

**United States Department of Labor
Employees' Compensation Appeals Board**

L.S., Appellant

and

**U.S. POSTAL SERVICE, HIGHLAND HILLS
STATION, Dallas, TX, Employer**

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**Docket No. 19-1768
Issued: March 24, 2020**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 26, 2019 appellant filed a timely appeal from a March 1, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 the need for medical treatment causally related to his accepted employment-related back conditions.

FACTUAL HISTORY

On December 17, 2014 appellant, then a 54-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that on December 2, 2014 he first realized that his repetitive employment duties of pushing, pulling, lifting, standing, stooping, and bending for

¹ 5 U.S.C. § 8101 *et seq.*

13 years aggravated his preexisting lower back condition. On February 19, 2015 OWCP accepted his claim for sprain of the lumbosacral spine and thoracic or lumbosacral neuritis or radiculitis. Appellant returned to limited duty on March 13, 2015. He stopped work on May 17, 2016 due to an accepted work-related left shoulder injury.²

On September 9, 2015 appellant's attending physician, Dr. Leslie Benson, an emergency medicine specialist, noted that appellant could work with restrictions of lifting no more than 10 pounds for one hour intermittently, sitting intermittently for six hours, standing intermittently for two hours, walking intermittently for two hours, and performing no climbing, pulling, pushing, or reaching above the shoulder. He diagnosed sprain of the lumbosacral joint ligament and thoracic lumbosacral radiculitis. Dr. Benson noted that he examined appellant on a monthly basis to determine his tolerance of working with restrictions.

In a report dated September 20, 2017, Dr. Gwenevere Williams, a Board-certified physiatrist, examined appellant due to lumbar pain with stiffness.³ She diagnosed sprain of the lumbosacral joint and acute lumbar radiculopathy. Dr. Williams noted that appellant's current condition was aggravated by standing, walking, bending, lifting, twisting, and sleeping.

On March 21, 2018 Jason Pickney, a nurse practitioner, examined appellant due to lumbar pain with stiffness. Appellant also submitted notes from Arlene Henderson, a physical therapist.

On March 30, 2018 appellant filed a notice of recurrence (Form CA-2) alleging that on September 15, 2017 he sustained a recurrence of a medical condition causally related to his accepted back conditions. He alleged that he woke up with back pain and stiffness on September 15, 2017. Appellant sought medical attention on September 20, 2017. He indicated that he underwent left shoulder surgery on May 19, 2016 and right shoulder surgeries on May 7 and November 8, 2017. Appellant underwent physical therapy due to bilateral carpal tunnel syndrome from August through October 2017.

On April 25, 2018 Dr. Lashondria Camp-Simpson, a Board-certified general surgeon, examined appellant due to sprain of the lumbosacral joint ligament and acute lumbar radiculopathy. She noted that he was not working due to his shoulder injuries. In a May 21, 2018 note, Dr. Camp-Simpson repeated her diagnoses and noted appellant's history of back injury on December 2, 2014. She reported that he last worked on May 17, 2016.

In a July 16, 2018 development letter, OWCP requested additional rationalized medical opinion evidence establishing a causal relationship between appellant's current condition and his accepted employment injury. It provided him with a questionnaire for his completion and afforded him 30 days for response.

In an August 2, 2018 statement, appellant noted that he had been receiving care for his accepted back condition since September 2017 and he had continual low back symptoms. He

² The record reveals that OWCP accepted appellant's occupational disease claim for bilateral rotator cuff tears under OWCP File No. xxxxxx481. That claim is not before the Board on this appeal.

³ On September 28, 2017 OWCP authorized a change of physicians to Dr. Williams.

asserted that his injury was chronic and that he continued to have issues with decreased range of motion (ROM), occasional numbness and tingling, and severe muscle spasms. Appellant alleged that he was not discharged from care, but had a short lapse in treatment due to shoulder surgery and Dr. Benson's retirement. He noted that his condition was worsened by prolonged walking or sitting and other activities of daily living. Appellant alleged that his symptoms were continuous, but that he also had intermittent spikes in pain when he increased his activities. He listed his other conditions as carpal tunnel syndrome, bilateral shoulder injuries, and neck injuries.

On August 8, 2018 Dr. Camp-Simpson noted appellant's history of injury in December 2014 and diagnosed resulting conditions of lumbar sprain and radiculopathy. She again noted that he last worked on May 17, 2016 and stopped due to his left shoulder injury "on a different claim." Dr. Camp-Simpson reviewed appellant's magnetic resonance imaging (MRI) scan of December 19, 2014 and his August 3, 2018 MRI scan. She found that his lumbar radiculopathy and lumbosacral sprain were chronic in nature. Dr. Camp-Simpson noted that the 2018 MRI scan did not show significant improvement from a 2014 MRI scan. She opined that appellant's current condition was directly related to his original employment injury. Dr. Camp-Simpson noted that he reported increased symptoms of numbness, tingling, and lower extremity weakness. She further noted that appellant's activities had been limited to multiple shoulder surgeries over the past two years. Dr. Camp-Simpson concluded that due to the extent of his injuries he would experience episodic flares including increased muscle spasms, radicular symptoms, and decreased ROM. She recommended continued physical therapy, injections, and referral to an orthopedic surgeon.

By decision dated September 11, 2018, OWCP denied appellant's recurrence claim finding that he had not established that he required additional medical treatment due to a worsening of his accepted work-related back conditions.

On October 10, 2018 appellant requested a review of the written record from an OWCP hearing representative.

By decision dated March 1, 2019, OWCP's hearing representative found that appellant had failed to provide rationalized medical opinion evidence establishing that his need for medical treatment due to the onset of pain and stiffness in his back on September 15, 2017 was causally related to his accepted work-related back 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

⁴ 20 C.F.R. § 10.5(y).

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 employment-related back conditions.

Appellant provided a September 20, 2017 report by Dr. Williams who noted the accepted employment injuries and diagnosed sprain of the lumbosacral joint and acute lumbar radiculopathy. Dr. Williams did not causally relate his current conditions to the accepted back conditions. Lacking an opinion on causal relationship, the Board finds that this report is of no probative value.⁹ Thus, it is insufficient to establish appellant's recurrence claim.

On April 25, May 21, and August 8, 2018 Dr. Camp-Simpson examined appellant due to sprain of the lumbosacral joint ligament and acute lumbar radiculopathy. She noted his history of back injury on December 2, 2014 and listed his accepted condition of lumbar sprain, finding that this condition was chronic. Dr. Camp-Simpson noted that the 2018 MRI scan did not show significant improvement from what was shown on a 2014 MRI scan. She opined that appellant's current condition was directly related to his original employment injury. Dr. Camp-Simpson concluded that, due to the extent of his injuries, he would experience episodic flares including increased muscle spasms, radicular symptoms, and decreased ROM. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical

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); *J.M.*, Docket No. 19-1111 (issued November 20, 2019); *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); *Ronald C. Hand*, 49 ECAB 113 (1997).

⁹ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

rationale explaining how a given medical condition is causally related to a prior accepted employment condition.¹⁰

The Board finds that Dr. Camp-Simpson provided a conclusory opinion which did not include a rationalized medical opinion establishing that appellant required further medical care after September causally related to his accepted employment back conditions. Therefore, the Board finds that her report is insufficient to establish his recurrence claim.¹¹

Appellant further submitted reports signed by a nurse practitioner and a physical therapist. These medical reports do not constitute competent medical evidence because neither a nurse practitioner nor a physical therapist is considered a “physician” as defined under FECA and are therefore not competent to provide medical opinions.¹² Consequently, this evidence is also insufficient to establish appellant’s claim.

As appellant has not submitted medical evidence sufficient to establish a recurrence of the need for medical treatment causally related to his accepted employment-related back conditions, the Board finds that he 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 the need for medical treatment causally related to his accepted employment-related back conditions.

¹⁰ *D.L.*, Docket No. 19-0900 (issued October 28, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

¹¹ *A.C.*, *supra* note 7; *K.G.*, Docket No. 15-0669 (issued April 8, 2016).

¹² Section 8101(2) of FECA provides that physician “includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.” 5 U.S.C. § 8101(2). *See also David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *C.S.*, Docket No. 19-1279 (issued December 30, 2019) (nurse practitioners and physical therapists are not considered physicians as defined under FECA).

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 2020
Washington, DC

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

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

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