United States Department of Labor
Employees' Compensation Appeals Board

K.F., Appellant	)	
and	)	**Docket No. 23-0749**
	)	**Issued: October 6, 2023**
DEPARTMENT OF THE ARMY, RED RIVER ARMY DEPOT, Texarkana, TX, 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 May 1, 2023 appellant filed a timely appeal from an April 11, 2023 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 the need for medical treatment causally related to the accepted October 5, 1992 employment injury.

FACTUAL HISTORY

On October 5, 1992 appellant, a 37-year-old preservation service worker, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to factors of his federal employment. OWCP accepted the claim for binaural sensorineural hearing loss due to appellant's employment-related noise exposure. In a May 5, 1993 decision, it found that his hearing loss was not severe enough to be ratable and that he was not entitled to a schedule award.

[1] 5 U.S.C. § 8101 *et seq*.

OWCP also found that appellant would not benefit from hearing aids and denied his claim for additional medical benefits.

On January 9, 2023 appellant filed a notice of recurrence (Form CA-2a) alleging that, on an unspecified date, he sustained a recurrence of the need for medical treatment for hearing loss causally related to his October 5, 1992 work injury.

In a development letter dated January 26, 2023, OWCP informed appellant of the deficiencies of his recurrence claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a February 22, 2022 response to the development questionnaire, appellant contended that it was not a recurrence and that his condition had been worsening since he filed his claim in 1992. He related that his condition was such that he could not hear and noted that he had retired in 1999. Regarding medical care received since the date of last medical care, appellant related that he had spent $2,000.00 on hearing aids that he could not wear. He identified Professional Hearing Services as the medical provider treating him for his hearing loss.

Appellant submitted a February 17, 2023 report, wherein Stephanie Winfield, an audiologist, noted that his audiometric results were consistent with a moderate-to-profound presumed sensorineural sloping hearing loss in both ears. Ms. Winfield indicated that he was a candidate for bilateral amplification and a likely candidate for cochlear implantation.

By decision dated April 11, 2023, OWCP denied appellant's recurrence claim, finding that he had not established that he required additional medical treatment due to a worsening of the accepted work-related conditions, without intervening cause.

LEGAL PRECEDENT

The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.[2]

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.[3] 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.[4]

[2] 5 U.S.C. § 8103(a).

[3] 20 C.F.R. § 10.5(y).

[4] *R.B.*, Docket No. 22-0980 (issued October 18, 2022); *B.B.*, Docket No. 21-1358 (issued May 11, 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).

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal relationship between the employee's current condition and the original injury in order to meet his or her burden.[5] 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.[6] Where no such rationale is present, medical evidence is of diminished probative value.[7]

ANALYSIS

The Board finds that appellant has not met his burden to establish a recurrence of the need for medical treatment, causally related to the accepted October 5, 1992 employment injury.

The record contains an October 13, 2004 report from Dr. Whitt, who noted that appellant had severe sensorineural hearing loss with poor discrimination, and that his condition was permanent. However, Dr. Whitt did not provide an opinion on whether the condition was work related. The Board has held that a medical report that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[8] Therefore, the Board finds that Dr. Whitt's October 13, 2004 report is insufficient to establish the recurrence claim.

The record also contains a February 17, 2023 report from an audiologist who noted that appellant's audiometric results were consistent with a moderate-to-profound presumed sensorineural sloping hearing loss in both ears, and that appellant was a candidate for bilateral amplification and a likely candidate for cochlear implantation. However, this report has no probative value regarding the medical cause of appellant's current condition as audiologists are not considered physicians as defined under FECA.[9]

[5] Federal (FECA) Procedural Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4b (June 2013); *see also M.F.*, Docket No. 21-1221 (issued March 28, 2022); *J.M.*, Docket No. 09-2041 (issued May 6, 2010).

[6] *S.P.*, *supra* note 4; *A.C.*, Docket No. 17-0521 (issued April 24, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

[7] *M.F.*, *supra* note 5; *M.P.*, *supra* note 4; *Michael Stockert*, 39 ECAB 1186 (1988).

[8] *See C.H.*, Docket No. 22-1186 (December 22, 2022); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[9] 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, 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 E.G.*, Docket No. 21-0165 (issued April 5, 2022) (an audiologist is not considered a physician as defined under FECA); *M.P.*, Docket No. 13-1790 (issued December 17, 2013) (an audiologist is not considered a physician under FECA, and the audiologist's opinion regarding the medical cause of a claimant's hearing loss is of no probative medical value).

As appellant has not submitted medical evidence sufficient to establish a recurrence of the need for medical treatment causally related to his accepted October 5, 1992 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 causally related to the accepted October 5, 1992 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 6, 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