

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

_____)	
E.M.)	
)	
and)	Docket No. 20-0668
)	Issued: April 28, 2021
DEPARTMENT OF COMMERCE, U.S.)	
CENSUS BUREAU, Suitland, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 4, 2020 appellant filed a timely appeal from a September 18, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 disability, commencing February 7, 2018, causally related to his accepted November 12, 2002 employment injury.

FACTUAL HISTORY

On December 27, 2002 appellant, then a 33-year-old materials handler, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury on November 12, 2002 when he

¹ 5 U.S.C. § 8101 *et seq.*

lifted heavy computer equipment while in the performance of duty. He stopped work on November 19, 2002. OWCP accepted the claim for lumbar strain and subsequently expanded its acceptance of appellant's claim to include displacement of lumbar intervertebral disc without myelopathy. It paid appellant wage-loss compensation on the periodic rolls, effective August 8, 2004.

On October 11, 2006 appellant returned to full-time, limited-duty work. In June 2007, he returned to full-duty work.

Appellant continued to receive medical treatment. In examination reports dated May 15 and 22, 2018, Dr. Alan G. Shreiber, a Board-certified orthopedic surgeon, related appellant's complaints of increasing pain in his back radiating to his left leg. Upon examination of appellant's lumbar spine, he observed moderate tenderness in the lower back area. Examination of the bilateral lower extremities revealed normal sensory and motor function. Dr. Shreiber assessed lumbar sprain and lumbosacral spondylosis.

On May 29, 2018 appellant underwent a lumbar spine magnetic resonance imaging (MRI) scan, which demonstrated multilevel degenerative disc disease, mild broad-based disc bulge at L3-4, moderate broad-based disc bulge and mild stenosis at L4-5, and mild broad-based disc bulge and neuroforaminal narrowing at L5-S1.

In a June 1, 2018 report, Dr. Shreiber indicated that appellant was seen in follow-up of continued low back pain radiating to his left leg. He discussed the recent lumbar spine MRI scan and noted that the stenosis at L4-5 was fairly significant. Dr. Shreiber assessed lumbosacral spondylosis.

On June 12, 2018 appellant filed a notice of recurrence (Form CA-2a) alleging that on February 7, 2018 he sustained a recurrence of disability due to his accepted November 12, 2002 employment injury. He noted that he had returned to normal duties and began to have pain in his left hip and extreme pain in his lower back. Appellant further noted that the pain was similar to the pain he felt when he had his original injury. On the reverse side of the claim form, L.D., a workers' compensation specialist for the employing establishment, indicated that appellant had informed her *via* telephone interview that on February 7, 2018 he was loading computer monitors into boxes when he experienced an onset of pain in his hips which later worsened.

In a June 18, 2018 report, Dr. Chee-Hahn Hung, a Board-certified physical medicine and rehabilitation physician who specializes in pain medicine, indicated that appellant was evaluated for an injury that occurred at work. Upon examination of appellant's left lower extremity, he observed unusual sensation to light touch in the left posterior thigh and calf. Examination of appellant's lumbar spine revealed bilateral low back and buttock pain with lumbar flexion. Dr. Hung assessed chronic pain syndrome, left sciatica, and lumbar post laminectomy syndrome. He reported that appellant was doing well after the July 29, 2004 lumbar surgery, until the "new workmen's compensation injury after repetitive bending and lifting on 2/7/18." Dr. Hung indicated that appellant was taken off work on May 1, 2018 and that he was extending appellant's time off work.

In a June 18, 2018 disability note, Dr. Hung advised that appellant may not return to work until after appellant's next appointment on July 11, 2018.

In a July 9, 2018 development letter, OWCP advised appellant that additional evidence was needed to establish his recurrence claim, including a treating physician's opinion supported by medical rationale explaining how his claimed recurrence of disability was due to a worsening of his original injury, without an intervening cause or new exposure. It also requested that he completed an attached questionnaire. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant submitted physical therapy treatment notes and billing sheets dated June 15 to July 24, 2018.

In reports and disability notes dated July 10 and August 7, 2018, Dr. Schreiber indicated that he examined appellant in follow-up of his low back pain. He reviewed appellant's history and noted lumbar examination findings of moderate tenderness in the low back. Dr. Schreiber assessed lumbosacral spondylosis and lumbar sprain. He noted that appellant could not return to work until after appellant's next scheduled appointment on September 4, 2018.

In a July 31, 2018 letter, Dr. Schreiber related that appellant initially injured his lower back and developed significant leg pain at work around 2005. He indicated that appellant returned to work in 2006 and experienced some intermittent lower back pain. Dr. Schreiber reported that appellant was treated over the past 12 years intermittently with medication and was doing well. He noted that he had recently seen appellant on May 1, 2018 for complaints of increasing lower back pain radiating down his left leg that began while he was working. Dr. Schreiber explained that he initially thought it was bursitis, but a lumbar spine MRI scan revealed a disc herniation at L4-5 with some spinal stenosis. He noted a diagnosis of spinal stenosis with radiculopathy. Dr. Schreiber opined that this injury appeared to be more of a new workers' compensation injury, rather than an exacerbation of the old one, since this injury was at a different level than appellant's original operation. He advised that appellant could not return to work until appellant's pain lessened.

In an August 3, 2018 report, Dr. Hung indicated that appellant was doing well after appellant's back surgery until his new workers' compensation injury that occurred on February 7, 2018. He related that appellant experienced pain on the left buttock and down the left posterior thigh, with tingling in the entire left leg and numbness after repetitive bending and lifting at work. Dr. Hung assessed chronic pain syndrome and indicated that appellant was taken off work on May 1, 2018.

In a September 4, 2018 report and disability note, Dr. Schreiber indicated that appellant was still complaining of severe pain in his lower back radiating into his left lower extremity. Upon physical examination, he observed normal sensory and motor function of both lower extremities and moderate tenderness in the lumbosacral spine. Dr. Schreiber assessed lumbar sprain and lumbosacral spondylosis. He advised that appellant could not return to work until after his next scheduled appointment on October 2, 2018.

By decision dated September 13, 2018, OWCP denied appellant's recurrence of disability claim, finding that the medical evidence of record was insufficient to establish a recurrence of disability due to his accepted November 12, 2002 employment injury.²

On June 21, 2019 appellant requested reconsideration. He explained that he believed that his lower back and left hip pain was part of the nature of his original injury. Appellant pointed out that the 2002 lumbar spine MRI scan showed L4-5 disc bulging, but a June 2018 lumbar spine MRI scan revealed that the L4-5 disc was ruptured. He alleged that Dr. Schreiber had repeatedly tried to provide OWCP with information based on what it requested, but it seemed that there was a lot of confusion on what OWCP needed to prove that appellant's injury was caused by his employment.

Appellant submitted a May 14, 2019 report by Dr. Schreiber. Dr. Schreiber related that appellant had lumbar decompression surgery in October 2018 and was doing fairly well until a couple of days ago when appellant woke up with some increasing left buttock and leg pain. Examination of appellant's lumbar spine revealed moderate and generalized tenderness and decreased range of motion. Dr. Schreiber assessed lumbar sprain and status post laminectomy. He reported that appellant was having some difficulty with workers' compensation about the etiology of his injury. Dr. Schreiber noted that on February 6, 2018 appellant was picking up monitors at work when he experienced increased pain in his back and leg. He opined that the lifting was the direct cause of appellant's injury, which eventually led to his surgery. Dr. Schreiber explained that the excessive lifting caused his disc at L4-5 to rupture.

By decision dated September 18, 2019, OWCP denied modification of the September 13, 2018 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.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

² On October 6, 2018 appellant filed a traumatic injury claim (Form CA-1) alleging that on February 6, 2018 he sustained pinched nerve impingement on the left side while in the performance of duty. OWCP assigned OWCP File No. xxxxx200. On September 12, 2019 OWCP administratively combined OWCP File No. xxxxxx200 and the current claim under OWCP File No. xxxxxx630, with the latter serving as the master file.

³ 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

⁴ *Id.*

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. OWCP 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 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 appellant has not met his burden of proof to establish a recurrence of disability commencing February 7, 2018, causally related to his accepted November 12, 2002 employment injury.

In support of his claim, appellant submitted a series of medical reports from Dr. Shreiber dated May 15, 2018 to May 14, 2019. In his initial examination report, Dr. Schreiber noted examination findings of moderate tenderness in the lumbar spine and normal sensory and motor function of the bilateral lower extremities. He diagnosed lumbar sprain and lumbosacral spondylosis. In disability notes dated July 10 to September 4, 2018, Dr. Schreiber advised that appellant could not return to work until after his next appointment on October 2, 2018. Although he took appellant off work beginning May 15, 2018, he did not provide an opinion as to whether the period of disability was due to appellant's accepted employment injury. As these reports did not address the relevant issue of whether appellant was disabled from employment commencing February 7, 2018 due to his accepted employment injury, they are insufficient to meet his burden of proof.⁸ The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.⁹

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013). *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

⁶ *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁷ *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

⁸ *See K.E.*, Docket No. 19-1922 (issued July 10, 2020); *F.S.*, Docket No. 18-0098 (issued August 13, 2018); *P.W.*, Docket No. 17-0514 (issued June 9, 2017).

⁹ *R.J.*, Docket No. 19-0179 (issued May 26, 2020); *Y.A.*, Docket No. 16-0258 (issued April 13, 2016); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

Dr. Shreiber further provided narratives dated July 31, 2018 to May 14, 2019. He indicated that he recently evaluated appellant on May 1, 2018 for complaints of increasing lower back pain that began at work. Dr. Schreiber opined that this injury appeared to be more of a new workers' compensation injury, rather than an exacerbation of the old one. Likewise, in his June 18 and August 3, 2018 reports, Dr. Hung reported that appellant had a "new workmen's compensation injury after repetitive bending and lifting" on February 7, 2018. The Board finds that this evidence fails to establish appellant's recurrence of disability claim, as Drs. Shreiber and Hung attributed appellant's inability to work to a new, intervening event on February 6, 2018 and not appellant's accepted August 12, 2002 employment injury.¹⁰

As appellant has not submitted sufficient medical evidence to establish that he was disabled from work beginning February 7, 2018 and continuing, due to a spontaneous change or worsening of his November 12, 2002 employment injury, the Board finds that he has not met his burden of proof to establish his claim.¹¹

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 disability commencing February 7, 2018, causally related to his accepted November 12, 2002 employment injury.

¹⁰ *Supra* note 4; *see also* *M.C.*, Docket No. 19-1074 (issued June 12, 2020); *T.W.*, Docket No. 19-0677 (issued August 16, 2019).

¹¹ *See R.A.*, Docket No. 19-1595 (issued August 13, 2020).

ORDER

IT IS HEREBY ORDERED THAT the September 18, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 28, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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