United States Department of Labor
Employees' Compensation Appeals Board

K.G., Appellant	)	
and	)	**Docket No. 22-0970**
	)	**Issued: February 24, 2023**
U.S. POSTAL SERVICE, WEST STATION, Nashville, TN, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 13, 2022 appellant filed a timely appeal from a May 27, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 disability commencing March 2, 2022, causally related to his accepted December 27, 2019 employment injury.

FACTUAL HISTORY

On January 13, 2020 appellant, then a 30-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed right hip pain due to factors of his federal

[1] 5 U.S.C. § 8101 *et seq.*

employment, including repeated sitting, reaching, and grabbing. He noted that he first became aware of his condition and realized its relation to his federal employment on December 27, 2019. OWCP accepted the claim for strain of muscle, fascia, and tendon of the right hip. Appellant stopped work on January 7, 2020 and returned to full-duty work without restrictions on January 13, 2020.

On March 9, 2022 appellant filed a notice of recurrence (Form CA-2a) for medical treatment and time lost from work commencing March 2, 2022 due to the December 27, 2019 employment injury. He noted on the claim form that he started feeling "the same pain" on March 1, 2022. Appellant further indicated that he first received medical treatment following the alleged March 2, 2022 recurrence and subsequently stopped work on March 9, 2022.

In a development letter dated March 23, 2022, OWCP informed appellant of the deficiencies of his recurrence claim. It advised him of the type of additional medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP thereafter received a report dated March 9, 2022 by William Jason, a physician assistant, who noted that appellant related complaints of right hip pain, which he attributed to a work-related injury. Mr. Jason further noted that he had been working regular duty since January 13, 2020, but claimed that his right hip pain had never fully resolved. He performed a physical examination and documented subjective complaints of pain in the right lateral hip and lumbar regions, but an otherwise normal examination. Mr. Jason diagnosed a right hip sprain and prescribed physical therapy and magnetic resonance imaging (MRI) scan of the right hip. He released appellant to return to work with restrictions of occasional lifting up to 15 pounds and occasional pushing and pulling up to 20 pounds.

Appellant underwent physical therapy treatment on March 17, 18, 21, and 25, 2022.

In a report dated March 21, 2022, Dr. Rebecca Smith, a Board-certified family physician, noted that appellant was working modified duty, and that his posterolateral right hip pain had improved. She reviewed a recent MRI scan of the right hip and noted mild tendinosis of the gluteus minimus with edema overlying the greater trochanteric bursa. Dr. Smith performed a physical examination and documented mild tenderness to palpation of the gluteus minimus and greater trochanteric bursa and mild pain with extension and abduction against resistance. She diagnosed a right hip strain and recommended medication and hot and cold compresses. In a work activity status report of even date, Dr. Smith maintained appellant's modified-duty restrictions.

In a report dated March 25, 2022, Dr. William Dutton, an occupational medicine physician, noted that appellant was working modified duty and had completed physical therapy. He performed a physical examination, which revealed tenderness in the right gluteus minimus, but was otherwise normal. Dr. Dutton diagnosed a right hip strain, released appellant from care, and opined that he was able to resume full-work activity.

In a completed development questionnaire dated March 28, 2022, appellant explained that he performed hip stretches for two years after his original discharge from treatment. Then, during the first week of March 2022, he experienced pain in the same area of his right hip while

performing his job duties including constant sitting, stretching, pulling, and bending. Appellant denied any intervening injury or hobbies outside of work that would have caused a new injury to his right hip. He asserted that his symptoms had worsened due to an increased work schedule due to short staffing.

By decision dated May 27, 2022, OWCP denied appellant's claimed recurrence commencing March 2, 2022. It found that the medical evidence of record was insufficient to establish that he was disabled from work during the claimed period, due to a material change or worsening of his December 27, 2019 employment injury.

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.[2]

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 an occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.[3]

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.[4] 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.[5]

[2] 20 C.F.R. § 10.5(x); *see W.H.*, Docket No. 21-0139 (issued October 26, 2021); *A.E.*, Docket No. 20-0259 (issued April 28, 2021); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

[4] *See B.D.*, Docket No. 18-0426 (issued July 17, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

[5] *Id*.; *Fereideoon Kharabi*, 52 ECAB 291 (2001).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability commencing March 2, 2022, causally related to his accepted December 27, 2019 employment injury.

In her March 21, 2022 report, Dr. Smith diagnosed a right hip strain and released appellant to return to work with restrictions. Similarly, in his March 25, 2022 report, Dr. Dutton released appellant from care and opined that he was capable of performing full-duty work without restrictions. However, neither physician provided an opinion regarding the cause of appellant's condition or disability, as such their reports are of no probative value.[6] Consequently, Dr. Smith's and Dr. Dutton's reports are insufficient to establish the recurrence claim.

OWCP also received a March 9, 2022 treatment note from a physician assistant and physical therapy notes dated March 17 through 25, 2022. Physician assistants and physical therapists, however, are not considered physicians as defined under FECA, and their medical findings and opinions are insufficient to establish entitlement to compensation benefits.[7]

As the medical evidence of record is insufficient to establish a recurrence of disability commencing March 2, 2022, causally related to the December 27, 2019 employment injury, the Board finds that appellant has not met his burden of proof to establish his recurrence claim.

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.[8]

[6] *See L.B., supra* note 3; *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[7] Section 8101(2) of FECA provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice a s defined by state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *N.C.*, Docket No. 21-0934 (issued February 7, 2022); *M.J.*, Docket No. 19-1287 (issued January 13, 2020) (physician assistants are not considered physicians as defined under FECA); *P.H.*, Docket No. 19-0119 (issued July 5, 2019) (physician assistants are not physicians under FECA); *T.K.*, Docket No. 19-0055 (issued May 2, 2019) (physical therapists are not considered physicians as defined under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA).

[8] The Board also notes that the employing establishment issued a Form CA-16 authorization for examination or treatment. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability commencing March 2, 2022, causally related to his accepted December 27, 2019 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 27, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2023
Washington, DC

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

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

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