United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 22-0901**
	)	**Issued: April 21, 2023**
DEPARTMENT OF THE ARMY, CORPUS CHRISTI ARMY DEPOT, Corpus Christi, TX, Employer	)	

Appearances:
Glenda Turner, for the appellant[1]
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 May 18, 2022 appellant, through his representative, filed a timely appeal from an April 29, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).[2]

[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] Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

Pursuant to the Federal Employees' Compensation Act[3] (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 March 8, 2021, causally related to his accepted June 2, 2005 employment injury.

FACTUAL HISTORY

On July 19, 2005 appellant, then a 50-year-old aircraft engine mechanic, filed a traumatic injury claim (Form CA-1) alleging that on June 2, 2005 he injured his right shoulder while working on a midframe assembly. OWCP accepted the claim for the right shoulder region other affections. It authorized right shoulder arthroscopy and rotator cuff repair, which was performed on November 17, 2005. OWCP paid appellant wage-loss compensation on the supplemental rolls from October 5, 2005 through January 1, 2006 and December 24, 2006 through January 20, 2007. Appellant retired from the employing establishment, effective September 26, 2014.

In a report dated March 13, 2006, Dr. Charles S. Clark, Jr., a Board-certified orthopedic surgeon, reported that appellant had excellent right shoulder range of motion and that he had reached maximum medical improvement (MMI). Dr. Clark, in a form dated August 15, 2006, noted a diagnosis of right shoulder rotator cuff repair, and advised that appellant continued to be under his care for treatment of the right shoulder condition.

On April 26, 2021 appellant filed a notice of recurrence (Form CA-2a) alleging that he sustained a recurrence of the need for medical treatment, commencing March 8, 2021, causally related to his right shoulder condition. In a development letter dated May 14, 2021, OWCP informed appellant of the deficiencies of his recurrence claim. It advised him of the type of medical evidence needed, 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 provided a questionnaire for appellant's completion and afforded him 30 days to respond.

OWCP subsequently received a March 8, 2021 report from Dr. Charles Breckenridge, a Board-certified orthopedic surgeon, noting that appellant was seen for right shoulder pain complaints. Dr. Breckenridge related that appellant injured his shoulder at work and underwent operative intervention in 2006. Appellant initially made excellent progress following the surgery, but had recently experienced symptoms similar to those experienced prior to his surgery. Dr. Breckenridge reviewed radiograph interpretations and noted on examination findings of tenderness over the acromioclavicular joint and the biceps tendon, decreased shoulder motion, significantly positive impingement sign, and positive cross arm adduction test. Diagnoses included right shoulder pain and traumatic rotator cuff rupture. Dr. Breckenridge opined that need for further treatment of appellant's right shoulder was causally related to his original work injury.

[3] 5 U.S.C. § 8101 *et seq.*

A June 10, 2021 magnetic resonance imaging (MRI) scan of appellant's right shoulder showed severe right shoulder tendinosis of the infraspinatus tendon with probable surface fraying posterior fibers near insertion, mild subacromial subdeltoid bursitis, and critical zone fraying subscapularis.

Dr. Breckenridge, in a June 14, 2021 report, provided examination findings and reported that appellant continued to have difficulty with his right shoulder. A review of an MRI scan of the right shoulder showed a full-thickness rotator cuff tendon tear. Dr. Breckenridge attributed the tear to appellant's work-related activity, noting that appellant initially injured his shoulder at work. He indicated that during appellant's 40 years of employment as an aircraft worker appellant performed significant repetitive activity overhead and in the frontal plane of his body, which was the proximate cause of his need for further medical treatment.

By decision dated July 30, 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 injury. On August 18, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a letter dated December 17, 2021, OWCP's hearing representative converted the request for oral hearing to a request for a review of the written record.

By decision dated January 13, 2022, OWCP's hearing representative affirmed the July 30, 2021 OWCP decision.

On February 1, 2022 appellant, through his representative, requested reconsideration.

OWCP received a January 13, 2022 report wherein Dr. Breckenridge repeated his prior findings.

By decision dated April 29, 2022, OWCP denied modification.

LEGAL PRECEDENT

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 a medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report establishing causal relationship between the employee's current condition and the original injury in order to meet his

[4] 20 C.F.R. § 10.5(y).

[5] *M.G.*, Docket No. 21-0427 (issued January 6, 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).

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 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 proof to establish a recurrence of the need for medical treatment, commencing March 8, 2021, causally related to his accepted June 2, 2005 employment injury.

In a report dated March 8, 2021, Dr. Breckenridge noted that appellant originally injured his right shoulder at work in 2005 and underwent surgery in 2006. He noted appellant's examination findings, diagnosed right shoulder traumatic rotator cuff rupture and concluded that medical treatment for the condition was causally related to the original injury. Dr. Breckenridge, in a June 14, 2021 report, provided examination findings and reviewed an MRI scan. He diagnosed a right shoulder full-thickness rotator cuff tendon tear, which he attributed to appellant's work activity. Dr. Breckenridge attributed the tear to appellant's work-related activity, noting that appellant initially injured his shoulder at work. He also indicated that during appellant's 40 years of employment as an aircraft worker, appellant performed significant repetitive activity overhead and in the frontal plane of appellant's body, which was the proximate cause of his need for further medical treatment. Dr. Breckenridge concluded that appellant sustained a recurrence of the need for medical treatment due to appellant's initial employment injury and years of repetitive work activity, but he did not explain when or how appellant's work activity up until his retirement in 2014 physiologically caused the right shoulder rotator cuff tear. The Board has held that a medical opinion is of limited value if it is conclusory in nature.[9]

Appellant also submitted an MRI scan. The Board has held, however, that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused a period of disability or required any further medical treatment without intervening cause.[10] This report is therefore insufficient to establish the claim.

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[6] Federal (FECA) Procedural Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4b (June 2013); *M.G.*, *id.*; *see also J.M.*, Docket No. 09-2041 (issued May 6, 2010).

[7] *M.G.*, *id.*; *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.G.*, *id.*; *S.P.*, *id.*; *Michael Stockert*, 39 ECAB 1186 (1988).

[9] *See A.M.*, Docket No. 22-0322 (issued November 17, 2022); *R.B.*, Docket No. 19-1527 (issued July 20, 2020); *R.S.*, Docket No. 19-1774 (issued April 3, 2020). *See also 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).

[10] *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).

As the medical evidence of record does not contain a rationalized medical opinion establishing that he required further medical care on or after March 8, 2021 causally related to his accepted employment injury, the Board finds that 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 the need for medical treatment, commencing March 8, 2021, causally related to his accepted June 2, 2005 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2023
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