

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of total disability commencing October 29, 2020 causally related to his accepted March 30, 2020 employment injury.

FACTUAL HISTORY

On March 30, 2020 appellant, then a 49-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 30, 2020 he sustained injury to his neck, left shoulder, and legs when his postal vehicle was struck in the rear by another motor vehicle while in the performance of duty. He stopped work on March 30, 2020 and returned to limited-duty work for four hours per day on September 8, 2020. OWCP accepted appellant's claim for cervical sprain. It paid him wage-loss compensation on the supplemental rolls, effective May 15, 2020.

In a September 22, 2020 report, Dr. David Gamburg, a Board-certified anesthesiologist, recounted the March 30, 2020 accident and noted that he chiefly complained of headache, neck pain, left shoulder pain, bilateral knee pain, and bilateral lower back pain radiating into the legs along the L4-5 nerve distributions. He indicated that, upon physical examination of the cervical spine, appellant exhibited facet joint tenderness and muscle spasm/tenderness over the spinous processes and paraspinous muscles. Appellant had a negative compression test and moderate range of motion deficit of the cervical spine. Dr. Gamburg diagnosed cervical post-traumatic sprain/strain syndrome, cervical dorsopathies, cervical myofascial pain syndrome, rule out cervical disc herniation/radiculopathy, lumbar post-traumatic sprain and strain syndrome, lumbar myofascial pain syndrome, rule out lumbar disc herniation/radiculopathy, left shoulder joint derangement, bilateral knee pain, and headache. He indicated that appellant had 50 percent disability.

In an October 5, 2020 report, Dr. Sanford Wert, a Board-certified orthopedic surgeon, diagnosed bilateral derangement of the knees and partial biceps, partial rotator cuff, and superior labrum from anterior to posterior (SLAP) tears of the left shoulder. He opined that the March 30, 2020 injury was the "competent producing cause of this patient's injuries and symptoms" and characterized appellant's disability as "[m]oderate -- working part-time."

In an October 28, 2020 duty status report (Form CA-17), Dr. Gamburg listed the date of injury as March 30, 2020 and the clinical findings as muscle weakness, severe neck pain, bilateral knee pain, and range of motion deficit of the right arm. He found that appellant was 100 percent disabled. In an October 28, 2020 attending physician's report (Form CA-20), Dr. Gamburg diagnosed cervicgia, cervical disc herniation, lumbago, left shoulder strain, left shoulder rotator cuff tear, and lumbar radiculopathy. He checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the March 30, 2020 employment activity and added the notation, "[patient] was involved in [right-]side high impacted collision." Dr. Gamburg found that appellant was totally disabled from work from September 22 through December 9, 2020.

Appellant stopped work altogether on October 29, 2020. On November 3, 2020 he filed a claim for recurrence (Form CA-2a) alleging a recurrence of total disability on October 29, 2020 causally related to his accepted March 30, 2020 employment injury. Appellant indicated that he had been working for four hours per day, but maintained that his left shoulder was more painful than usual and he was unable to work.

In a November 16, 2020 development letter, OWCP notified appellant of the deficiencies of his recurrence claim. It advised him of the type of medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

The findings of a July 31, 2020 magnetic resonance imaging (MRI) scan of the left shoulder revealed several abnormalities, including biceps tendinitis and tendon/tissue tears.

In an October 28, 2020 report, Dr. Gamburg provided a history of the March 30, 2020 accident and diagnosed cervical post-traumatic sprain/strain syndrome, cervical dorsopathies, cervical myofascial pain syndrome, cervical disc herniation, rule out cervical radiculopathy, lumbar post-traumatic sprain and strain syndrome, lumbar myofascial pain syndrome, rule out lumbar disc herniation/radiculopathy, left shoulder joint derangement, bilateral knee pain, and headache. He opined that, based on the history reported by appellant and the objective/subjective findings, the March 30, 2020 accident was the competent, producing cause of appellant's injuries. Dr. Gamburg maintained that "causal relationship does exist" and indicated that appellant had "66 percent disability."

In a November 2, 2020 report, Dr. Wert noted that appellant maintained that the high impact from this March 30, 2020 motor vehicle accident caused injuries to multiple body parts including the neck, bilateral shoulders, bilateral knees, bilateral shins, right leg, and back. He diagnosed right shoulder sprain/strains, partial biceps, rotator cuff, and SLAP tears of the left shoulder, and bilateral derangement of the knees and advised that appellant was totally disabled from work.

By decision dated January 20, 2021, OWCP denied appellant's recurrence claim, finding that he failed to submit sufficient medical evidence to establish a recurrence of total disability commencing October 29, 2020 causally related to his accepted March 30, 2020 employment injury.

On December 28, 2021 appellant, through counsel, requested reconsideration.

In support thereof, appellant submitted a December 9, 2020 report, wherein Dr. Gamburg referenced the March 30, 2020 accident and noted that, upon physical examination of the cervical spine, appellant exhibited facet joint tenderness and muscle spasm/tenderness over the spinous processes and paraspinous muscles. He diagnosed cervical post-traumatic sprain/strain syndrome, cervical dorsopathies, cervical myofascial pain syndrome, cervical disc herniation, rule out cervical radiculopathy, lumbar post-traumatic sprain and strain syndrome, lumbar myofascial pain syndrome, rule out lumbar disc herniation/radiculopathy, left shoulder joint derangement, bilateral knee pain, and headache. Dr. Gamburg indicated that appellant had 100 percent disability due to pain and range of motion deficit. He opined that, based on the history reported by appellant and the objective/subjective findings, the March 30, 2020 accident was the competent producing cause of appellant's injuries. Dr. Gamburg maintained that "causal relationship does exist."

In reports dated January 13, February 10, March 10, April 14, June 23, July 21, September 22, and December 8, 2021, Dr. Gamburg provided the same diagnoses as in his December 9, 2020 report. He advised that appellant was 100 percent disabled due to pain and range of motion deficit and opined that, based on the history reported by appellant and the

objective/subjective findings, the March 30, 2020 accident was the competent, producing cause of appellant's injuries. Dr. Gamburg reiterated that "causal relationship does exist."

Appellant submitted Form CA-17 reports from Dr. Gamburg, dated January 13, February 10, March 10, April 14, May 19, June 23, July 21, August 24, and September 22, 2021. In these reports, he listed the date of injury as March 30, 2020 and provided diagnoses "due to injury" of cervical disc displacement, cervical radiculopathy, cervicgia, neck sprain, left shoulder pain, left shoulder joint derangement, bilateral leg abrasions, leg contusion, low back pain, skin paresthesia, chronic fatigue, involuntary movements, and soft tissue disorders. Dr. Gamburg found that appellant was totally disabled from work.

Appellant also submitted Form CA-20 reports from Dr. Gamburg, dated January 13, February 10, March 10, April 14, May 19, June 23, July 21, August 24, and September 22, 2021. In these reports, Dr. Gamburg listed the date of injury as March 30, 2020 and diagnosed cervical disc herniation, cervical radiculopathy, cervicgia, lumbago, bilateral knee sprains/pain/weakness, and left shoulder rotator cuff tear/weakness with range of motion deficit. He checked a box marked "Yes" on each report to indicate that the diagnosed conditions were caused or aggravated by the reported employment activity. Dr. Gamburg found that appellant was totally disabled from work for the period September 22, 2020 through September 22, 2021.

Appellant submitted a March 19, 2021 electromyogram/nerve conduction velocity study of the upper extremities, which revealed normal results with no evidence of cervical radiculopathy/peripheral polyneuropathy.

By decision dated January 13, 2022, OWCP denied modification of its January 20, 2021 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

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

⁵ *Id.*

condition that results from a new injury, even if it involves the same part of the body previously injured.⁶

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.⁷ Where no such rationale is present, the medical evidence is of diminished probative value.⁸

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.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of total disability commencing October 29, 2020 causally related to his accepted March 30, 2020 employment injury.

Appellant submitted an October 28, 2020 report, wherein Dr. Gamburg provided a history of the March 30, 2020 accident and diagnosed cervical post-traumatic sprain/strain syndrome, cervical dorsopathies, cervical myofascial pain syndrome, cervical disc herniation, rule out cervical radiculopathy, lumbar post-traumatic sprain and strain syndrome, lumbar myofascial pain syndrome, rule out lumbar disc herniation/radiculopathy, left shoulder joint derangement, bilateral knee pain, and headache. Dr. Gamburg opined that, based on the history reported by appellant and the objective/subjective findings, the March 30, 2020 accident was the competent producing cause of appellant's injuries. He maintained that "causal relationship does exist" and indicated that appellant had 66 percent disability. In reports dated December 9, 2020, January 13, February 10, March 10, April 14, May 19, July 21, September 22, and December 8, 2021, Dr. Gamburg diagnosed cervical post-traumatic sprain/strain syndrome, cervical dorsopathies, cervical myofascial pain syndrome, cervical disc herniation, rule out cervical radiculopathy, lumbar post-

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).

⁷ *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *see C.C.*, Docket No. 18-0719 (issued November 9, 2018).

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

⁹ *See D.W.*, Docket No. 19-1584 (issued July 9, 2020); *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹⁰ *C.B.*, Docket No. 19-0464 (issued May 22, 2020); *Terry R. Hedman, id.*; *see R.N.*, Docket No. 19-1685 (issued February 26, 2020).

traumatic sprain and strain syndrome, lumbar myofascial pain syndrome, rule out lumbar disc herniation/radiculopathy, left shoulder joint derangement, bilateral knee pain, and headache. He indicated that appellant had 100 percent disability due to pain and range of motion deficit. Dr. Gamburg opined that, based on the history reported by appellant and the objective/subjective findings, the March 30, 2020 accident was the competent producing cause of appellant's injuries. He maintained that "causal relationship does exist." Although Dr. Gamburg found work-related total disability commencing October 28, 2020, these reports are of limited probative value regarding appellant's recurrence of disability claim because Dr. Gamburg did not provide sufficient rationale explaining how appellant's total disability was due to the accepted employment injury. The Board has held that reports that do not contain medical rationale explaining how the accepted employment injury caused or contributed to the claimed disability are of limited probative value regarding causal relationship.¹¹ Therefore, this evidence is insufficient to establish appellant's claim.

Appellant submitted Form CA-17 reports from Dr. Gamburg, dated October 28, 2020, January 13, February 10, March 10, April 14, May 19, June 23, July 21, August 24, and September 22, 2021. In these reports, he listed the date of injury as March 30, 2020 and provided diagnoses "due to injury" of cervical disc displacement, cervical radiculopathy, left shoulder pain, cervicgia, neck sprain, left shoulder joint derangement, bilateral leg abrasions, leg contusion, low back pain, skin paresthesia, chronic fatigue, involuntary movements, and soft tissue disorders. Dr. Gamburg found that appellant was totally disabled from work. In Form CA-20 reports dated October 28, 2020, January 13, February 10, March 10, April 14, May 19, June 23, July 21, August 24, and September 22, 2021, he listed the date of injury as March 30, 2020 and diagnosed cervical disc herniation, cervical radiculopathy, cervicgia, lumbago, bilateral knee sprains/pain/weakness, and left shoulder rotator cuff tear/weakness with range of motion deficit. Dr. Gamburg found that appellant was totally disabled from September 22, 2020 through September 22, 2021. These reports also are of limited probative value regarding appellant's recurrence of disability claim because Dr. Gamburg did not provide adequate medical rationale explaining how appellant's total disability was due to the March 30, 2020 employment injury. He again implicated numerous other nonwork-related conditions as causing work-related disability, but failed to provide medical rationale explaining how these conditions were related to the March 30, 2020 employment injury. As noted, a report is of limited probative value if it does not contain medical rationale explaining causal relationship between the claimed disability and the accepted employment injury.¹² Therefore, this evidence is also insufficient to establish appellant's claim.

Appellant also submitted October 2, 5, and 20, 2020 reports of Dr. Wert. However, Dr. Wert did not provide an opinion on appellant's disability commencing October 28, 2020. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's claimed disability is of no probative value on the issue of causal relationship.¹³ Therefore, these reports are insufficient to establish appellant's claim.

¹¹ See *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹² *Id.*

¹³ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Appellant also submitted reports of diagnostic testing. However, diagnostic studies, standing alone, lack probative value as they do not address whether an accepted employment condition caused the claimed disability.¹⁴

As appellant has not submitted rationalized medical evidence establishing causal relationship between his claimed recurrence of total disability and the accepted March 30, 2020 employment injury, 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 total disability commencing October 29, 2020 causally related to his accepted March 30, 2020 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 14, 2022
Washington, DC

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

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

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

¹⁴ See A.V., Docket No. 19-1575 (issued June 11, 2020).