

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

K.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Columbus, OH, Employer**

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**Docket No. 22-0579
Issued: September 15, 2022**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 7, 2022 appellant filed a timely appeal from a January 14, 2022 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of the need for medical treatment commencing on March 1, 2021, causally related to her accepted September 5, 2013 employment injury.

FACTUAL HISTORY

On September 13, 2013 appellant, then a 53-year-old dock clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 5, 2013 she injured her right shoulder and leg as a

¹ 5 U.S.C. § 8101 *et seq.*

result of pulling, pushing, and flipping sacks weighing up to 70 pounds on a continual basis while in the performance of duty. She stopped work on September 13, 2013.² OWCP accepted the claim for sprain of the right shoulder and upper arm and disorder of bursae and tendons in the right shoulder region. It paid wage-loss compensation on the supplemental rolls beginning June 20, 2014.

On June 24, 2014 appellant underwent an OWCP-authorized right shoulder subacromial decompression, distal clavicle excision, biceps tendonectomy, and rotator cuff debridement due to a longitudinal split biceps tendon partial thickness rotator cuff tear and acromioclavicular (AC) arthrosis with chronic impingement. She returned to full-duty work on May 11, 2015.³

On May 20, 2021 appellant filed a notice of recurrence (Form CA-2a) claiming the need for medical treatment commencing March 1, 2021 due to her accepted September 5, 2013 employment injury. She provided a narrative statement and asserted that she developed pain in her right shoulder, in the same location as her authorized surgery.

In an August 24, 2021 development letter, OWCP requested that appellant submit additional evidence in support of her recurrence claim, including a physician's opinion supported by a medical explanation as to the relationship between her current need for medical treatment and the accepted September 5, 2013 employment injury. It provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond. No additional evidence was received.

By decision dated September 27, 2021, OWCP denied appellant's claim for a recurrence of the need for medical treatment, finding that the medical evidence of record was insufficient to establish a need for medical treatment "due to a worsening of your accepted work-related conditions without intervening cause."

OWCP continued to receive evidence. In a September 29, 2021 report, Dr. Michael M. Heckman, a Board-certified orthopedic surgeon, described appellant's right shoulder pain and difficulties lifting heavy sacks or performing activities of daily living. He noted her prior right shoulder surgery in 2014. Dr. Heckman performed a physical examination and found limited range of motion of the right shoulder due to pain. He reported 4/5 strength of the supraspinatus and infraspinatus in the right upper extremity. Dr. Heckman found positive cross-body test, Neer's test, Hawkins' test, Speed's test, and Yergason's test. He obtained four right shoulder x-rays and noted AC joint arthritic changes. Dr. Heckman diagnosed impingement of the right shoulder,

² OWCP previously accepted that appellant sprained her left wrist and hand as well as sustaining a left-hand contusion on September 18, 2022 under OWCP File No. xxxxxx168. Appellant developed aggravation of bilateral lower leg osteoarthritis, and ankylosis or arthrofibrosis of the left knee under OWCP File No. xxxxxx797. On March 26, 2014 she underwent right knee arthroscopy with partial medial meniscectomy, synovectomy, and debridement of arthritis of the patellofemoral joint of the medial compartment of the right knee. Appellant underwent left knee total arthroplasty on November 4, 2014. On February 10, 2015 OWCP administratively combined her files with OWCP File No. xxxxxx797 serving as the master file. Appellant stopped work on August 6, 2015 due to her accepted left knee injuries under OWCP File No. xxxxxx797. On March 26, 2018 she received a schedule award for 31 percent permanent impairment of her left lower extremity and eight percent permanent impairment of her right lower extremity.

³ By decision dated March 2, 2016, OWCP granted appellant a schedule award for eight percent permanent impairment of the right upper extremity. She retired from the employing establishment on November 30, 2017.

weakness to the supraspinatus tendon, and tenderness in her biceps. He recommended additional diagnostic testing.

On September 30, 2021 appellant underwent a right shoulder magnetic resonance imaging (MRI) scan, which demonstrated an irregular full-thickness tear of the supraspinatus tendon, superimposed on moderately severe tendinitis throughout the suprahumeral cuff, and moderate tendinitis of the subscapularis tendon.

On October 19, 2021 appellant submitted a partially completed development questionnaire and asserted that she returned to full-duty work in September 2017 and retired on November 30, 2017. She indicated that she was currently working as a greeter in a retail store.

In an October 21, 2021 statement, appellant asserted that her right shoulder condition had worsened since March 2021 and that she experienced difficulties in lifting groceries, showering, drying her hair, and lifting a glass to drink. She attributed her difficulties to the angles at which she lifted objects. Appellant alleged that her initial shoulder surgery did not repair her employment-related shoulder injury and that she continued to experience additional fraying. She denied any additional shoulder injuries.

On October 21, 2021 appellant requested reconsideration.

By decision dated January 14, 2022, OWCP denied modification of its prior 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.⁴

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.⁵ 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.⁶

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

⁴ 5 U.S.C. § 8103(a).

⁵ 20 C.F.R. § 10.5(y).

⁶ See *B.B.*, Docket No. 21-1359 (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); *MaryA. Ceglia*, Docket No. 04-113 (issued July 22, 2004).

or her burden.⁷ 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 condition is causally related and supports his or her conclusion with sound medical rationale.⁸ Where no such rationale is present, medical evidence is of diminished probative value.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of the need for medical treatment commencing on March 1, 2021, causally related to her accepted September 5, 2013 employment injury.

In a September 29, 2021 report, Dr. Heckman described appellant's right shoulder symptoms. He noted her prior right shoulder surgery in 2014. Dr. Heckman performed a physical examination and found limited range of motion of the right shoulder due to pain, loss of strength of the supraspinatus and infraspinatus tendons in the right upper extremity. He diagnosed impingement of the right shoulder, weakness to the supraspinatus tendon, and tenderness in her biceps. Dr. Heckman's report is of limited probative value as he failed to offer an opinion regarding causal relationship. The Board has held that a medical report is of no probative value on a given medical matter if it does not contain an opinion on that matter.¹⁰ Thus, this report is insufficient to establish appellant's recurrence claim.

Appellant also submitted diagnostic studies. The Board has held, however, that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused any period of disability or required any further medical treatment without intervening cause.¹¹ These reports are therefore insufficient to establish the claim.

In this instance, appellant filed the recurrence more than 90 days following her last medical treatment for her accepted employment conditions, she was thus required to submit a rationalized medical opinion establishing causal relationship between her current condition and the original injury, without intervening cause.¹² As the medical evidence of record does not contain a rationalized medical opinion establishing that appellant required further medical care on or after March 1, 2021 causally related to her accepted employment conditions, the Board finds that appellant has not met her burden of proof to establish her recurrence claim.

⁷ Federal (FECA) Procedural Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4b (June 2013); *see also* *S.W.*, Docket No. 21-1094 (issued April 18, 2022); *J.M.*, Docket No. 09-2041 (issued May 6, 2010).

⁸ *S.W., id.*; *A.C.*, Docket No. 17-0521 (issued April 24, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

⁹ *S.W., id.*; *M.P.*, *supra* note 6; *Michael Stockert*, 39 ECAB 1186 (1988).

¹⁰ *See M.F.*, Docket No. 21-1221 (issued March 28, 2022); *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *T.H.*, Docket No. 18-0704 (issued September 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

¹¹ *Supra* note 5; *T.B.*, Docket No. 20-0255 (issued March 11, 2022); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *see J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹² *Supra* note 6; *E.R.*, Docket No. 19-0889 (issued February 3, 2020).

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 her burden of proof to establish a recurrence of the need for medical treatment commencing on March 1, 2021, causally related to her accepted September 5, 2013 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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