

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of disability commencing September 11, 2017 causally related to the accepted August 29, 2016 employment injury.

FACTUAL HISTORY

On August 30, 2016 appellant, then a 39-year-old criminal investigator, filed a traumatic injury claim (Form CA-1) alleging that on August 29, 2016 he injured his left shoulder when he tossed a weighted medicine ball up against the wall above his head during fitness training and it landed on his left arm and pushed his shoulder down with an audible pop and a snapping feeling while in the performance of duty. Following the claimed employment injury, he returned to full-time light-duty work. On March 21, 2017 OWCP accepted appellant's claim for sprain of the left shoulder joint, and superior labrum anterior and posterior (SLAP) tear of the left shoulder. Appellant stopped work again on September 11, 2017, the date that Dr. James Paci, a Board-certified orthopedic surgeon, performed authorized left shoulder arthroscopic biceps tenodesis, subacromial decompression, acromioplasty, distal clavicle excision, and labral debridement.

Appellant filed claims for compensation (Form CA-7) for leave without pay (LWOP) used for disability from work during the period September 11, 2017 through January 20, 2018.

In an October 4, 2017 development letter, OWCP noted that Dr. Paci additionally diagnosed left shoulder biceps tenosynovitis secondary to the SLAP tear and AC joint arthritis secondary to AC sprain. It informed appellant that Dr. Paci had not provided medical rationale explaining how the additional diagnosed conditions were caused by the August 29, 2016 employment incident. OWCP requested that he provide additional medical evidence to establish disability from work during the period claimed. It afforded appellant 30 days to respond.

On October 24, 2017 Dr. Paci opined that appellant was totally disabled from work commencing October 24, 2017. In a November 10, 2017 report, he noted appellant's August 29, 2016 employment injury and diagnosis of superior glenoid labrum lesion of the left shoulder and sprain of the left shoulder joint. Dr. Paci opined that appellant's condition had become progressively worse, developing left shoulder biceps tenosynovitis secondary to the SLAP tear and AC joint osteoarthritis due to more than one year of delayed treatment. He concluded, "The delayed responses and additional diagnoses presented, and indication of the treatment performed on September 11, 2017 are all directly attributed to the injury *via* direct causation."

By decision dated December 13, 2017, OWCP denied appellant's claims for compensation for the period September 11, 2017 and continuing as the medical evidence of record was insufficient to establish a causal relationship between the claimed disability and the accepted August 29, 2016 employment injury.

On January 16, 2018 Dr. Paci examined appellant and found continued improvement following his September 11, 2017 left shoulder surgery. He released appellant to return to work on January 22, 2018.

In a February 27, 2018 treatment note, Dr. Paci indicated that appellant had full range of motion with negative provocative testing. He found that appellant could return to work in four weeks and recommended additional physical therapy.

On August 13, 2018 appellant, through counsel, requested reconsideration of the December 13, 2017 decision.

OWCP received additional evidence. In an April 7, 2018 report, Dr. Paci described appellant's physical findings and diagnostic studies. He diagnosed left shoulder biceps tenosynovitis, SLAP tear, and AC joint arthritis secondary to appellant's August 29, 2016 employment injury. Dr. Paci noted that during the September 11, 2017 surgery, he could visualize biceps tenosynovitis, intact rotator cuff tendons, labral degeneration anteriorly, posteriorly, and superiorly, requiring debridement, a type II acromion with a sharp underlying spur requiring acromioplasty, advanced osteoarthritis of the AC joint requiring distal clavicle excision, hypertrophy of the coracoacromial ligament requiring release, and advanced bursitis. He opined that appellant's left shoulder surgery and subsequent disability from September 11, 2017 through March 2018 was causally related to his August 29, 2016 employment injury.

By decision dated April 17, 2019, OWCP denied modification of its December 13, 2017 decision.

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 resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.⁴ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.⁵

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.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

⁴ 20 C.F.R. § 10.5(x); *see T.J.*, Docket No. 18-0831 (issued March 23, 2020); *see J.D.*, Docket No. 18-1533 (issued February 27, 2019).

⁵ *Id.*

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

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.⁷

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁸ Where no such rationale is present, the medical evidence is of diminished probative value.⁹

ANALYSIS

The Board finds that this case is not in posture for decision.

In a November 10, 2017 report, Dr. Paci explained that appellant's left shoulder biceps tenosynovitis was secondary to the SLAP tear sustained on August 29, 2016 and that his AC osteoarthritis was secondary to AC joint sprain caused when the medicine ball landed on his arm and shoulder. He opined that with a reasonable degree of medical certainty that the injuries sustained to the left shoulder were related to the August 29, 2016 work injury, required surgery, and resulted in disability from September 11, 2017 through March 2018. Dr. Paci noted appellant's August 29, 2016 employment injury and diagnosis of superior glenoid labrum lesion of the left shoulder and sprain of the left shoulder joint and opined that appellant's condition had become progressively worse due to more than one year of delayed treatment. He concluded, "The delayed responses and additional diagnoses presented, and indication of the treatment performed on September 11, 2017 are all directly attributed to the injury *via* direct causation."

The Board finds that, while Dr. Paci's November 10, 2017 report is not fully rationalized, he was consistent in opining that appellant's August 29, 2016 employment injury and the resulting September 11, 2017 authorized surgery caused disability from work.¹⁰ Although the report is insufficient to meet appellant's burden of proof to establish his claim for compensation, it raises an uncontroverted inference between appellant's current condition and resultant disability from work and the accepted August 29, 2016 employment injury, and thus, it is sufficient to require OWCP to further develop the medical evidence.¹¹

⁷ *K.P.*, Docket No. 19-1811 (issued May 12, 2020); *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁸ *J.D.*, *supra* note 3; *C.C.*, Docket No. 18-0719 (issued November 9, 2018).

⁹ *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

¹⁰ *D.G.*, *id.*; *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹¹ *D.G.*, *id.*; *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, 41 ECAB 354, 360 (1989).

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹² While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and to see that justice is done.¹³ Thus, the Board will remand the case to OWCP to obtain a fully-rationalized medical opinion as to whether appellant's claimed recurrence of disability is causally related to the accepted August 29, 2016 employment injury. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 5, 2020
Washington, DC

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

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

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

¹² *D.G., id.*; *Vanessa Young*, 56 ECAB 575 (2004).

¹³ *K.T.*, Docket No. 19-1436 (issued February 21, 2020): *D.G., id.*; *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *Jimmy A. Hammons*, 51 ECAB 219 (1999); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).