

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

J.S., Appellant)	
)	
and)	Docket No. 20-0617
)	Issued: May 27, 2021
U.S. POSTAL SERVICE, GLEN HEAD POST OFFICE, Glen Head, NY, Employer)	
)	

Appearances:
Thomas S. Harkins, Esq., for the appellant¹
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 January 28, 2020 appellant, through counsel, filed a timely appeal from an August 16, 2019 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 August 16, 2019 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 March 22, 2018, causally related to his accepted April 21, 2012 employment injury.

FACTUAL HISTORY

On May 4, 2012 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 21, 2012 he sustained a lower back injury when he walked up a hill and felt a pull in the right side of his lower back while in the performance of duty. He stopped work on April 25, 2012. OWCP initially accepted appellant's claim for a lumbar sprain and later expanded the accepted conditions to include lumbar disc herniation.⁴

Appellant returned to work in a limited-duty position on a part-time basis for the employing establishment on July 2, 2012 and stopped work on December 11, 2012. Thereafter, he intermittently returned to limited-duty positions and stopped work. Appellant returned to a limited-duty letter carrier position for five hours per day on November 7, 2016. The position primarily involved delivering mail from a postal vehicle and required sitting, standing, and walking for up to five hours per day.

In a duty status report (Form CA-17) dated May 11, 2017, Dr. Anthony Petrizzo, an osteopath Board-certified in orthopedic surgery, indicated that appellant could walk up to six hours per day, and lift up to 35 pounds intermittently.

Appellant filed a notice of recurrence (Form CA-2) on March 29, 2018 alleging that he stopped work and sustained a recurrence of disability on March 22, 2018 due to his accepted April 22, 2012 employment injury. He asserted that he experienced increased lumbar pain and decreased range of motion of the lumbar spine and that the employing establishment asked him to increase his walking duties by one hour per day.

In support of his recurrence claim, appellant submitted a March 29, 2018 report from Dr. Petrizzo who indicated that he saw appellant on that date. Dr. Petrizzo noted that appellant was "unable to do walking routes of any kind due to his multiple spinal surgeries." He advised that he could only perform driving routes so that he could continue working while minimizing the risk of injury. In a Form CA-17 report of even date, Dr. Petrizzo indicated that appellant could walk up to five hours per day, lift up to 25 pounds continuously, and lift up to 70 pounds intermittently.

In an April 12, 2018 report, Dr. Reginald Rousseau, a Board-certified anesthesiologist, reported physical examination findings, diagnosed low back pain and sacroiliitis, and noted that a sacroiliac epidural steroid injection was performed.

⁴ OWCP paid appellant wage-loss compensation for disability from work on the supplemental rolls commencing June 17, 2012 and on the periodic rolls commencing February 9, 2014. Appellant underwent OWCP-authorized arthrodesis, facetectomy, and fusion surgery at L5-S1 on January 6, 2014 and fusion mass exploration surgery with hardware removal on January 22, 2016.

In a development letter dated April 27, 2018, OWCP requested that appellant submit additional factual and medical evidence in support of his recurrence of disability claim. It afforded him 30 days to respond.

In response, appellant submitted a March 13, 2018 statement in which he indicated that the employing establishment had attempted to have letter carriers perform a “walking piece” delivery route lasting one hour each day. He advised that he had not performed the one-hour walking piece route since he returned to work, but that the employing establishment asked him to perform it commencing March 20, 2018. In a May 8, 2018 statement, appellant’s union representative indicated that appellant had not been performing the one-hour walking piece route because management did not allow it in order to keep him within his medical restrictions. He asserted, however, that management required appellant to perform the one-hour walking piece route commencing March 20, 2018. In a May 22, 2018 statement, counsel argued that a recurrence of disability occurred when the employing establishment altered appellant’s work duties such that they exceeded his work restrictions.

Appellant submitted a March 20, 2018 note in which Dr. Petrizzo indicated that he was a patient in his orthopedic office and noted, “[i]t is my medical opinion that he is unable to carry mail in a mailbag on his back, due to his multiple spinal surgeries.” In a May 22, 2018 note, he further indicated that he saw appellant on March 22, 2018. Dr. Petrizzo noted that it was his medical opinion that appellant was unable to carry mail in a mailbag on his back. He also opined that appellant could not carry mail in his arms and that it was not recommended that he use a push cart. Appellant was unable to walk or perform “no park and loop city delivery” and he could only perform mounted routes. Dr. Petrizzo noted, “This is due to his multiple spinal surgeries.”

By decision dated May 30, 2018, OWCP found that appellant had not met his burden of proof to establish a recurrence of disability on or after March 22, 2018 causally related to his accepted April 21, 2012 employment injury.

On May 18, 2019 appellant, through counsel, requested reconsideration of the May 30, 2018 decision. In a June 21, 2018 report, Dr. Petrizzo indicated that appellant presented due to worsening back pain. He noted that appellant reported he continued working and had difficulty carrying items and walking due to worsening pain. Dr. Petrizzo provided examination findings and indicated that appellant had mechanical low back pain. He recommended that appellant continue working with restrictions of no bending, stretching, twisting, or lifting more than 25 pounds. Dr. Petrizzo noted that appellant was restricted from carrying any sustained load, or using a mailbag or push cart.

In reports between April 11, 2018 and June 19, 2019, Dr. Grace Forde, a Board-certified neurologist, provided examination findings and collectively diagnosed radiculopathy of lumbosacral region, lumbar postlaminectomy syndrome, and sacroiliac pain. Dr. Forde noted that appellant reported that his low back condition had worsened. She provided epidural steroid injections and prescribed medication.

In reports dated June 1 and 29, 2018, Dr. Rousseau noted that appellant presented for sacroiliac epidural steroid injections.

In November 2018, OWCP referred appellant for a second opinion examination with Dr. Edward Mills, a Board-certified orthopedic surgeon. It provided Dr. Mills with a copy of the case record, including a statement of accepted facts (SOAF), and requested that he provide an opinion regarding whether appellant continued to have residuals/disability causally related to his accepted April 21, 2012 employment injury. In a January 15, 2019 report, Dr. Mills indicated that the April 21, 2012 employment injury had resolved. He noted that appellant could perform full-duty work on a full-time basis and was no longer in need of any further treatment.

In a Form CA-17 report dated January 22, 2019, Dr. Petrizzo indicated that appellant was able to return to the full duties of his job on a full-time basis. The case record contains documents indicating that appellant returned to regular duty on a full-time basis without restrictions on January 23, 2019.

By decision dated August 16, 2019, OWCP denied modification of its May 30, 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.⁵ 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.⁶ 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, 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

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

⁶ *Id.*

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).

injury, and supports that conclusion with medical reasoning.⁹ Where no such rationale is present, the medical evidence is of diminished probative value.¹⁰

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.¹¹ 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.¹²

ANALYSIS

The Board finds appellant has not met his burden of proof to establish a recurrence of disability, commencing March 22, 2018 causally related to his accepted April 21, 2012 employment injury.

In support of his recurrence claim, appellant submitted a March 29, 2018 report from Dr. Petrizzo, who indicated that he saw appellant on that date. Dr. Petrizzo noted that appellant was “unable to do walking routes of any kind due to his multiple spinal surgeries.” He advised that appellant could only preform driving routes so that he could continue working while minimizing the risk of injury. In a Form CA-17 report of even date, Dr. Petrizzo indicated restrictions of walking up to five hours per day with lifting up to 25 pounds continuously and 70 pounds intermittently.

The Board finds that, although Dr. Petrizzo’s March 29, 2018 narrative report contains increased work restrictions, it is of limited probative because it does not contain a rationalized medical opinion explaining that appellant’s need for increased restrictions was due to the April 21, 2012 employment injury. Dr. Petrizzo did not identify the surgeries that caused the worsening of appellant’s condition beginning March 29, 2018. He did not provide any explanation, supported by objective findings, of the medical mechanism through which appellant’s OWCP-authorized January 6, 2014 and January 22, 2016 surgeries could cause disability on or after March 22, 2018, the date of appellant’s claimed recurrence of disability. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/level of disability has an employment-related cause.¹³ Moreover, the opinion contained in Dr. Petrizzo’s March 29, 2018 narrative report is rendered equivocal by the fact that his March 29, 2018 Form CA-17 report indicates that appellant could walk for up to five hours per day. The Board has held that an opinion which is equivocal in nature

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

¹⁰ *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

¹¹ *See 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).

¹² *C.B.*, Docket No. 19-0464 (issued May 22, 2020); *see R.N.*, Docket No. 19-1685 (issued February 26, 2020).

¹³ *See T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

is of limited probative value regarding the issue of causal relationship.¹⁴ Therefore, these reports of Dr. Petrizzo are insufficient to establish appellant's claim.

Appellant also submitted a March 20, 2018 note in which Dr. Petrizzo indicated that he was a patient in his orthopedic office and noted, "[i]t is my medical opinion that he is unable to carry mail in a mailbag on his back, due to his multiple spinal surgeries." In a May 22, 2018 note, he further indicated that he saw appellant on March 22, 2018. Dr. Petrizzo noted that it was his medical opinion that appellant was unable to carry mail in a mailbag on his back. He also opined that appellant could not carry mail in his arms and that it was not recommended that he use a push cart. Appellant was unable to walk or perform "no park and loop city delivery" and he could only perform mounted routes. Dr. Petrizzo noted, "This is due to his multiple spinal surgeries."

While the March 20 and May 22, 2018 reports of Dr. Petrizzo contain additional work restrictions of no walking, park and loop city delivery, or carrying mail in a mailbag on the back or in the arms, the reports do not discuss any clinical findings or contain medical rationale explaining how appellant's work-related condition had worsened and how the increased restrictions were causally related to the accepted April 21, 2012 employment injury. Dr. Petrizzo only indicated that the additional restrictions were "due to multiple spinal surgeries." He did not identify the surgeries that caused the worsening of appellant's condition beginning March 20, 2018. Dr. Petrizzo again failed to provide any explanation, supported by objective findings, of the medical mechanism through which appellant's OWCP-authorized January 6, 2014 and January 22, 2016 surgeries could cause disability on or after March 22, 2018. Therefore, these reports of Dr. Petrizzo also are insufficient to establish appellant's claim.

The Board notes that counsel has argued that a recurrence of disability occurred when the employing establishment altered his work duties such that they exceeded his work restrictions.¹⁵ Appellant has alleged that the employing establishment asked him to perform a "walking piece" delivery route lasting one hour each day commencing March 20, 2018, thereby increasing his walking from five to six hours per day. The Board notes that, regardless of whether the employing establishment required such extra walking, appellant's restrictions prior to stopping work on March 22, 2018 allowed him to walk for up to six hours per day and therefore his work restrictions would not have been exceeded. In a Form CA-17 report dated May 11, 2017, Dr. Petrizzo had indicated that appellant could walk up to six hours per day. For the reasons explained above, Dr. Petrizzo failed to provide a rationalized medical opinion that his later recommended increases in appellant's work restrictions were causally related to the April 21, 2012 employment injury.

Appellant also submitted April 12, and June 1 and 29, 2018 reports in which Dr. Rousseau indicated that sacroiliac epidural steroid injections were performed. In reports dated between April 11, 2018 and June 19, 2019, Dr. Forde provided examination findings and collectively diagnosed radiculopathy of lumbosacral region, lumbar post-laminectomy syndrome, and sacroiliac pain. She noted that appellant reported that his low back condition had worsened. In a June 21, 2018 report, Dr. Petrizzo recommended that appellant continue working with restrictions of no bending, stretching, twisting, or lifting more than 25 pounds. He noted that appellant was restricted from carrying any sustained load, or using a mailbag or push cart. The Board finds that

¹⁴ See *E.B.*, Docket No. 18-1060 (issued November 1, 2018); *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962).

¹⁵ See *supra* note 6.

these reports are of no probative value regarding appellant's recurrence of disability claim because they do not contain an opinion that appellant suffered a recurrence of disability on or after March 22, 2018 causally related to his accepted April 21, 2012 employment injury. The Board has held that a medical report is of no probative value on a given medical matter if it does not contain an opinion on that matter.¹⁶ Therefore, these reports are insufficient to establish appellant's claim.

The case record also contains other reports which would not support appellant's claim for an employment-related recurrence on or after March 22, 2018. In a January 15, 2019 report, Dr. Mills, an OWCP referral physician, opined that the April 21, 2012 employment injury had resolved and that appellant could perform full-duty work on a full-time basis. In a Form CA-17 report dated January 22, 2019, Dr. Petrizzo indicated that appellant was able to return to the full duties of his job on a full-time basis.

As appellant has not submitted any rationalized medical evidence establishing a recurrence of disability commencing March 22, 2018 causally related to his accepted April 21, 2012 employment injury, 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 disability commencing March 22, 2018 causally related to his accepted April 21, 2012 employment injury.

¹⁶ *T.H.*, Docket No. 18-0704 (issued September 6, 2018); *see also Charles H. Tomaszewski*, 39 ECAB 461 (1988).

ORDER

IT IS HEREBY ORDERED THAT the August 16, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 27, 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