

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

D.G., Appellant	)	
	)	
and	)	Docket No. 23-0448
	)	Issued: October 12, 2023
DEPARTMENT OF THE NAVY, FLEET	)	
CYBER COMMAND, Fort Meade, MD,	)	
Employer	)	
	)	

*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 February 13, 2023 appellant filed a timely appeal from a January 26, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the January 26, 2023 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of disability commencing October 25, 2022, causally related to his accepted July 12, 2022 employment injury.

## FACTUAL HISTORY

On July 21, 2022 appellant, then a 47-year-old information technology manager, filed a traumatic injury claim (Form CA-1) alleging that on July 12, 2022 he aggravated his chronic back and neck nerve injuries when involved in an automobile accident while in the performance of duty. He stopped work on that date. By decision dated September 1, 2022, OWCP accepted appellant's claim for strain of muscle, fascia, and tendon of the lower back, and sprain of ligaments of the thoracic spine. It paid him wage-loss compensation on the supplemental rolls, effective August 29, 2022.

On September 21 and October 19, 2022 Dr. Frederic L. Salter, a Board-certified orthopedic surgeon, released appellant for light-duty work, noting that he should work from home and take breaks as needed for walks. In the September 21, 2022 report, Dr. Salter indicated that appellant should use a standing desk.

In an October 7, 2022 statement, J.B., an employing establishment injury compensation specialist, indicated that appellant had an existing medical accommodation of permanent telework prior to the accepted injury. In an October 14, 2022 email to J.B., appellant stated that he did not recall ever receiving a written job offer. He noted that his supervisor told him to stay home and removed him from his responsibilities.

In an October 25, 2022 report, Dr. Salter related that appellant reported persistent pain and stiffness in the lower back, as well as recent increasing pain radiating down both legs. He noted that appellant had been working at home, and explained that sitting and standing at work had significantly increased his pain recently and made it difficult for him to complete his work days. Dr. Salter's examination revealed moderate restriction of lumbar motions, as well as tenderness and spasm in the mid-to-lower lumbar paraspinal region, increasing with increasing motions. He diagnosed lumbosacral strain with bilateral lumbar radiculopathy as a direct result of the accepted July 12, 2022 injury. Dr. Salter held appellant off of work for two days due to his increasing symptoms, indicating that he could return to work on October 27, 2022, with restrictions that he could work four hours each day from home with stretching breaks. In an October 25, 2022 work restriction note, he advised the same.

On November 10, 2022 appellant filed claims for compensation (Form CA-7) for disability for the periods October 19 through November 4, 2022 and November 7 through 11, 2022. On the reverse side of each claim form, A.T., an employing establishment official, indicated that he had returned to his predate-of-injury job on September 22, 2022.

In a November 18, 2022 development letter, OWCP informed appellant of the deficiencies of his claim for wage-loss compensation commencing October 25, 2022.<sup>3</sup> It advised him of the type of medical evidence required and afforded him 30 days to submit the requested evidence.

Appellant continued to submit Form CA-7 claims and medical evidence. In a November 23, 2022 report, Dr. Salter noted that appellant reported he had been working four hours each day with stretching and walking breaks, and his pain was more tolerable than when he was working eight-hour days. He also related that appellant stated he was unable to work in a high-security, in-office position in his current condition. In a December 14, 2022 letter, Dr. Salter reiterated the subjective complaints and objective findings from his October 25, 2022 report, and opined that it had been medically reasonable to hold appellant off of work for two days and then allow him to return to work from home for four hours each day with stretching breaks.

In a January 11, 2023 letter, OWCP requested additional information from the employing establishment, including a copy of appellant's position description with physical requirements.

In a January 25, 2023 offer to be considered for reassignment, A.T. noted that appellant had requested a reasonable accommodation on October 28, 2022, including telework, a sit/stand desk, and the ability to take periodic stretch breaks as needed. He indicated that appellant had been provided telework as an interim accommodation. A.T. advised appellant that the employing establishment could no longer provide this accommodation as his position of record required him to work full-time and regularly access classified systems, which could not be done while teleworking due to security requirements.

By decision dated January 26, 2023, OWCP denied appellant's claim for compensation for disability from work for the period October 25, 2022 and continuing.

### **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.<sup>4</sup> 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.<sup>5</sup> 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. The 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

---

<sup>3</sup> OWCP authorized payment for four hours on October 19, 2022.

<sup>4</sup> 20 C.F.R. § 10.5(x); *T.J.*, Docket No. 18-0831 (issued March 23, 2020); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

<sup>5</sup> *Id.*

does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>6</sup>

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.<sup>7</sup> As part of this burden of proof, the employee must show either 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.<sup>8</sup>

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.<sup>9</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>10</sup>

### ANALYSIS

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

On October 7, 2022 J.B., an employing establishment injury compensation specialist, indicated that appellant had an existing medical accommodation of permanent telework prior to the accepted injury. In an October 14, 2022 e-mail, appellant stated that he did not recall ever receiving a written job offer. He noted that his supervisor told him to stay home and removed him from his responsibilities. On November 14, 2022 appellant filed claims for compensation for disability for the periods October 19 through November 4, 2022 and November 7 through 11, 2022.<sup>11</sup>

---

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

<sup>7</sup> *C.L.*, Docket No. 20-1631 (issued December 8, 2021); *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).

<sup>8</sup> *Id.*

<sup>9</sup> *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *C.C.*, Docket No. 18-0719 (issued November 9, 2018); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>10</sup> *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

<sup>11</sup> The Board notes that, as of January 25, 2023, the employing establishment indicated it was unable to accommodate appellant's restriction of working from home.

The Board finds that, in this case, the factual evidence of record is insufficient to determine whether appellant is claiming a recurrence of disability due to a withdrawal of his light-duty position, or because of a change in his accepted July 12, 2022 employment injury.<sup>12</sup> As noted above, a recurrence of disability can be established under either scenario.<sup>13</sup> As appellant alleged that the employing establishment never provided him a written job offer and that his supervisor removed him from his responsibilities, OWCP should have requested that the employing establishment provide any applicable description of appellant's modified duties and any written job offer for the period October 25, 2022 and continuing.<sup>14</sup>

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>15</sup> It has an obligation to see that justice is done.<sup>16</sup> Thus, the Board will remand the case to OWCP to obtain a statement from a knowledgeable supervisor as to appellant's allegation that the employing establishment was unable to accommodate his work restrictions. Following this and any necessary further development, OWCP shall issue a *de novo* decision.

### CONCLUSION

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

---

<sup>12</sup> See *L.F.*, Docket No. 19-0519 (issued October 24, 2019); see also *M.S.*, Docket No. 18-0130 (issued September 17, 2018).

<sup>13</sup> *Supra* notes 4 and 5.

<sup>14</sup> See *T.R.*, Docket No. 19-1611 (issued October 26, 2020); see also *P.H.*, Docket No. 20-0039 (issued April 23, 2020).

<sup>15</sup> See e.g., *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

<sup>16</sup> See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 26, 2023 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: October 12, 2023  
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