

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability commencing August 8, 2019, causally related to her accepted September 6, 2017 employment injury.

FACTUAL HISTORY

On September 12, 2017 appellant, then a 66-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 6, 2017 she injured her right arm, right shoulder, and head when she fell on slippery pavement while in the performance of duty. OWCP accepted the claim for right shoulder strain. It paid appellant wage-loss compensation on the supplemental rolls from December 2, 2017 through April 28, 2018, and on the periodic rolls from April 29 through October 11, 2018.

On April 18, 2018 Dr. George Herriott, III, a Board-certified orthopedic surgeon, performed a right shoulder arthroscopic subacromial decompression and acromioplasty and open rotator cuff repair.

On October 11, 2018 appellant returned to full-time employment without restrictions.

Appellant, on August 28, 2019, filed a notice of recurrence (Form CA-2a) on August 8, 2019, claiming disability causally related to her September 6, 2017 employment injury. She related that her shoulder had become progressively weaker such that she could not lift objects.

In a development letter dated September 5, 2019, OWCP advised appellant of the definition of a recurrence of disability and requested that she provide additional factual and medical information supporting that her employment-related disability had increased such that she was unable to work. It afforded her 30 days to submit the necessary evidence.

Subsequently, OWCP received an August 20, 2019 report from Dr. Herriott. Dr. Herriott indicated that he had evaluated appellant on August 8, 2019 for increased right shoulder pain after a 2018 arthroscopy. He related that she “states that her occupation has increased her pain so much that she cannot do it anymore.” Dr. Herriott reviewed the results of an August 13, 2019 magnetic resonance imaging (MRI) study of the right shoulder, finding that it showed a large recurrent complete tear of the supraspinatus and subscapularis tendons of the rotator cuff, which appeared to be chronic, joint effusion with fluid extending into the subacromial and subdeltoid bursa, a chronic tear of the long head of the biceps tendon, and severe degenerative changes in the glenohumeral joint with degeneration of the labrum and subchondral cysts in the glenoid rim. He diagnosed a complete right rotator cuff tear and trigger finger of the left thumb. Dr. Herriott recommended a total reverse shoulder procedure. He related, “Because of the recurrent retracted rotator cuff tear, it will be very difficult if not impossible for her to continue with her work duties which require the ability to repetitively abduct and forward flex her arm, as well as repetitive lifting.” Dr. Herriott further advised, “[appellant’s] difficulty/inability to participate in her previous occupation is directly related to her initial work[-]related injury which was a rotator cuff tear. [Appellant] has had an attempted repair of the rotator cuff, which failed.”

In a statement dated September 17, 2019, appellant related that when she returned to work after surgery, she had experienced progressive shoulder catching and grinding. She described her work activities. Appellant advised that on August 8, 2019 Dr. Herriott had diagnosed a rotator cuff tear and told her that she could not work.

By decision dated November 25, 2019, OWCP found that appellant had not submitted rationalized medical evidence establishing a recurrence of disability commencing August 8, 2019 causally related to her accepted employment injury.

On December 24, 2019 appellant requested reconsideration.

Thereafter, OWCP received an August 8, 2019 report from Dr. Herriott, who had followed appellant for right shoulder pain. He noted that she was “a mail carrier and states that her occupation has increased her pain so much that she cannot do it anymore.” Dr. Herriott diagnosed an incomplete tear of the right rotator cuff and referred appellant for an MRI scan. He advised that she might have to “change occupations to avoid the repetitive lifting that is required in her job as a mail carrier.”

OWCP further received an interpretive report of the August 13, 2019 right shoulder MRI scan demonstrating a large recurrent tear of the supraspinatus and subscapularis tendons.

On November 14, 2019 Dr. Herriott evaluated appellant for left thumb trigger finger. He administered a steroid injection.

On January 16, 2020 counsel requested that OWCP authorize the requested surgery.

By decision dated March 16, 2020, OWCP denied modification of its November 25, 2019 decision. It noted that appellant had described difficulty with continued lifting and advised that she could file a claim for a new injury.

In a report dated October 9, 2020, Dr. Herriott discussed appellant’s history of a full-thickness rotator cuff tear due to an injury at work. He opined that she had not regained full use of the shoulder even after a repair of the cuff tear on April 18, 2018 and physical therapy. Dr. Herriott advised that an MRI scan on August 13, 2019 had shown a recurrent rotator cuff tear and degenerative changes in the glenohumeral joint. He diagnosed rotator cuff tear arthropathy and related that it was “a degenerative condition in the shoulder as [a] result of a large rotator cuff tear.” Dr. Herriott recommended a reverse total shoulder arthroplasty, which he opined was the “direct result of the rotator cuff tear that she sustained in her work[-]related injury.” He explained that shoulder deficits in the rotator cuff often progressed to rotator cuff arthropathy as a result of the “elevation of the humeral head that occurs as a result of the rotator cuff tear, allowing the humeral head to articulate against the acromion and create increased loading forces across the superior aspect of the glenoid.” Dr. Herriott opined that the rotator cuff arthropathy should be covered by workers’ compensation.

On October 13, 2020 appellant, through counsel, requested reconsideration.

By decision dated January 4, 2021, OWCP denied modification of its March 16, 2020 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.³ 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.⁴

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 condition that results from a new injury, even if it involves the same part of the body previously injured.⁵

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.⁶ Where no such rationale is present, the medical evidence is of diminished probative value.⁷

ANALYSIS

The Board finds that the case is not in posture for decision.

In support of her claim, appellant submitted an August 20, 2019 report from Dr. Herriott. Dr. Herriott indicated that he had treated her on August 8, 2019 for increased right shoulder pain after arthroscopic surgery in 2018, noting that she asserted that her occupational duties had caused her pain to worsen. He reviewed the MRI scan findings of a recurrent complete tear of the supraspinatus and subscapularis tendons of the rotator cuff. Dr. Herriott recommended a total reverse shoulder procedure. He advised that it would be difficult or impossible for appellant to

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

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

⁶ *L.O.*, Docket No. 19-0953 (issued October 7, 2019); *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

⁷ *M.G.*, Docket No. 19-0610 (issued September 23, 2019); *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

perform her work duties due to her recurrent rotator cuff tear and attributed her disability to her prior employment-related rotator cuff tear, noting that the previous attempt at a repair had failed.

On October 9, 2020 Dr. Herriott diagnosed rotator cuff tear arthropathy, which he advised was a degenerative condition due to appellant's large rotator cuff tear. He recommended a reverse total shoulder arthroplasty. Dr. Herriott attributed the need for surgery to appellant's employment-related rotator cuff tear, and provided as a rationale that the rotator cuff deficit caused the elevation of the humeral head creating force across the acromion and superior aspect of the glenoid.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.⁸ While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and to see that justice is done.⁹ The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.¹⁰ In his August 20, 2019 report, Dr. Herriott evidenced knowledge of appellant's employment injury and her treatment with rotator cuff surgery. He found that she was totally disabled due to a recurrent tear. Dr. Herriott further found, on October 9, 2020, that she required surgery due to her employment injury, and provided a pathophysiological explanation regarding why the accepted employment injury was sufficient to cause the need for surgery. Accordingly, the Board finds that Dr. Herriott's opinion, while insufficiently rationalized to meet appellant's burden of proof to establish a recurrence of disability, is of sufficient quality to require further development of her claim by OWCP.¹¹

On remand OWCP shall refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts, for a reasoned opinion regarding whether she sustained a recurrence of disability beginning August 8, 2019 causally related to her accepted September 6, 2017 employment injury, and whether she requires a total reverse shoulder procedure as a result of her accepted work injury. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

⁸ *R.M.*, Docket No. 20-0486 (issued June 9, 2021); *Vanessa Young*, 56 ECAB 575 (2004).

⁹ *K.T.*, Docket No. 19-1436 (issued February 21, 2020); *Jimmy A. Hammons*, 51 ECAB 219 (1999); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁰ 20 C.F.R. § 10.121; *see also K.S.*, Docket No. 18-0845 (issued October 26, 2018).

¹¹ *R.M.*, *supra* note 8; *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 20, 2023
Washington, DC

Alec J. Koromilas, 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