United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
	)	
and	)	**Docket No. 19-1517**
	)	**Issued: January 29, 2020**
DEPARTMENT OF THE ARMY, LOGISTICS READINESS CENTER, Fort Belvoir, VA, Employer	)	

Appearances:
Appellant, pro se
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 July 8, 2019 appellant filed a timely appeal from a June 3, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 his burden of proof to establish a recurrence of disability commencing May 1, 2017 causally related to the accepted June 3, 2016 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 10, 2016 appellant, then a 56-year-old fuel handler, filed a traumatic injury claim (Form CA-1) alleging that on June 3, 2016 he injured his neck and back when attempting to turn off a valve to stop a leak while in the performance of duty. He stopped work on June 3, 2016.

On May 24, 2017 OWCP accepted appellant's claim for sprain of the lumbar spine.

On August 31, 2017 Dr. Daniel S. Ikeda, a Board-certified internist, diagnosed severe lower extremity radiculopathy from recurrent disc herniation of the lumbar spine. He scheduled appellant for surgery on September 22, 2017 and found that he was totally disabled from work.

In a June 8, 2018 work capacity evaluation form (Form OWCP 5-c), Fermin Cabezas, a physician assistant, diagnosed lumbar spondylosis, low back pain, lumbar radiculopathy, and status post lumbar fusion.

In November 2018 appellant filed a notice of recurrence (Form CA-2a) alleging that on May 1, 2017 he sustained a recurrence of disability due to surgery causally related to his June 3, 2016 employment injury. He stopped work on that date and did not return. On the reverse side of the claim form, appellant's supervisor indicated that appellant performed light-duty work until his surgery in May 2017.

In a May 2, 2019 development letter, OWCP advised appellant of the deficiencies of his recurrence claim. It requested additional factual and medical evidence and provided a questionnaire for his completion. OWCP afforded appellant 30 days for a response.

On May 1, 2019 appellant filed a claim for compensation (Form CA-7) for leave without pay (LWOP) for the period August 9, 2017 through May 1, 2019.

In a May 14, 2019 narrative statement, appellant explained that, following his accepted June 3, 2016 employment injury, he performed light duty as he could not fulfill his regular job duties. He then underwent two surgeries as a result of the June 3, 2016 employment injury. Appellant did not return to work and began receiving Social Security Administration disability payments and Office of Personnel Management disability retirement benefits.

On May 14, 2019 appellant completed the questionnaire provided by OWCP. He attributed his recurrence of disability to the June 3, 2016 injury and resulting two lumbar surgeries. Appellant asserted that he was in back pain 24 hours a day and that standing and sitting made his condition worse.

By decision dated June 3, 2019, OWCP denied appellant's recurrence claim.

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 which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused

the illness.[2] This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to 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 so that they exceed the established physical limitations.[3]

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 to show that he or she cannot perform such limited-duty work. As part of this burden, 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.[4] This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.[5] Where no such rationale is present, the medical evidence is of diminished probative value.[6]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability commencing May 1, 2017 causally related to the accepted June 3, 2016 employment injury.

In an August 31, 2017 report, Dr. Ikeda diagnosed severe lower extremity radiculopathy from recurrent disc herniation of the lumbar spine. He scheduled appellant for surgery on September 22, 2017 and found that he was totally disabled. Dr. Ikeda did not specifically address whether appellant had a recurrence of disability causally related to his accepted employment condition of lumbar sprain or otherwise provide medical reasoning explaining why any current condition or disability was due to the accepted June 3, 2016 injury. His report did not meet appellant's burden of proof as it did not provide a rationalized explanation as to how appellant's accepted lumbar sprain resulted in the need for surgery or for total disability for work.[7]

[2] 20 C.F.R. § 10.5(x); *S.W.*, Docket No. 18-1489 (issued June 25, 2019).

[3] *Id.*

[4] *J.B.*, Docket Nos. 18-1752, 19-0792 (issued May 6, 2019).

[5] *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

[6] *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

[7] *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

Appellant also submitted diagnostic test results into the case record. However, the Board has held that reports of diagnostic tests lack probative value as they fail to provide an opinion on the causal relationship between his employment duties and the diagnosed conditions.[8]

The report from Mr. Cabezas, a physician assistant, has no probative medical value on the issue of causal relationship as physician assistants are not considered physicians as defined under FECA.[9] Consequently, the medical findings and/or opinions of a physician assistant are of no probative value for purposes of establishing entitlement to compensation benefits.[10]

As none of the medical evidence provided contains a discussion regarding how appellant's accepted employment injury resulted in disability during the claimed period, the Board finds that appellant, therefore, has not met his burden of proof.

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 May 1, 2017 causally related to the accepted June 3, 2016 employment injury.

[8] *K.S.*, Docket No. 18-1781 (issued April 8, 2019); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

[9] 5 U.S.C. § 8101(2). *B.K.*, Docket No. 19-0829 (issued September 25, 2019); *T.C.*, Docket No. 19-0227 (issued July 11, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (Under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[10] *N.R.*, Docket No. 19-1366 (issued December 6, 2019); *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

ORDER

IT IS HEREBY ORDERED THAT the June 3, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 29, 2020
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