

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of the need for medical treatment causally related to his accepted February 18, 2014 employment injuries.

FACTUAL HISTORY

On February 18, 2014 appellant, then a 35-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that, on that same day, he injured his right shoulder and neck while in the performance of duty. He explained that he was walking through rough terrain in the dark when a rock rolled from under his foot and caused him to fall. Because he was carrying a M4 carbine, appellant indicated that he was unable to break his fall and landed hard on his right shoulder. He did not stop work.

On June 13, 2014 OWCP accepted appellant's claim for a sprain of the neck, shoulder and upper arm, unspecified site, right and a sprain of the shoulder and upper arm, other specified sites, right.

In a June 27, 2014 medical report, Dr. Mark Selecky, a Board-certified orthopedic surgeon, examined appellant for pain related to the traumatic sprain/strain of his right shoulder and cervical spine and noted that he felt about 85 percent recovered, but still experienced stiffness and soreness. He opined that appellant's neck and shoulder injuries were clearly interrelated to the same industrial injury and recommended that appellant continue physical therapy and seek chiropractic treatment. Dr. Selecky advised that appellant could continue his regular work duties as tolerated. In a work capacity evaluation (Form OWCP-5c) of even date, he noted a diagnosis of a right shoulder/neck sprain and checked a box marked "Yes" to indicate his opinion that appellant was capable of performing his usual job.

In an August 8, 2014 medical report, Dr. Selecky evaluated appellant's neck and shoulder injury after his initial visits with a chiropractor. On evaluation he recommended that appellant continue with additional chiropractic appointments and ordered a magnetic resonance imaging (MRI) scan of his cervical spine as he was still symptomatic six months after his injury. In a Form OWCP-5c of even date, Dr. Selecky checked a box marked "Yes" to indicate his opinion that appellant was capable of performing his usual job.

In a September 26, 2014 Form OWCP-5c, Dr. Selecky again indicated that appellant was capable of performing his full duties at work.

In an October 9, 2014 operative note, Dr. Kenneth Romero, a Board-certified anesthesiologist, indicated that appellant underwent a cervical epidural steroid injection in order to treat his cervical radiculitis, cervical disc protrusions at C5-6 and C6-7, cervicgia and cervical facet pain.

In a December 18, 2018 medical report, Dr. Rae Davis, Board-certified in pain medicine, evaluated appellant for his worsening lower back pain and right buttock pain. He noted that appellant had this injury for several years and treated it with medications, physical therapy, and injections. Appellant requested to return to physical therapy as his pain had worsened over the

last several weeks and informed him that he suspected his pain was due to an exacerbation of his lumbar radiculopathy due to his disc herniation. On evaluation Dr. Davis assessed spondylosis without myelopathy or radiculopathy in the lumbosacral region, intervertebral disc disorders with radiculopathy in the lumbar region, and lumbago/low back pain. He ordered an updated lumbar MRI scan and referred appellant to physical therapy.

In a January 2, 2019 medical report, Dr. Davis evaluated appellant for his right-sided neck pain caused when he fell down a hill several days prior. He assessed myalgia, myofascial pain syndrome, cervical facet joint pain, and cervicgia and referred appellant to physical therapy to treat his symptoms.

In a March 6, 2019 report of contact, OWCP noted that appellant called in to request an authorization, but was advised that the case had been closed.

On April 4, 2019 appellant filed a notice of recurrence (Form CA-2a) for medical treatment alleging that on December 1, 2018 he sustained a recurrence of his February 18, 2014 injury. He indicated that, following his original injury, he was not limited in performing his usual work duties. Appellant noted that, with treatment, including physical therapy, chiropractic care, and an injection, his symptoms were initially alleviated until they no longer had a significant impact on his life. However, over the past several months his symptoms had worsened and caused considerable discomfort. Appellant explained that his doctor warned him that his symptoms may return due to the nature of his injury. He also noted that he had filed a separate claim for a lower back injury he suffered in 2014.³ On the reverse side of the claim form, the employing establishment acknowledged that following the original injury no accommodations or adjustments in appellant's regular duties related to the original work injury were made.

In an April 9, 2019 statement, appellant explained that the recurrence of his February 2014 neck and right shoulder injuries was a gradual worsening of his symptoms. He provided that his symptoms never went away completely, but were reduced with treatment to a point where he felt they did not warrant further treatment at that time. Appellant reported experiencing the same symptoms he experienced with his original injury, including pain, stiffness, reduced range of motion, tension, and nausea.

In a development letter dated June 19, 2019, OWCP advised appellant of the deficiencies of his recurrence claim. It informed him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested evidence.

In a July 12, 2019 medical report, Dr. Davis noted that appellant's symptoms related to his neck pain remained unchanged. He assessed cervical facet joint pain, cervicgia, and cervical myofascial pain syndrome and referred appellant to physical therapy.

³ The Board notes that appellant has a prior accepted traumatic injury claim for displacement of lumbar intervertebral disc without myelopathy and lumbar radiculopathy related to a September 1, 2014 employment injury under OWCP File No. xxxxxx080.

By decision dated July 30, 2019, OWCP denied appellant's recurrence claim for medical treatment finding that the evidence of record was insufficient to establish a worsening of the accepted work-related conditions or a return of disability/increased disability as a result of a consequential injury or condition related to his accepted conditions.

LEGAL PRECEDENT

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.⁴ An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury without intervening cause.⁵

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal relationship between the employee's current condition and the original injury in order to meet his or her burden of proof.⁶

To meet this burden the claimant must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.⁷ Where no such rationale is present, 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 the need for medical treatment causally related to his accepted February 18, 2014 employment injuries.

In support of his recurrence claim, appellant submitted Dr. Davis' December 18, 2018 medical report in which he was evaluated for worsening pain in his lower back and right buttock. Dr. Davis noted that appellant had received several years of medications, physical therapy, and injections to treat his condition. Appellant also informed Dr. Davis that he suspected that his pain was due to an exacerbation of lumbar radiculopathy due to disc herniation. On evaluation Dr. Davis assessed spondylosis without myelopathy or radiculopathy in the lumbosacral region, intervertebral disc disorders with radiculopathy in the lumbar region, and lumbago/low back pain. He, however, did not provide a definite opinion on causal relationship between appellant's various

⁴ 20 C.F.R. § 10.5(y).

⁵ *M.P.*, Docket No. 19-0161 (issued August 16, 2019); *E.G.*, Docket No. 18-1383 (issued March 8, 2019); *T.B.*, Docket No. 18-0762 (issued November 2, 2018); *E.R.*, Docket No. 18-0202 (issued June 5, 2018).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013); *see also J.M.*, Docket No. 09-2041 (issued May 6, 2010).

⁷ *A.C.*, Docket No. 17-0521 (issued April 24, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

⁸ *O.H.*, *id.*; *Michael Stockert*, 39 ECAB 1186 (1988); *see Ronald C. Hand*, 49 ECAB 113 (1997).

diagnosed conditions and his accepted employment conditions as required to establish appellant's recurrence claim.⁹ Furthermore, Dr. Davis did not offer a medical explanation of how the accepted conditions for which appellant last received treatment resulted in further diagnoses and need for additional treatment several years later.¹⁰ Finally, he failed to explain that appellant's current need for further medical care was due to his accepted February 18, 2014 employment conditions.¹¹ Therefore, this report is insufficient to establish appellant's recurrence claim.

In his remaining medical evidence dated January 2 and July 12, 2019, Dr. Davis evaluated appellant for right-sided neck pain caused when he fell down a hill. He diagnosed myalgia, myofascial pain syndrome, cervical facet joint pain, and cervicgia. To establish his claim, appellant must submit rationalized medical evidence relating his chronic pain syndrome to his accepted back conditions.¹² However, the Board notes that this medical evidence describes an intervening incident in which appellant fell down a hill.¹³ The Board has found that a recurrence of disability does not occur where the claimant's work stoppage is caused by a new or intervening injury, even if the new injury involves the same part of the body previously injured.¹⁴ Accordingly, Dr. Davis' remaining medical evidence is also insufficient to establish appellant's recurrence claim.

As the medical evidence of record does not contain a rationalized medical opinion establishing that appellant required further medical care after December 1, 2018 causally related to his accepted February 18, 2014 employment injury, the Board finds that appellant 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 the need for medical treatment causally related to his accepted February 18, 2014 employment injuries.

⁹ See *H.A.*, Docket No. 18-1466 (issued August 23, 2019) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship).

¹⁰ See *id.* (medical evidence must also include rationale explaining how the physician reached the conclusion he or she is supporting).

¹¹ *T.M.*, Docket No. 18-1418 (issued February 7, 2019).

¹² *Charles D. Gregory*, 57 ECAB 322 (2006).

¹³ See *supra* note 6 at Chapter 2.1500.3(c)(5) (June 2013); see also *V.H.*, Docket No. 18-0456 (issued August 9, 2019).

¹⁴ See *V.H.*, *id.*

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board