United States Department of Labor
Employees' Compensation Appeals Board

W.K., Appellant	)	
and	)	**Docket No. 23-0379**
	)	**Issued: October 26, 2023**
DEPARTMENT OF THE INTERIOR, FISH & WILDLIFE SERVICE, Shirley, NY, Employer	)	

Appearances:
James D. Muirhead, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On January 20, 2023 appellant, through counsel, filed a timely appeal from an October 18, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[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] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of total disability for intermittent periods commencing August 21, 2017 causally related to his accepted March 20, 2017 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 22, 2017 appellant, then a 51-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that when operating a loader on March 20, 2017 a jammed exit door suddenly sprung open, striking his left upper extremity and pinning his left hand between the door and the vehicle frame while in the performance of duty. He stopped work on March 21, 2017 and returned to limited-duty work on March 24, 2017.

Appellant stopped work on August 21, 2017.

On September 7, 2017 appellant filed a claim for wage-loss compensation (Form CA-7) for disability from work commencing August 21, 2017.

Appellant returned to full-time light-duty work on September 18, 2017 performing administrative tasks.

Based on reports by Dr. Mohammed A. Mirza, a Board-certified orthopedic and hand surgeon, on October 6, 2017 OWCP accepted that appellant had sustained a left-hand contusion on March 20, 2017, as alleged.

In an October 5, 2017 letter, the employing establishment confirmed that appellant's duties as a maintenance mechanic had required frequent driving, operating a skid steer/loader, unloading lawnmowers, mowing large areas, and cutting and grinding trees.

In an e-mail dated October 11, 2017, J.D., an employing establishment injury compensation specialist, noted that appellant had worked from March 24 through August 20, 2017 in light-duty status.[4]

In an October 23, 2017 report, Dr. Mirza maintained appellant on full-time light-duty work.

[3] Docket No. 19-0558 (issued September 10, 2019).

[4] By decision dated October 11, 2017, OWCP denied expansion of its acceptance of appellant's claim to include left carpal tunnel syndrome, stenosing tenosynovitis of the left ring finger, and left scapholunate and lunotriquetral ligament tears. It found that the medical evidence of record did not contain sufficient medical rationale to establish that the accepted March 20, 2017 employment injury had caused or contributed to these conditions.

By decision dated November 21, 2017, OWCP denied appellant's claim for a recurrence of disability commencing August 21, 2017, finding that the medical evidence of record was insufficient to explain how the March 20, 2017 employment injury would have disabled him for work for the claimed period.

By decision dated November 6, 2018, OWCP denied modification of its prior decision, finding that the additional evidence submitted on reconsideration was insufficient to establish a recurrence.

On January 16, 2019 appellant, through counsel, appealed to the Board.

OWCP received additional reports by Dr. Mirza dated from November 5, 2018 through February 7, 2019. On November 5, 2018 Dr. Mirza administered an intra-articular injection to the ulnar side of the left wrist. In a January 3, 2019 report, he returned appellant to modified-duty work effective that day.

In a March 28, 2019 report, Dr. Mirza observed limited ranges of left wrist motion in all planes, with swelling and thrombotic thrombocytopenic purpura over the lunate. He returned appellant to full-duty work with no restrictions.

By decision dated September 10, 2019,[5] the Board affirmed OWCP's November 6, 2018 decision, finding that appellant had not submitted sufficient rationalized medical evidence to support that the accepted left-hand contusion had totally disabled him from work for intermittent periods commencing August 21, 2017.

On February 21, 2020 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a February 21, 2020 letter, Dr. Mirza opined that appellant's symptoms of pain, clicking, numbness, and tingling in his left hand and wrist were a direct result of the crushing force of the vehicle door and cab in the March 20, 2017 employment injury.

By decision dated April 28, 2020, OWCP denied modification of the November 6, 2018 decision.

On May 11, 2020 appellant, through counsel, requested reconsideration. He also requested that OWCP expand its acceptance of the claim to include the conditions mentioned by Dr. Mirza in his February 21, 2020 report. Appellant submitted copies of medical evidence previously of record.

By decision dated May 15, 2020, OWCP denied appellant's request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

[5] *Supra* note 3.

On September 2, 2020 appellant, through counsel, requested reconsideration. Counsel submitted additional medical evidence.

In a July 29, 2020 report, Dr. David Weiss, a Board-certified orthopedic surgeon, recounted appellant's history of injury and treatment and reviewed medical records. On examination of the left wrist, he observed limited motion, well-healed surgical scars, grip and pinch strength weakness, and diminished light-touch sensibility on monofilament testing. Dr. Weiss diagnosed status-post crush injury to the left wrist, post-traumatic lunotriquetral and scapholunate ligamentous tears to the left wrist, post-traumatic left carpal tunnel syndrome, progressive left wrist pathology with scaphoid lunate advanced collapse (SLAC) lesion, and postsurgical status. He opined that the March 20, 2017 employment injury pinned appellant's left wrist between a 200-pound steel ballistic door and a steel door frame, compressing the left median nerve and causing edema leading to traumatic carpal tunnel syndrome, a scapholunate tear, and complete lunotriquetral ligament tear. The ligament tears resulted in marked, progressive instability of the left wrist, which precipitated a SLAC lesion necessitating the April 24, 2018 left wrist surgery. Dr. Weiss also found that appellant had attained maximum medical improvement (MMI) as of July 29, 2020 and calculated a 15 percent permanent impairment of the left upper extremity according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[6]

Counsel also submitted medical literature regarding wrist conditions.

By decision dated June 24, 2021, OWCP denied modification of its April 28, 2020 decision.

On September 27, 2021 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a September 20, 2021 report, Dr. Weiss opined that, while the March 20, 2017 employment injury initially appeared to be a contusion, Dr. Mirza diagnosed scapholunate diastasis and DISI deformity on May 18, 2017 and a June 16, 2017 MRI scan of the left wrist demonstrated a partial tear of the volar scapholunate ligament, extensor tenosynovitis of the second and third extensor compartment, a foveal triangular fibrocartilage complex tear, and SLAC lesion. He opined that these conditions necessitated the April 24, 2018 surgery. Dr. Weiss explained that the March 20, 2017 employment injury disrupted normal carpal kinematics, precipitating a SLAC lesion, and was competent to produce the other diagnosed left upper extremity conditions.

By decision dated July 7, 2022, OWCP denied modification of its June 24, 2021 decision.

On September 28, 2022 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a February 19, 2018 report, Ali Sadegh, a mechanical engineer with training in accident reconstruction biomechanics, discussed his inspection of the loader vehicle in which appellant was injured on March 20, 2017 and described the mechanism of the injury based on contemporaneous

[6] A.M.A., *Guides* (6th ed. 2009).

incident reports. He opined that the sudden force of trying to release the stuck loader door hyper-extended appellant's left hand, "causing the torn ligament of [appellant's] left hand," which "later developed to a carpal tunnel and trigger finger."

A June 25, 2021 MRI scan of the left wrist demonstrated fusion of the capitate and lunate with metal artifact, and mild degenerative change without degenerative marrow edema.

In a September 16, 2022 report, Dr. Weiss noted his review of the engineering consultant's February 19, 2018 report. He opined that the crushing forces of the March 20, 2017 employment incident caused a scapholunate ligament tear, extensor synovitis, progressive carpal instability, and SLAC lesion, which "thereby led to [appellant's] disability from work."

By decision dated October 18, 2022, OWCP denied modification of its July 7, 2022 decision.[7]

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.[8] 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.[9]

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.[10]

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

[7] OWCP noted that the decision adjudicated only counsel's request for reconsideration of the July 7, 2022 decision which appellant's claim for recurrence of disability, and did not address the issue whether he had established that it should expand its acceptance of the claim to include additional left upper extremity conditions.

[8] 20 C.F.R. § 10.5(x); *see J.D.*, Docket No. 18-1533 (issued February 27, 2019).

[9] *Id*.

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

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.[11] Where no such rationale is present, the medical evidence is of diminished probative value.[12] When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work.[13] As part of this burden, the employee must show a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty job requirements.[14]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of total disability for intermittent periods commencing August 21, 2017 causally related to his accepted March 20, 2017 employment injury.

The Board preliminarily notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's November 6, 2018 decision, which was considered by the Board in its September 10, 2019 decision. Findings made in prior Board decisions are *res judicata* and cannot be considered absent further review by OWCP under section 8128 of FECA.[15]

Dr. Mirza, in a report dated January 3, 2019, returned appellant to modified-duty work effective that day, but did not indicate whether appellant had been totally or partially disabled for work prior to that date. The remainder of his reports, dated from November 5, 2018 through February 7, 2019, do not address whether appellant was disabled from work. Similarly, Dr. Mirza, in his March 28, 2019 report and February 21, 2020 letter, noted swelling, discoloration, and restricted motion of the left wrist, and returned appellant to full, unrestricted duty effective March 28, 2019. He did not find appellant disabled from work for any period. As Dr. Mirza did not address the relevant issue of whether appellant was disabled from work during the claims

[11] *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *see C.C.*, Docket No. 18-0719 (issued November 9, 2018).

[12] *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

[13] *See H.C.*, Docket No. 22-0844 (issued December 5, 2022); *D.W.*, Docket No. 19-1584 (issued July 9, 2020); *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

[14] *C.B.*, Docket No. 19-0464 (issued May 22, 2020); *see R.N.*, Docket No. 19-1685 (issued February 26, 2020).

[15] *H.C.*, *supra* note 13; *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

period due to his accepted employment injury, the reports of Dr. Mirza are of no probative value on this issue.[16]

Dr. Weiss, in reports dated July 29, 2020 and September 20, 2021, diagnosed status-post crush injury to the left wrist, post-traumatic lunotriquetral and scapholunate ligamentous tears to the left wrist, post-traumatic left carpal tunnel syndrome, progressive left wrist pathology with SLAC lesion, and postsurgical status. As he did not indicate whether the accepted left-hand contusion disabled appellant from work on or after August 21, 2017, Dr. Weiss' July 29, 2020 and September 20, 2021 reports are of no probative value.[17]

In his September 16, 2022 report, Dr. Weiss opined that the March 20, 2017 employment injury caused a scapholunate ligament tear, extensor synovitis, progressive carpal instability, and SLAC lesion, which led to an unspecified period of disability from work. He did not, however, provide medical rationale to support that the accepted left-hand contusion had disabled appellant from work on or after August 21, 2017. Dr. Weiss' opinion is therefore insufficient to meet appellant's burden of proof.[18]

OWCP also received a February 19, 2018 report by Mr. Sadegh, a mechanical engineer, who offered an opinion on the causal relationship between the March 20, 2017 employment injury and appellant's left hand and wrist conditions. As there is no indication that he is a physician under FECA, Mr. Sadegh's report is of no probative value.[19]

Appellant submitted a June 15, 2021 MRI scan of the left wrist. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injuries resulted in appellant's period of disability on specific dates.[20]

OWCP also received medical literature regarding wrist conditions and treatment. The Board has long held that excerpts from publications have little probative value in resolving medical

[16] *S.P.*, Docket No. 21-0380 (issued November 22, 2022); *B.B.*, Docket No. 19-0511 (issued July 22, 2019); *M.C.*, Docket No. 18-1391 (issued February 1, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[17] *Id*.

[18] *S.P.*, *supra* note 16; *see S.G.*, Docket No. 20-0828 (issued January 6, 2022); *L.V.*, Docket No. 19-1725 (issued April 5, 2021); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[19] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See supra* note 10 at 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). *See also T.J.*, Docket No. 23-0026 (issued May 24, 2003) citing to *James A. Long*, 40 ECAB 538 (1989) (lay persons are not competent to render medical opinion).

[20] *Y.D.*, Docket No. 21-0842 (issued February 23, 2022); *D.K.*, Docket No. 21-0082 (issued October 26, 2021); *O.C.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

questions unless a physician establishes the applicability of the general medical principle discussed in the article to the specific factual situation in the case.[21]

As the medical evidence of record is insufficient to establish a recurrence of disability on or after August 21, 2017 causally related to his accepted March 20, 2017 employment injury, 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 met his burden of proof to establish a recurrence of total disability for intermittent periods commencing August 21, 2017 causally related to his accepted March 20, 2017 employment injury.[22]

[21] *S.B.*, Docket No. 21-0683 (issued December 16, 2021); *T.S.*, Docket No. 18-1518 (issued April 17, 2019); *W.C. (R.C.)*, Docket No. 18-0531 (issued November 1, 2018); *K.U.*, Docket No. 15-1771 (issued August 26, 2016); *Roger D. Payne*, 55 ECAB 535 (2004).

[22] Upon return of the case record, OWCP should consider payment of up to four hours of compensation to appellant for lost time from work due to medical appointments to assess or treat symptoms related to the employment injury. *See supra* note 10 at Chapter 2.901.19c (February 2013); *A.J.*, Docket No. 21-1211 (issued May 4, 2022); *J.E.*, Docket No. 19-1758 (issued March 16, 2021); *A.V.*, Docket No. 19-1575 (issued June 11, 2020). *See also K.A.*, Docket No. 19-0679 (issued April 6, 2020); *William A. Archer*, 55 ECAB 674 (2004).

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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