United States Department of Labor
Employees' Compensation Appeals Board

W.K., Appellant	)	
and	)	**Docket No. 19-0558**
	)	**Issued: September 10, 2019**
DEPARTMENT OF THE INTERIOR, FISH & WILDLIFE SERVICE, Shirley, NY, Employer	)	

Appearances:
James D. Muirhead, Esq., for the appellant[1]
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 16, 2019 appellant, through counsel, filed a timely appeal from a November 6, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that following the November 6, 2018 decision, OWCP received additional evidence. 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 for intermittent periods commencing August 21, 2017 causally related to his accepted March 20, 2017 employment injury.

FACTUAL HISTORY

On March 22, 2017 appellant, then a 51-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that when operating a loader at 12:15 p.m. on March 20, 2017, a jammed exit door suddenly sprung open, striking his left upper extremity and pinning his left hand between the door and the vehicle frame while in the performance of duty. He claimed that this incident caused injury to his left arm, including his hand and wrist, and that the force of the door snapping back caused unknown damage. Appellant stopped work on March 21, 2017, and returned to limited-duty work on March 24, 2017.

In a report dated March 20, 2017, Dr. Sydney DeAngelis, Board-certified in emergency medicine, noted a history of injury. She obtained left hand and wrist x-rays which were negative for fracture or dislocation. Dr. DeAngelis diagnosed a left hand contusion.

In an April 13, 2017 report, Dr. Mohammed A. Mirza (hereinafter, "Dr. M. Mirza"), a Board-certified internist, noted a history of injury and obtained left wrist x-rays which were negative for fracture or dislocation. He diagnosed left carpal tunnel syndrome and recommended surgical release. On May 1, 2017 Dr. M. Mirza obtained additional x-rays of the left wrist, which demonstrated a left scapholunate diastasis and dorsiflexion of the lunate with a dorsal intercalated segment instability (DISI) deformity. A June 21, 2017 magnetic resonance imaging (MRI) scan of the left wrist demonstrated a partial tear of the volar scapholunate ligament, extensor tenosynovitis of the second and third extensor compartments, and a foveal insertional tear of the triangle fibrocartilage complex.

Appellant stopped work on August 21, 2017.

In a development letter dated September 6, 2017, OWCP informed appellant that the evidence of record was insufficient to establish that the March 20, 2017 employment incident had caused or aggravated left carpal tunnel syndrome and scapholunate diastasis. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary information. By separate letter of even date, it similarly requested additional information from the employing establishment.

In response, appellant submitted an August 31, 2017 arthrogram study report by Dr. M. Mirza which demonstrated scapholunate and lunotriquetral ligament tears. Dr. M. Mirza also diagnosed stenosing tenosynovitis of the left ring finger and left carpal tunnel syndrome. He held appellant off work for four weeks. Dr. M. Mirza noted in a September 25, 2017 report that appellant's condition remained unchanged.

In an undated report, Dr. Ather Mirza (hereinafter, "Dr. A. Mirza"), Board-certified in orthopedic surgery and hand surgery, requested authorization for surgical repair of the left

scapholunate and lunotriquetral ligaments, stenosing tenosynovitis of the left ring finger, and a left carpal tunnel release.[4]

On September 7, 2017 appellant claimed wage-loss compensation (Form CA-7) commencing August 21, 2017.

In a statement dated September 18, 2017, appellant alleged that repetitive upper extremity motion and vibration while operating lawn mowers, chain saws, and hand tools in the performance of duty had contributed to the development of the claimed left wrist conditions.

Appellant returned to work on September 28, 2017 in full-time light-duty status, performing administrative tasks.

On October 6, 2017 OWCP accepted that appellant had sustained a left hand contusion on March 20, 2017 as alleged. It noted in its acceptance decision that the conditions of left carpal tunnel syndrome, stenosying tenosynovitis of the left ring finger, tear of the scapholunate ligament in the left wrist, and tear of the lunotriquetral ligament were not accepted and would be addressed in a separate letter.

By development letter dated October 6, 2017, OWCP informed appellant that the evidence submitted was insufficient to establish that he had sustained a recurrence of disability commencing August 21, 2017. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary information.

In an October 5, 2017 letter, the employing establishment confirmed that appellant's duties as a maintenance mechanic had required frequent driving, operating a skid steer or loader, unloading lawnmowers, mowing large areas, and cutting and grinding trees.

In an e-mail dated October 11, 2017, J.D., an employing establishment injury compensation specialist, noted that appellant had worked from March 24 to August 20, 2017 in light-duty status.

By decision dated October 11, 2017, OWCP denied expansion of appellant's claim to include left carpal tunnel syndrome, stenosing tenosynovitis of the left ring finger, and left scapholunate and lunotriquetral ligament tears. It found that the medical evidence of record did not contain sufficient medical rationale to establish that the accepted March 20, 2017 employment incident had caused or contributed to these conditions.

In an October 23, 2017 report, Dr. M. Mirza diagnosed internal derangement of the left wrist, rule out tear of the scapholunate and lunotriquetral ligaments, left carpal tunnel syndrome, and stenosing tenosynovitis of the left ring finger. He opined that all diagnoses were "directly causally related to the accident that occurred on March 20, 2017" when appellant "smashed his hand between the door and the cab." Dr. Mirza maintained appellant on full-time light duty.

[4] OWCP denied surgical authorization by letters dated November 16 and December 19, 2017 as the requested procedures addressed conditions not accepted by OWCP.

By decision dated November 21, 2017, OWCP denied appellant's claim for a recurrence of disability. It found that the record contained insufficient medical evidence explaining how his alleged total disability for the claimed period was due to the accepted March 20, 2018 employment injury.

In a report dated November 27, 2017, Dr. M. Mirza noted that, although appellant had been initially diagnosed with a left hand and wrist contusion, additional studies demonstrated a scapholunate ligament tear "causally related to his massive injury that took place to his left wrist and hand." He also opined that the diagnosed left carpal tunnel syndrome had been caused by "swelling of the left wrist from the original trauma sustained by [him]. Stenosing tenosynovitis" of the left middle and ring fingers was "similarly related to the same accident. There was no pain to the left wrist prior to the accident."

In a January 8, 2018 report, Dr. A. Mirza diagnosed scaphoid lunate advanced collapse wrist, left carpal tunnel syndrome, and stenosing tenosynovitis of the left middle and ring finger. He noted that appellant should undergo an arthroscopic lunocapitate fusion with screw fixation, release of stenosing tenosynovitis of the left middle and ring fingers, and endoscopic release of left carpal tunnel syndrome.

On April 24, 2018 Dr. A. Mirza performed a left wrist arthroscopy, arthroscopic synovectomy and debridement of the left wrist, arthrotomy and synovectomy and excision of the scaphoid left wrist, lunocapitate fusion with internal fixation and bone graft left wrist, removal of bone graft from distal radius, endoscopic left carpal tunnel release, and release of stenosing tenosynovitis of the left middle and ring fingers.[5] He released appellant to light duty effective July 3, 2018.

In an August 2, 2018 report, Dr. A. Mirza noted that an imaging test following the March 20, 2017 employment incident revealed "torn ligaments and tendons in his left wrist directly from the door slamming his hand/wrist, which then led to the surgery on his left wrist." He opined that the scapholunate tear and surgical repair were "all causally related to the accident that took place on March 20, 2017 at work which led to the operation of lunocapitate fusion."

On August 8 and 17, 2018 counsel requested reconsideration of the November 21, 2017 OWCP decision and submitted additional medical evidence.

In a letter dated August 10, 2018, Dr. A. Mirza noted treating appellant "for his left hand and wrist as the result of a work-related injury sustained on March 20, 2017 when [appellant] sustained a crush injury to his left hand and wrist." He opined that appellant's left hand and wrist complaints "were a direct result of his work-related injury sustained on March 20, 2017 when [he] sustained a crush injury."

On August 30, 2018 appellant underwent a left triangular fibrocartilage complex corticosteroid injection for symptomatic relief.

In a report dated October 11, 2018, Dr. M. Mirza diagnosed recurrent left small finger stenosing tenosynovitis and injected the flexor tendon sheath.

[5] Appellant participated in physical therapy treatments from June 11 to July 2, 2018.

By decision dated November 6, 2018, OWCP denied modification of its prior decision, finding that the additional evidence submitted on reconsideration was insufficient to establish a recurrence.

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 resulting from a previous injury or illness without an intervening cause or a new exposure to the work environment that caused the illness. It can also mean an inability to work that takes place 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[6]

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 an inability to perform such limited-duty work. As part of this burden of proof, 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.[7] To establish a change in the nature and extent of the injury-related condition, there must be a probative medical opinion, based on a complete and accurate factual and medical history as well as supported by sound medical reasoning, that the disabling condition is causally related to employment factors.[8] In the absence of rationale, the medical evidence is of diminished probative value.[9] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, it must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of total disability for intermittent periods commencing August 21, 2017 causally related to his accepted March 20, 2017 employment injury. Appellant has not alleged a change in his light-duty job requirements. Instead, he attributed his inability to work to a change in the nature and extent of his employment-related conditions. Appellant therefore has the burden of proof to provide

[6] *L.S.*, Docket No. 18-1494 (issued April 12, 2019); *F.C.*, Docket No. 18-0334 (issued December 4, 2018); *J.F.*, 58 ECAB 124 (2006). 20 C.F.R. § 10.5(x). *See also Richard A. Neidert*, 57 ECAB 474 (2006).

[7] *L.S., id*.; *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Terry R. Hedman*, 38 ECAB 222 (1986).

[8] *L.S., supra* note 6; *Mary A. Ceglia*, 55 ECAB 626 (2004).

[9] *Id.*; *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[10] *L.S., supra* note 6; *Ricky S. Storms*, 52 ECAB 349 (2001).

medical evidence to establish that he was disabled due to a worsening of his accepted work-related conditions.[11]

In support of his recurrence claim, appellant submitted reports from Dr. M. Mirza and Dr. A. Mirza. Dr. M. Mirza held appellant off work for four weeks commencing August 31, 2017 as an arthrogram obtained that day had demonstrated left scapholunate and lunotriquetral ligament tears. In October 23 and November 27, 2017 reports, he opined that trauma of the March 20, 2017 employment incident had caused internal derangement of the left wrist and a scapholunate ligament tear, while subsequent swelling resulted in left carpal tunnel syndrome and stenosing tenosynovitis of the left middle and ring fingers.

Dr. A. Mirza performed a left wrist arthroscopy on April 24, 2018 and released appellant to light-duty work effective July 3, 2018. In August 2 and 10, 2018 reports, he opined that the March 20, 2017 crush injury caused left scapholunate and lunotriquetral ligament tears, left carpal tunnel syndrome, and stenosing tenosynovitis of the left middle and ring fingers. However, OWCP has not accepted left carpal tunnel syndrome, ligament tears, or tenosing tenosynovitis as causally related to the accepted employment injury. Where an employee claims that a condition not accepted by OWCP was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.[12]

The Board finds that Drs. M. Mirza and A. Mirza have not provided sufficient medical reasoning explaining why appellant's condition or disability, commencing August 21, 2017, was due to the accepted March 20, 2017 employment injury.[13] They did not relate appellant's disability to the accepted March 20, 2017 left hand contusion. While Dr. M. Mirza noted in his November 27, 2017 report that appellant had no left wrist pain prior to the March 20, 2017 employment incident, temporal relationship alone will not suffice. The fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.[14] Although Dr. M. Mirza also opined that post-traumatic swelling had produced left carpal tunnel syndrome and stenosing tenosynovitis of the left middle and ring fingers, he did not specify the dates of objective clinical findings corroborating this etiology. Additionally, neither physician discussed whether appellant's repetitive use of mowers and power equipment would have caused or contributed to left carpal tunnel syndrome as appellant had alleged. The lack of a complete factual and medical history further diminishes the probative value of their opinions.[15] Thus, the

[11] *L.S.*, *supra* note 6; *D.H.*, Docket No. 18-0129 (issued July 23, 2018); *D.L.*, Docket No. 13-1653 (issued November 22, 2013); *Cecelia M. Corley*, 56 ECAB 662 (2005).

[12] *See C.S.*, Docket No. 17-1686 (issued February 5, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[13] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *Mary A. Ceglia*, *supra* note 8.

[14] *A.P.*, Docket No. 19-0224 (issued July 11, 2019); *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[15] *L.T.*, Docket No. 19-0458 (issued July 12, 2019); *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

reports of both Dr. M. Mirza and Dr. A. Mirza are of limited probative value and insufficient to establish appellant's recurrence claim.[16]

On appeal counsel contends that Dr. M. Mirza's August 31, 2017 arthrogram report established an objective, work-related disability. As noted above, Dr. M. Mirza did not provide sufficient medical rationale supporting that the accepted left hand contusion totally disabled appellant from work commencing August 21, 2017 or caused the additional diagnosed conditions.

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 total disability for intermittent periods commencing August 21, 2017 causally related to his accepted March 20, 2017 employment injury.

ORDER

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

Issued: September 10, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[16] *L.S., supra* note 6; *G.T.*, Docket No. 18-1369 (issued March 13, 2019).