

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

_____)	
L.C., Appellant)	
)	
and)	Docket No. 20-1679
)	Issued: October 20, 2022
DEPARTMENT OF THE ARMY, MATERIEL)	
COMMAND, Anniston, AL, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 24, 2020 appellant filed a timely appeal from a May 21, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of total disability, commencing July 30, 2010, causally related to his accepted employment injury.

¹ The Board notes that, following the May 21, 2020 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.*

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board on a different issue.³ The facts and circumstances as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 16, 2008 appellant, then a 25-year-old general equipment mechanic helper, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right rotator cuff tear on March 7, 2008 while using an air jackhammer while in the performance of duty. He indicated that he experienced pain from his shoulder to his chest. Appellant was released to return to light-duty work on March 19, 2008. On November 13, 2008 OWCP accepted appellant's claim for bicipital tenosynovitis on the right. It paid appellant wage-loss compensation for intermittent disability from work during the period April 7 through October 23, 2008.⁴

On November 15, 2010 Dr. Stanley W. Jett, a family practitioner, found that appellant was disabled from work for the period October 14, 2008 through May 20, 2010 due to his accepted right shoulder condition.

Dr. Milka E. Martinez Arache, a Board-certified internist, found that appellant was disabled from work for the periods October 9 through 10, 2012, January 4 through 7, 2013, and January 22 through 23, 2014.

Dr. Jett, in a March 30, 2015 report, also diagnosed right bicipital tenosynovitis and traumatic arthritis of the right shoulder, which he attributed to the March 2008 employment injury. He noted that appellant's right shoulder condition was the result of working with an air chisel and jackhammer. Dr. Jett opined that the repetitive use of heavy equipment alone with the bicipital tenosynovitis led to chronic traumatic arthritis of the right shoulder. He also recommended surgery and found that appellant was partially disabled from work.⁵

On August 23, 2018 appellant completed a claim for compensation (Form CA-7) and requested wage-loss compensation for disability from work commencing October 14, 2008. On the reverse side of the claim form, the employing establishment indicated that appellant was removed from employment effective October 14, 2008.

In a September 19, 2018 development letter, OWCP found that appellant was claiming disability to a material change or worsening of his accepted work-related condition of right bicipital tenosynovitis. It further noted that appellant was performing light-duty work until

³ Docket No. 16-1797 (issued March 10, 2017).

⁴ Appellant continued to file Form CA-7 claims for wage-loss compensation for disability from work commencing October 24, 2008. By decision dated July 29, 2010, OWCP denied his claims for wage-loss compensation for disability from work commencing October 24, 2008, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period due to his accepted condition.

⁵ By decision dated August 21, 2014, OWCP denied appellant's request for expansion of the acceptance of his claim to include additional shoulder conditions. Appellant subsequently submitted multiple requests for reconsideration, but OWCP denied modification.

October 14, 2008, when the employing establishment terminated his employment. OWCP requested that appellant provide evidence of either a spontaneous change in his medical condition, or a withdrawal of a light-duty assignment made specifically to accommodate his work-related injury. It provided questionnaire for his completion and afforded him 30 days to respond.

On August 1, 2018 Dr. Jett noted that appellant continued to experience right shoulder pain associated with his accepted employment injury. He noted that appellant was unable to work due to his employment injury. Dr. Jett diagnosed right bicipital tenosynovitis.

Appellant submitted a note dated October 25, 2018, wherein Jerry L. Klug, a physical therapist, found that appellant was totally disabled from work and attributed his current conditions to his accepted employment injuries.

By decision dated October 29, 2018, OWCP denied appellant's claim for compensation for disability from work commencing July 30, 2010, finding that he failed to provide medical evidence from a qualified physician establishing total disability due to his accepted employment injury. On November 31, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

Appellant subsequently submitted a November 12, 2018 report, wherein Dr. Jett diagnosed right bicipital tenosynovitis associated with the irritation of the biceps tendon and surrounding synovial sheath as well as bilateral carpal tunnel syndrome, chronic pain, pinched nerve in his cervical spine, sleep deprivation, swelling and numbness in both hands due to repetitive motion of the jackhammer during his eight-hour shift, and irritation of the radial nerve. Dr. Jett opined that, due to these conditions, appellant was unable to lift more than 15 pounds, to push or pull, to reach above his shoulders, and to use his hand and fingers. He recommended surgery and opined that appellant's condition had worsened.

By decision dated April 11, 2019, OWCP's hearing representative affirmed the October 29, 2018 OWCP decision.

On July 26, 2019 appellant requested reconsideration. He provided a July 16, 2019 report from Mr. Klug.

On November 6, 2019 Dr. Jett examined appellant due to his chronic right shoulder pain and noted that appellant felt that he was unable to do any kind of work due to limited range of motion in his right shoulder and muscle spasms. He diagnosed right bicipital tenosynovitis.

By decision dated December 31, 2019, OWCP denied modification of its prior decisions.

On February 22, 2020 appellant requested reconsideration. He submitted a February 21, 2020 statement explaining why he was disabled from work. Additionally, appellant submitted an undated letter wherein Dr. Jett noted his findings on physical examination and found that appellant "is no longer able to do any kind of heavy lifting that is 15 lbs. or more, pulling, reaching above his shoulders, pushing heavy objects, using his hand and fingers, crawling, kneeling, and bending." Dr. Jett opined that appellant "continues to have pain in the shoulder to the point that he is unable

to return to work.” He explained that appellant’s injury dating back to July 30, 2010 had “worsened without any intervening injury or new exposure to factors which caused the original illness.” Dr. Jett noted that at the time of the injury, appellant was not available to work an eight-hour shift.

In a report dated March 6, 2020, Dr. Jett repeated his diagnoses and findings and reiterated his opinion that appellant’s accepted condition had worsened without any intervening injury or new exposure to factors. He added that appellant was unable to sustain any type of gainful employment due to the right bicipital tenosynovitis injury that occurred on the job.

By decision dated May 21, 2020, OWCP denied modification of its prior decisions.

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 injury of illness, without an intervening injury of new exposure to the work environment that caused the illness.⁶ Recurrence of disability also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her 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),⁷ or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁸ Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.⁹

When an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish that the recurrence is causally related to the original injury.¹⁰ This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the recurrent disability is causally related to the employment injury.¹¹ The physician’s opinion must be based on a complete and accurate factual and medical

⁶ 20 C.F.R. § 10.5(x).

⁷ *S.S.*, Docket No. 06-1427 (issued January 9, 2007).

⁸ *Supra* note 6.

⁹ *C.M.*, Docket No. 19-0902 (issued April 16, 2021); *G.L.*, Docket No. 16-1542 (issued August 25, 2017); *Theresa L. Andrews*, 55 ECAB 719, 722 (2004); *see also Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹⁰ 20 C.F.R. § 10.104(b); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 and 2.1500.6 (June 2013).

¹¹ *C.M.*, *supra* note 11; *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *S.S.*, 59 ECAB 315, 218-19 (2008).

history and it must be supported by sound medical reasoning.¹² Where no such rationale is present, the medical evidence is of diminished probative value.¹³

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹⁴ The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify their disability and entitlement to compensation.¹⁵

ANALYSIS

The Board finds that appellant has not established a recurrence of total disability, commencing July 30, 2010, causally related to his accepted employment injury.

On November 15, 2010 Dr. Jett found that appellant was disabled from work for the period October 14, 2008 through May 20, 2010 due to his accepted right shoulder condition. Dr. Jett, in a March 30, 2015 report, diagnosed right bicipital tenosynovitis and traumatic arthritis of the right shoulder, which he attributed to the accepted employment injury. He noted that appellant's right shoulder condition was the result of working with an air chisel and jackhammer. Dr. Jett opined that the repetitive use of heavy equipment alone with the bicipital tenosynovitis led to chronic traumatic arthritis of the right shoulder. He also recommended surgery and found that appellant was partially disabled from work. On August 1, 2018 Dr. Jett noted that appellant continued to experience right shoulder pain associated with his accepted employment injury. He noted that appellant was unable to work due to his employment 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 the claimed disability was related to the accepted employment injury.¹⁶ Therefore this evidence is insufficient to establish appellant's recurrence claim.

Dr. Arache found that appellant was disabled from work for the periods October 9 through 10, 2012, January 4 through 7, 2013, and January 22 through 23, 2014. However, she did not provide an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative

¹² *Id.*

¹³ *C.M.*, *supra* note 11; *G.L.*, Docket No. 19-0898 (issued December 5, 2019); *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

¹⁴ *C.M.*, *supra* note 11; *B.D.*, Docket No. 18-0426 (issued July 17, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁵ *Id.*; *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁶ *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).

value on the issue of causal relationship.¹⁷ This report is, therefore, insufficient to establish appellant's recurrence claim.

On November 6, 2019 Dr. Jett examined appellant due to his chronic right shoulder pain and noted that appellant felt that he was unable to do any kind of work due to limited range of motion in his right shoulder and muscle spasms. He diagnosed right bicipital tenosynovitis. As noted, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value.¹⁸ This report, therefore, is insufficient to establish appellant's recurrence claim.

In a note dated October 25, 2018, a physical therapist found that appellant was totally disabled from work and attributed his current conditions to his accepted employment injuries. This note, however, does not constitute competent medical evidence because physical therapists are not considered physicians as defined under FECA.¹⁹ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to compensation benefits.²⁰

In a November 12, 2018 report, Dr. Jett diagnosed right bicipital tenosynovitis associated with the irritation of the biceps tendon and surrounding synovial sheath as well as bilateral carpal tunnel syndrome, chronic pain, pinched nerve in his cervical spine, sleep deprivation, swelling and numbness in both hands due to repetitive motion of the jackhammer during his eight-hour shift, and irritation of the radial nerve. He opined that, due to these conditions, appellant was unable to lift more than 15 pounds, to push or pull, to reach above his shoulders, and to use his hand and fingers. Dr. Jett recommended surgery and opined that appellant's condition had worsened. In an undated letter, he noted his findings on physical examination and found that appellant "is no longer able to do any kind of heavy lifting that is 15 lbs. or more, pulling, reaching above his shoulders, pushing heavy objects, using his hand and fingers, crawling, kneeling, and bending." Dr. Jett opined that appellant "continues to have pain in the shoulder to the point that he is unable to return to work." He explained that appellant's injury dating back to July 30, 2010 had "worsened without any intervening injury or new exposure to factors which caused the original illness." Dr. Jett noted that at the time of the injury, appellant was not available to work an eight-hour shift. In a report dated March 6, 2020, he repeated his diagnoses and findings and reiterated his opinion that appellant's accepted condition had worsened without any intervening injury or new exposure to factors. Dr. Jett added that appellant was unable to sustain any type of gainful employment due to the right bicipital tenosynovitis injury that occurred on the job. The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow

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

¹⁸ *Id.*

¹⁹ 5 U.S.C. § 8101(2) provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law, 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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).

²⁰ *V.R.*, Docket No. 19-0758 (issued March 16, 2021); *B.B.*, Docket No. 18-0732 (issued March 11, 2020).

an employee to self-certify their disability and entitlement to compensation.²¹ As such, this evidence is insufficient to establish appellant's recurrence claim.

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant 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 established a recurrence of total disability, commencing July 30, 2010, causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²¹ *Supra* note 17.