

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

_____)	
A.M., Appellant)	
)	
and)	Docket No. 22-0322
)	Issued: November 17, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Reno, NV, 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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 30, 2021 appellant filed a timely appeal from an October 21, 2021 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, commencing January 2, 2021, causally related to the accepted September 17, 2002 employment injury.

FACTUAL HISTORY

On September 17, 2002 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his lower back when carrying a heavy package through a door while in the performance of duty. He explained that his back was struck

¹ 5 U.S.C. § 8101 *et seq.*

by the door handle as the door was closing.² Appellant did not stop work. OWCP accepted the claim for lumbosacral strain, thoracic strain, and lumbar region contusion. It subsequently expanded the acceptance of the claim to include aggravation of cervical, thoracic, and lumbar spondylosis without myelopathy; and cervical and thoracolumbar intervertebral disc degeneration. Appellant retired from the employing establishment in 2003.

In a November 14, 2006 report, Dr. Christopher Twombly, a Board-certified physiatrist, related that appellant was seen for a follow up of chronic mechanical low back pain with lumbar spondylosis. He noted diagnoses of chronic mechanical low back pain, lumbar and thoracic spondylosis, myofascial pain, and possible mild disc versus facet pain. Dr. Twombly noted that appellant was doing well and did not need further treatment, but would follow up on an as-needed basis.

On April 17, 2021 appellant filed a notice of recurrence (Form CA-2a) alleging that he sustained a recurrence of the need for medical treatment, commencing January 2, 2021, causally related to his spinal conditions. He noted that he had experienced recurring episodes of pain throughout the years, which were controlled through exercise and rest, but that he had misstepped and his pain had been constant for two months.

Appellant submitted an attending physician's report (Form CA-20) dated January 28, 2003 from Dr. Forrest Burke, a specialist in physical medicine and rehabilitation. Dr. Burke noted a September 17, 2002 date of injury and diagnosed cervical, lumbar and thoracic spondylosis.

In a development letter dated April 19, 2021, OWCP informed appellant of the deficiencies of his recurrence claim. It requested that he submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to the relationship between his current need for medical treatment and the accepted employment conditions. OWCP also provided a questionnaire for appellant's completion, which posed questions regarding his medical treatment. It afforded appellant 30 days to respond.

OWCP subsequently received a March 1, 2021 report, wherein Dr. John Reyher, an osteopathic physician Board-certified in physical medicine and rehabilitation, noted that appellant's pain began on September 17, 2002 when he performed heavy lifting and carrying, and that his pain was aggravated when his back was struck by a heavy door. Appellant had also related that approximately six weeks prior he had been hunting and hiking for a few hours when he tripped over a sagebrush and fell, but experienced no pain at the time of the fall. However, two weeks later, he noticed increased lower back pain radiating into his left lower extremity. Dr. Reyher reviewed a November 30, 2002 lumbar magnetic resonance imaging scan and noted that examination findings for appellant's low back included positive left straight leg raising and pain with extension. He diagnosed other lumbar intervertebral disc degeneration, lower back muscle, fascia and tendon strain, and lumbar radiculopathy. Dr. Reyher concluded that appellant had

² OWCP assigned OWCP File No. xxxxxx418 to the current claim. Appellant has a prior claim for a traumatic injury (Form CA-1 alleging that on October 18, 2001 he injured his lower back while loading mail. OWCP accepted the claim for lumbosacral strain and assigned OWCP File No. xxxxxx277. On February 5, 2003 appellant filed an occupational disease claim (Form CA-2) alleging that his federal employment duties aggravated his spinal disc degeneration. OWCP accepted the claim for cervical and thoracic or thoracolumbar intervertebral disc degeneration and assigned OWCP File No. xxxxxx331. On June 18, 2003 OWCP administratively combined OWCP File Nos. xxxxxx277, xxxxxx331, and xxxxxx418, with the latter designated as the master file.

chronic low back pain and lower extremity radicular pain, which was secondary to an industrial injury.

By decision dated July 7, 2021, OWCP denied appellant's recurrence claim, finding that the medical evidence of record was insufficient to establish a recurrence of the need for medical treatment due to a worsening of his accepted employment injuries. It found there was no medical evidence to support that the claimed recurrence was due to the accepted September 17, 2002 employment injury.

On July 28, 2021 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated October 21, 2021, OWCP's hearing representative affirmed the July 7, 2021 OWCP decision.

LEGAL PRECEDENT

The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.³

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 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.⁶ To meet this burden, the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the

³ 5 U.S.C. § 8103(a).

⁴ 20 C.F.R. § 10.5(y).

⁵ *R.B.*, Docket No. 22-0980 (issued October 18, 2022); *B.B.*, Docket No. 21-1358 (issued May 11, 2022); *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *M.P.*, Docket No. 19-0161 (issued August 16, 2019); *E.R.*, Docket No. 18-0202 (issued June 5, 2018).

⁶ Federal (FECA) Procedural Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013); *see also M.F.*, Docket No. 21-1221 (issued March 28, 2022); *J.M.*, Docket No. 09-2041 (issued May 6, 2010).

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 to establish a recurrence of the need for medical treatment, commencing January 2, 2021, causally related to the accepted September 17, 2002 employment injury.

In a March 1, 2021 report, Dr. Reyher noted the history of appellant's September 17, 2002 employment injury. He also noted that appellant related a history that approximately six weeks prior to his report, appellant had tripped over sagebrush and fallen. Appellant had related that he had not experienced pain at the time of the fall, but two weeks later, he noticed an increase of lower back pain radiating into his left lower extremity. Dr. Reyher reported low back examination findings of positive left straight leg raising and pain with extension. He diagnosed other lumbar intervertebral disc degeneration, lower back muscle, fascia and tendon strain, and lumbar radiculopathy. Dr. Reyher indicated that appellant had chronic low back pain and left lower extremity radicular pain secondary to an industrial injury. The Board has held that a medical opinion is of limited value if it is conclusory in nature.⁹ Dr. Reyher concluded that appellant sustained a recurrence of the need for medical treatment, but he did not explain how or why the accepted conditions for which appellant last received treatment in November 2006, resulted in the need for further medical treatment commencing January 2, 2021.¹⁰ The need for rationale in is particularly important since Dr. Reyher noted that appellant had an intervening fall in 2021.¹¹

In a Form CA-20 dated January 28, 2003, Dr. Burke noted a September 17, 2002 date of injury and diagnosed cervical, lumbar and thoracic spondylosis. However, as this report predates the claimed recurrence of the need for medical treatment, it is of no probative value on the issue of causal relationship.¹²

As appellant has not submitted medical evidence sufficient to establish a recurrence of the need for medical treatment causally related to his accepted September 17, 2002 employment injury, the Board finds that he has not met his burden of proof.

⁷ *S.P.*, *supra* note 5; *A.C.*, Docket No. 17-0521 (issued April 24, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

⁸ *M.F.*, *supra* note 6; *M.P.*, *supra* note 5; *Michael Stockert*, 39 ECAB 1186 (1988).

⁹ *See R.B.*, Docket No. 19-1527 (issued July 20, 2020); *R.S.*, Docket No. 19-1774 (issued April 3, 2020).

¹⁰ *K.B.*, Docket No. 21-1038 (issued February 28, 2022); *R.C.*, Docket No. 20-1321 (issued July 7, 2021); *J.S.*, Docket No. 0764 (issued January 21, 2021).

¹¹ *Supra* note 9.

¹² *V.N.*, Docket No. 16-1427 (issued December 13, 2016).

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, commencing January 2, 2021, causally related to the accepted September 17, 2002 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board