

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

C.W., Appellant)	
)	
and)	Docket No. 20-0817
)	Issued: November 24, 2020
DEPARTMENT OF THE TREASURY,)	
U.S. MINT, West Point, NY, Employer)	
)	

Appearances:
Paul Kalker, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 3, 2020 appellant, through counsel, filed a timely appeal from a January 15, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the January 15, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability, commencing June 27, 2019, causally related to her accepted August 27, 2015 employment injury.

FACTUAL HISTORY

On August 27, 2015 appellant, then a 53-year-old die setter, filed a traumatic injury claim (Form CA-1) alleging that on that date she fell off a platform step while carrying a heavy tooling machine part, which landed on her right middle finger causing pain, while in the performance of duty. On February 5, 2018 OWCP accepted the claim for a crush injury of the right middle finger.

In a February 19, 2018 report, Dr. Cuartas noted that appellant reported increased pain in the right long finger with snapping and locking. He observed moderate tenderness of the A1 pulley of the right long finger with limited range of motion. Dr. Cuartas opined that these findings remained causally related to the accepted August 27, 2015 injury.

On March 12, 2018 appellant filed a notice of recurrence (Form CA-2a), for medical treatment alleging that she sustained a recurrence on November 20, 2017, while in full-duty status as a result of her previously accepted crush injury to the right middle finger. She described ongoing difficulties with handling tools. Appellant explained that she wished to seek additional medical treatment. She did not stop work.⁴

By decision dated March 30, 2018, OWCP accepted appellant's recurrence claim. It authorized additional medical care for the accepted right long finger injury.

Appellant stopped work on June 27, 2019. On July 1, 2019 she filed a Form CA-2a, alleging that she sustained a recurrence of disability on June 27, 2019. Appellant described worsening symptoms in her right long finger without any intervening cause.⁵

In a development letter dated July 2, 2019, OWCP provided a definition of a recurrence of disability. It advised appellant of the type of factual and medical evidence necessary to establish her claim, provided a questionnaire for her completion, and afforded her 30 days to submit additional evidence.

In response, appellant submitted a July 17, 2019 statement noting that she had returned to full-duty work as a super die setter/metal forming machine operator, but had been on light duty since May 2, 2019 due to a left hand injury under OWCP File No. xxxxxx619. She described a spontaneous worsening of her right long trigger finger beginning on June 27, 2019. Appellant provided her official position description.

⁴ Appellant also provided a March 17, 2018 report from a physician assistant.

⁵ Appellant noted that she filed a claim for a May 2, 2019 left hand injury under OWCP File No. xxxxxx619. Her claims have not been administratively combined.

In a July 8, 2019 report, Dr. Gina C. Del Savio, Board-certified in orthopedic surgery and hand surgery, held appellant off work pending surgery for right long trigger finger.

By decision dated August 8, 2019, OWCP denied appellant's recurrence claim, finding that she had not established that she was disabled from work commencing June 27, 2019, due to a material change or worsening of the accepted right long finger crush injury.

On November 2, 2019 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a September 30, 2019 narrative report, Dr. Del Savio provided a detailed history of appellant's injury and treatment beginning on August 27, 2015. Appellant presented on May 16, 2019 with a May 2, 2019 occupational left hand injury, sustained while working with a hammer and anvil. The hammer did not strike appellant's left hand, but she experienced the immediate onset of pain in the base of the left thumb. Appellant's right long finger continued to trigger. As of June 24, 2019, she asserted that her left hand symptoms prevented her from performing her light-duty assignment. Dr. Del Savio recommended that appellant stop work due to her hand injuries and noted that she "is and has been unable to work in any capacity." In a July 8, 2019 examination, appellant reported severe right hand symptoms not relieved with over-the-counter medication. Dr. Del Savio recommended a right long finger release. On September 9, 2019 she diagnosed a right long trigger finger secondary to the accepted injury, and carpometacarpal joint arthritis of the left thumb. Dr. Del Savio explained that "given the physical nature of [appellant's] job and the repetitive use of both hands for vigorous activities as a die setter, the injury to one hand causes the other to be aggravated in a cyclical fashion. She recommended a "right long trigger finger release to definitely manage the right tendinitis caused by the injury in 2015."

By decision dated January 15, 2020, OWCP expanded its acceptance of the claim to include a right middle trigger finger, in addition to the previously accepted crush injury to the right middle finger.

By separate decision dated January 15, 2020, OWCP denied appellant's claim for a recurrence of disability commencing June 27, 2019. It found that the medical evidence of record did not establish that she was "disabled/further disabled due to a material change/worsening of [her] accepted work-related conditions."

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim.⁷ Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁸ For each period of disability claimed, the employee has the burden of proof to establish that he or

⁶ *Supra* note 1.

⁷ See *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

⁸ 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

she was disabled from work as a result of the accepted employment injury.⁹ 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.¹⁰

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 that had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. The term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to the 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 his or her established physical limitations.¹¹

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 of proof 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 limited-duty requirements.¹²

An employee who claims a recurrence of disability resulting from an accepted employment injury has the burden of proof to establish that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability, commencing June 27, 2019, causally related to her accepted August 27, 2015 employment injury.

In support of her recurrence claim, appellant submitted a July 8, 2019 report, from Dr. Del Savio which held her off from work pending right trigger finger release. In a September 30, 2019 narrative report, Dr. Del Savio attributed appellant's worsened right hand symptoms to the effects of the May 2, 2019 left hand injury. She explained that vigorous, repetitive bilateral hand movements while working as a die setter caused a cyclical aggravation of each hand.

⁹ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

¹⁰ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹¹ 20 C.F.R. § 10.5(x); *see D.T.*, Docket No. 19-1064 (issued February 20, 2020).

¹² *C.B.*, Docket No. 19-0464 (issued May 22, 2020); *see R.N.*, Docket No. 19-1685 (issued February 26, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹³ *Id.*

Dr. Del Savio opined that the appellant “is and has been unable to work in any capacity.” Although she provided an opinion regarding disability, her reports are insufficiently rationalized to establish causal relationship between appellant’s claimed disability and the accepted August 27, 2015 right long finger injury. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.¹⁴ Therefore, the Board finds that this evidence is insufficient to meet appellant’s burden of proof.

On appeal counsel asserts that the medical evidence of record establishes appellant’s claim for a recurrence of disability commencing June 27, 2019, and that OWCP had unreasonably ignored symptoms and conditions supported by appellant’s physicians. As explained above, the medical evidence of record is insufficient to establish a recurrence of disability.

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 10.607.¹⁵

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability, commencing June 27, 2019, causally related to her accepted August 27, 2015 employment injury.

¹⁴ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability). See also *J.M.*, Docket No. 16-0306 (issued May 5, 2016).

¹⁵ Upon return of the case record, OWCP may consider administratively combining the present claim with OWCP File No. xxxxxx619.

ORDER

IT IS HEREBY ORDERED THAT the January 15, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 24, 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