

ISSUE

The issue is whether appellant met his burden of proof to establish a recurrence of total disability commencing January 1, 2013, causally related to his accepted July 5, 2008 employment injury.

FACTUAL HISTORY

On July 5, 2008 appellant, then a 37-year-old postal equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a concussion as a result of a loose vacuum hose striking him on the back of the head while in the performance of duty. OWCP initially accepted the claim for concussion with loss of consciousness, neck sprain, and lumbar sprain. Appellant stopped work on July 2, 2009 and OWCP placed him on the supplemental rolls effective that date. On December 10, 2009 he underwent OWCP-approved surgery including L4-5 total disc replacement, application of an intervertebral device, anterior discectomy and decompression, and anterior instrumentation. OWCP placed appellant on the periodic rolls effective December 20, 2009. Appellant returned to work on April 28, 2010.

On June 6, 2011 appellant accepted a job offer with the employing establishment as a modified mail processing equipment mechanic. The physical requirements of the modified assignment included: intermittent fine manipulation up to eight hours per day; sitting at a computer up to eight hours per day; lifting trays of mail weighing less than 10 pounds up to seven hours per day; and walking to view monitors up to two hours per day. Appellant stopped work on or about January 1, 2013.

On October 1, 2013 appellant filed a claim for compensation (Form CA-7) for temporary total disability for the period January 1 through October 1, 2013.

Appellant was separated from employment with the employing establishment due to disability effective August 9, 2014.

By decision dated June 9, 2015, OWCP denied appellant's claim for compensation on and after January 1, 2013. It found that he had not submitted sufficient medical evidence, consisting of a detailed report from his treating physician providing a well-reasoned opinion, explaining why he was temporarily totally disabled due to his work-related injury.

On May 9, 2017 appellant filed a notice of recurrence (Form CA-2a) commencing October 27, 2012.

By decision dated August 30, 2017, OWCP accepted appellant's claim for recurrence for additional medical care. It listed his accepted conditions as concussion with loss of consciousness, neck sprain, lumbar back sprain, lumbar intervertebral disc disorder with myelopathy, thoracic spine pain, and degeneration of the lumbar or lumbosacral intervertebral disc.

On October 12, 2017 appellant filed a claim for compensation (Form CA-7) for temporary total disability from January 1, 2013 through September 30, 2017.

The record contains numerous reports from Dr. Anthony Hicks, a preventative medicine specialist. In reports dated November 28, 2012 and February 19, 2013, Dr. Hicks opined that appellant could work with restrictions. In a work excuse note dated February 19, 2013, he stated

that appellant missed work from November 28, 2012 through February 19, 2013 due to being incapacitated related to injuries sustained while performing his work duties.

By letter dated February 26, 2013, Dr. Hicks opined that as a direct result of appellant's permanent impairment, he was unable to return to the job for which he was hired, and was placed in modified-duty status with permanent physical restrictions. He noted that it was unlikely appellant would ever be able to safely perform job duties consistent with viable employment, and that as such, appellant could not return to work.

Appellant submitted a series of work excuse notes from Dr. Hicks dated between April 4 and September 23, 2013, in which Dr. Hicks stated that appellant missed work from February 19 through October 1, 2013 due to being incapacitated related to injuries sustained while performing his work duties.

In duty status reports dated May 23 and July 23, 2013, Dr. Hicks reported that appellant could resume work on May 23, 2013 with restrictions. He also submitted a report dated July 23, 2013 indicating that appellant should be off work until a follow-up appointment, and that appellant was unable to work with restrictions due to severe ongoing physical dysfunction and no available work at the employing establishment.

By letter dated July 26, 2013, Dr. Hicks opined that it was unlikely that appellant would ever be able to safely perform job duties consistent with viable employment, and that as such, appellant was both unable to fulfill the job requirements of his original position and the job requirements of modified positions that had attempted to accommodate his physical limitations.

In duty status reports dated from August 27, 2013 through October 30, 2014, Dr. Hicks noted that he advised appellant not to return to work and that he should remain off duty. He noted that appellant was unable to work with restrictions due to severe ongoing physical dysfunction and no available work at the employing establishment. Dr. Hicks posited that appellant would likely be able to return to his regular duties within three to six months.

In a work excuse note dated July 10, 2014, Dr. Hicks recounted that appellant missed work from June 6 through July 10, 2014 due to being incapacitated related to injuries sustained while performing his work duties.

By letter dated August 6, 2014, the employing establishment advised that appellant had a valid job offer on file for several years, and that the work had been and remained available to him.

On August 11, 2014 appellant filed a claim for compensation (Form CA-7) for temporary total disability for the period January 1, 2013 through July 10, 2014.

By letter dated September 2, 2014, the employing establishment noted that appellant had retired effective August 9, 2014, as he was not medically qualified to perform the duties of his position.

Dr. Hicks reiterated that appellant should be off work on December 18, 2014. On March 12, 2015 he stated that appellant should be off work and had been accepted for disability retirement.

Appellant continued to submit reports from Dr. Hicks dated from July 14, 2015 through September 14, 2017, which stated that appellant should be off work.

By letter dated March 7, 2017, Dr. Hicks stated that prior to 2013, appellant was restricted to sedentary work, but that by 2013, he was unable to work even with those restrictions due to his ongoing conditions. He explained that appellant's degeneration of the lumbosacral spine had worsened over time, which was demonstrated by objective results of a March 28, 2012 electromyogram.

By letter dated July 5, 2017, the employing establishment noted that appellant had a valid job offer on file for several years.

On July 13, 2017 Dr. Hicks stated that appellant should be off work and that he had been accepted for disability retirement.

In a development letter dated October 30, 2017, OWCP informed appellant that he had not submitted sufficient medical evidence to substantiate that his claimed disability was caused by his work injury. It requested that he submit a complete and comprehensive narrative report, including a history of injury and a thorough explanation with objective findings, as to how his condition worsened such that he was no longer able to perform the duties of his position when he stopped work on January 1, 2013. OWCP afforded him 30 days to submit the requested evidence.

Appellant continued to submit progress reports from Dr. Hicks dated from November 16, 2017 through January 24, 2018, which stated that appellant should be off work.

By decision dated March 5, 2018, OWCP denied appellant's claim for wage-loss compensation beginning January 1, 2013.

On March 14, 2018 appellant, through his representative, requested reconsideration of OWCP's March 5, 2018 decision. Appellant resubmitted the March 7, 2017 report of Dr. Hicks.

In a report from Dr. Hicks dated April 5, 2018, he stated that appellant should be off work due to severe ongoing physical dysfunction.

By decision dated June 7, 2018, OWCP denied modification of its decision dated March 5, 2018.

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.⁴

⁴ *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).

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.⁵

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.⁶ 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.⁷

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.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of total disability commencing January 1, 2013, causally related to the July 5, 2008 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 medical evidence that he was disabled due to a worsening of his accepted work-related conditions.⁹

In duty status reports dated November 28, 2012 and February 19, 2013, Dr. Hicks opined that appellant could work with restrictions. By letter dated February 26, 2013, he stated that appellant could not return to work. In duty status reports dated May 23 and July 23, 2013, Dr. Hicks indicated that appellant could resume work on May 23, 2013 with restrictions. He also submitted a report dated July 23, 2013 noting that appellant should be off work until a follow-up appointment, and stating that appellant was unable to work with restrictions. By letter dated July 26, 2013, Dr. Hicks stated that appellant could not return to work. The Board notes that Dr. Hicks did not provide medical rationale for why he found that appellant could work with

⁵ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

⁶ 20 C.F.R. § 10.5(x).

⁷ *Id.*

⁸ *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, *supra* note 5; *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁹ *See R.L.*, Docket No. 19-0444 (issued July 29, 2019).

restrictions on February 19, 2013, but could not return to work as of February 26, 2013, only to be able to resume work on May 23, 2013. There is no explanation for the inconsistency between the two reports of July 23, 2013 regarding appellant's ability to work. Dr. Hicks' reports do not provide opinion as to the cause of appellant's disability and, therefore, are of no probative value. As such, these reports are insufficient to establish appellant's recurrence claim commencing January 1, 2013.¹⁰

By letter dated March 7, 2017, Dr. Hicks noted that prior to 2013, appellant was restricted to sedentary work, but that by 2013, he was unable to work even with those restrictions due to his ongoing conditions. He explained that appellant's degeneration of the lumbosacral spine had worsened over time, which was demonstrated by objective results of a March 28, 2012 electromyogram. This letter did not explain why and how appellant's accepted conditions had worsened to the point he was unable to perform duties of his modified position as of January 1, 2013, given that he was able to perform such duties from March 2012 through November 28, 2012. Dr. Hicks did not provide an opinion as to why appellant was disabled from work. 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.¹¹ As such, this evidence is insufficient to establish appellant's recurrence claim commencing January 1, 2013.

In the remainder of the work excuse notes, duty status reports, and medical reports dated from August 27, 2013 through April 5, 2018, Dr. Hicks opined that appellant was disabled from returning to work. In these notes and reports, he did not explain with specificity how appellant was disabled on or after January 1, 2013 due to a worsening of his accepted work-related conditions.¹² The Board has held that a medical opinion that is not fortified by rationale is of diminished probative value. As these reports contain no rationale explaining why appellant was disabled as a result of his July 5, 2008 employment injury after working for approximately 18 months in a limited-duty position, they are insufficient to support a worsening of his accepted employment-related conditions to establish a recurrence of disability.¹³

For each period of disability claimed, an employee has the burden of proof to establish a causal relationship between his or her recurrence of disability and his or her accepted employment injury.¹⁴ Because appellant has not submitted sufficient medical evidence to establish that he was unable to work beginning January 1, 2013, due to a spontaneous change or worsening of his accepted July 5, 2008 employment-related conditions, the Board finds that appellant has not met his burden of proof in this case.

¹⁰ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *Id.*

¹² *E.B.*, Docket No. 17-1467 (issued July 26, 2018); *D.H.*, Docket No. 18-0129 (issued July 23, 2018); see *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹³ See *Sedi L. Graham*, 57 ECAB 494 (2006) (medical form reports and narrative statements merely asserting causal relationship generally do not discharge a claimant's burden of proof).

¹⁴ *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

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 commencing January 1, 2013, causally related to his accepted July 5, 2008 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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