

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

T.G., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
Charleston, SC, Employer**

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) **Docket No. 25-0407**
) **Issued: April 21, 2025**
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Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 21, 2025 appellant, through counsel, filed a timely appeal from a February 28, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

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.*

³ The Board notes that, following the February 28, 2025 decision, OWCP received additional evidence. 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 for the period August 19 through 26, 2024, causally related to his accepted February 23, 2023 employment injury.

FACTUAL HISTORY

On February 24, 2023 appellant, then a 51-year-old customs and border protection (CBP) agent, filed a traumatic injury claim (Form CA-1) alleging that on February 23, 2023 he injured his right shoulder while in the performance of duty. He noted that he “felt something give” in his right shoulder when he performed a takedown maneuver during tactical training.⁴ Appellant stopped work on February 24, 2023, and returned to full-time light-duty work on March 2, 2023. OWCP accepted the claim for complete rotator cuff tear of right shoulder.

In an August 16, 2024 letter, the employing establishment advised OWCP that appellant had not returned to work in a full-time, full-duty capacity following the accepted February 23, 2023 employment injury.

On August 24, 2024, appellant filed a notice of recurrence (Form CA-2a) for disability from work for the period August 19 through 26, 2024 causally related to the accepted February 23, 2023 employment injury. He alleged that he was unable to use his right arm, and that he had anxiety attacks due to a lack of adequate progress with his right shoulder. Appellant also noted that, on August 19, 2024, he was unable to get out of bed.

In a recurrence claim development letter dated August 26, 2024, OWCP provided a definition of recurrence of disability and informed appellant of the deficiencies of his claim. It notified him of the additional evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested evidence.

OWCP thereafter received a narrative letter dated August 20, 2024 by Vonnie L. Jessup, a licensed professional counselor, who noted that appellant related complaints of anxiety, depression, and chronic pain. Ms. Jessup opined that appellant was unable to return to work until a multifaceted approach was initiated and completed to address his anxiety and depression.

In a report dated August 25, 2024, Nakia Singleton, a licensed counselor and social worker, indicated that appellant related a history of depressive disorder, chronic pain in his right shoulder, knee, and ankle, and suicidal ideation with a plan to overdose, which he attributed to his inability to return to full-duty work following his February 23, 2023 employment injury. She also noted that he indicated that he had stopped his psychiatric medication in July 2024 and that a colleague, who was a single mother, had to go to the border again because he was unable to return to full

⁴ OWCP assigned the present claim OWCP File No. xxxxxx676. Appellant filed three subsequent traumatic injury claims for injuries to his right shoulder, which occurred on October 30, 2023, September 27, 2024, and January 31, 2025. OWCP accepted the October 30, 2023 claim for right upper arm strain and right shoulder contusion under OWCP File No. xxxxxx225. It processed the September 27, 2024 claim as a short form closure under OWCP File No. xxxxxx215, and the January 31, 2025 claim remains under development under OWCP File No. xxxxxx425. OWCP administratively combined OWCP File Nos. xxxxxx225, xxxxxx215, xxxxxx425, and xxxxxx676, with the latter serving as the master file.

duty. Appellant related that he felt his coworkers looked at him as “wasting space” and that his colleagues were “better off without him.”

In a report dated August 26, 2024, Dr. Melanie T. Hatzis, a Board-certified psychiatrist, noted that appellant “has been on high risk most of 2023 and 2024,” and that he had visited the emergency department that weekend for mental health treatment. She requested that a nurse schedule him for a follow-up appointment.

Appellant was evaluated by Dr. Maribel Rodriguez-Scott, an osteopath specializing in family medicine, on September 4, 2024. She noted that she had released him from care on April 4, 2024, but that he had continued to perform modified-duty work due to persistent pain and decreased mobility in the right shoulder. Dr. Rodriguez-Scott indicated that appellant requested a functional capacity evaluation (FCE) to determine his work capacity for job placement, and a sedentary-duty work note until his FCE could be completed. She diagnosed a right shoulder injury, referred him for an FCE, and released him to return to “sedentary work only.”

In a letter dated September 20, 2024, Amanda Smith, a mental health clinical pharmacy practitioner, requested that appellant be excused from work for the period August 19 through 23, 2024. She noted that a stressful situation at work had exacerbated his anxiety.

On September 25, 2024, appellant accepted a temporary light-duty position with the employing establishment at the Area Port of Charleston.

In a September 26, 2024 statement, appellant indicated that he was hospitalized for mental health issues due to difficulties in obtaining medical treatment for his right shoulder.⁵

By decision dated October 9, 2024, OWCP denied appellant’s recurrence claim, finding that the medical evidence of record was insufficient to establish disability from work during the period August 19 through 26, 2024 causally related to his accepted February 23, 2023 employment injury.

On October 17, 2024, appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review. A hearing was held on December 18, 2024. The hearing representative held the record open for 30 days for submission of additional evidence, including a rationalized narrative medical report from his treating physician.

OWCP subsequently received a January 28, 2025 medical report by Dr. Richard Friedman, a Board-certified orthopedic surgeon, pertaining to appellant’s subsequent September 27, 2024 employment injury. Physical therapy reports were also received.

⁵ Appellant also claimed that Dr. Seth L. Jaffe, an osteopath Board-certified in orthopedic surgery, to whom OWCP had referred him for a second opinion evaluation for an impairment rating evaluation, which took place on July 23, 2024, had not examined him. The record reflects that in his July 23, 2024 report, Dr. Jaffe noted that he was “not willing to state whether he is at [maximum medical improvement].” In a September 16, 2024 addendum, he opined that appellant needed to be evaluated by an orthopedic surgery specialist to determine if there had been another injury that required further treatment.

By decision dated February 28, 2025, OWCP's hearing representative affirmed OWCP's October 9, 2024 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.⁶ 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.⁷

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.⁸

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, based on 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.⁹ Where no such rationale is present, the medical evidence is of diminished probative value.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability for the period August 19 through 26, 2024, causally related to his accepted February 23, 2023 employment injury.

In support of his recurrence claim, appellant submitted a January 28, 2025 report, wherein Dr. Friedman discussed appellant's medical treatment for his subsequent September 27, 2024 employment injury. However, Dr. Friedman did not provide an opinion on causal relationship

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

⁷ *Id.*

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

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

¹⁰ See *M.T.*, Docket No. 25-0180 (issued January 25, 2025); *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

between appellant's claimed disability for the period August 19 through 26, 2024 and the accepted February 23, 2023 employment injury. The Board has held that medical evidence 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.¹¹ This evidence is, therefore, insufficient to establish appellant's recurrence claim.

In a September 4, 2024 report, Dr. Rodriguez-Scott noted that she had released appellant from care on April 4, 2024, but that he had continued to perform modified-duty work due to persistent pain and decreased mobility in the right shoulder. She indicated that appellant requested an FCE to determine his work capacity for job placement, and a sedentary-duty work note until his FCE could be completed. Dr. Rodriguez-Scott diagnosed a right shoulder injury, referred him for an FCE, and released him to return to "sedentary work only." However, she did not provide an opinion on causal relationship between appellant's claimed disability for the period August 19 through 26, 2024 and the accepted February 23, 2023 employment injury.¹² Therefore, this evidence is also insufficient to establish the recurrence claim.

Appellant also submitted physical therapy reports. Certain healthcare providers such as physical therapists are not considered qualified physicians as defined under FECA.¹³ Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹⁴

The remaining medical evidence of record pertains to appellant's claim for expansion of the acceptance of the claim to include a consequential emotional/stress-related condition. However, OWCP has not issued a final adverse decision on expansion. Therefore, that issue is not presently before the Board.¹⁵

As the medical evidence of record is insufficient to establish a recurrence of disability from August 19 through 26, 2024, causally related to the accepted February 23, 2023 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.

¹¹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *Id.*

¹³ 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) (May 2023); *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).

¹⁴ *Id.*

¹⁵ *Supra* note 3.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability for the period August 19 through 26, 2024, causally related to his accepted February 23, 2023 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2025 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2025
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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