See L.O.*, Docket No. 19-0953 (issued October 7, 2019); *see also L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

On appeal counsel asserts that OWCP's February 27, 2019 decision was contrary to fact and law. However, as explained above, the medical evidence of record does not contain a rationalized medical opinion explaining how appellant's accepted employment conditions caused total disability during the claimed period of disability.¹⁰ Appellant, therefore, has not met his burden of proof to establish his recurrence claim.

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 September 10, 2015, causally related to the accepted August 9, 2012 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2019
Washington, DC

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

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

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

¹⁰ See *N.M.*, Docket No. 18-1584 (issued March 15, 2019).