

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

_____)
H.C., Appellant)

and)

DEPARTMENT OF THE TREASURY,)
BUREAU OF ENGRAVING AND PRINTING,)
Washington, DC, Employer)
_____)

Docket No. 22-0844
Issued: December 5, 2022

Appearances:

Daniel M. Goodkin, 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 May 10, 2022 appellant, through counsel, filed a timely appeal from a March 14, 2022 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.

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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of disability commencing October 23, 2015 causally related to his accepted September 29, 1998 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 14, 1998 appellant, then a 24-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on September 29, 1998 he sustained injury when he participated in a noncompliant two man take-down maneuver during a training session while in the performance of duty.⁴ OWCP accepted his claim for displacement of cervical intervertebral disc without myelopathy. Appellant periodically stopped work using his leave and returned to work in limited-duty jobs at the employing establishment.

In a January 4, 2007 report, Dr. Steven Scherping, a Board-certified orthopedic surgeon, indicated that appellant reported that, in November 2006, he began to develop recurrent severe pain in his posterior neck and posterior shoulder girdles while working for the employing establishment. He noted that appellant indicated that there was no obvious history of trauma or precipitating event for this pain. Dr. Scherping diagnosed rule out cervical disc herniation/cervical spinal stenosis. In a February 26, 2007 report, he again discussed appellant's reported symptoms beginning in November 2006. Dr. Scherping opined that appellant's September 29, 1998 employment injury was within a reasonable degree of medical certainty responsible for his cervical disc herniation and associated symptoms "both at that time as well as currently."

In an April 21, 2009 report, Dr. Angele C. Seiler, a Board-certified internist, evaluated appellant for neck pain due to a recent nonwork-related motor vehicle accident, which occurred when he was stopped in his vehicle and rear-ended by another car. She noted that appellant had a history of cervical disc degeneration that periodically caused pain and was not bothering him before the motor vehicle accident occurred.

Appellant stopped work on October 23, 2015. On October 24, 2018 he filed a notice of recurrence (Form CA-2a) alleging a recurrence of disability on October 23, 2015 due to his September 29, 1998 employment injury. Appellant asserted that his "first recurrence" occurred on September 3, 2006 when he went to the emergency room due to cervical pain from C6 and C7 cervical disc herniations related to his 1998 employment injury. He alleged that "the most recent recurrence" occurred on October 23, 2015 when his condition degenerated to the point he could no longer hold his head up.

³ Docket No. 20-0344 (issued April 19, 2021).

⁴ OWCP assigned File No. xxxxxx566.

Appellant submitted an October 10, 2018 report from Dr. Imran Siddiqui, a Board-certified physiatrist, who discussed his treatment of appellant's cervical condition since February 2018. Dr. Siddiqui noted that Dr. Scherping had indicated that appellant's reported cervical problems in February 2007 were the direct result of a progression of symptoms related to his initial injury in 1998. He reported that appellant continued to have occasional symptomatic flare-ups, but his condition was reasonably managed until 2015 when he was lifting heavy boxes at work and felt a strong "pop" in his neck followed by severe debilitating pain. Dr. Siddiqui indicated that, given the medical history and objective diagnostic findings, it was within a reasonable degree of medical certainty that the 1998 trauma led to post-traumatic arthritic changes in appellant's cervical spine, which ultimately led to the deterioration that he experienced as symptomatic flare ups in both 2006 and 2015.

In a development letter dated February 6, 2019, OWCP requested that appellant submit additional evidence in support of his recurrence of disability claim. In particular, it requested that he submit records of any medical treatment received between late-1998 and early-2007. OWCP afforded appellant 30 days to submit the requested evidence.

Appellant submitted additional medical reports, most of which were authored in 2015 and 2016.⁵ In a November 11, 2015 report, Dr. Victor Ibrahim, a Board-certified orthopedic surgeon, indicated that appellant continued to have chronic diffuse neck pain and feelings of constant spasm and tightness. On November 17, 2015 he advised that appellant had been under his care since August 2015 at which time he presented with severe progressive neck pain that was initiated by an employment-related incident and exacerbated "with prolonged work, standing or sitting." In a December 11, 2015 report, Dr. Ibrahim noted that appellant continued to have axial neck pain. He indicated that appellant continued on his current opioid regimen and that he had been having trouble managing his pain. In a February 1, 2016 attending physician's report (Form CA-20), Dr. Ibrahim listed a date of injury of October 23, 2015 and a history of injury of "moving heavy boxes in his office." He diagnosed myofascial cervical pain, checked a box marked "Yes" indicating that the diagnosed condition was related to the reported work activity,⁶ and found disability commencing October 26, 2015.

In a January 6, 2016 report, Dr. Austin Churchill, a Board-certified physiatrist, indicated that appellant's current neck pain, dysfunction, and magnetic resonance imaging (MRI) scan findings were a direct result of the initial injury in 1998. He indicated, "[t]he initial injury during that training session in 1998 has [led] to early onset progressive degenerative cervical spine disease that has now reached a point that it interferes significantly with day[-]to[-]day function."

⁵ Appellant submitted a copy of a Form CA-1 he filed on December 7, 2015 in which he alleged that he sustained an injury on October 23, 2015 when he lifted a box and felt a sudden shooting pain in his neck and spasm in his neck/shoulder while in the performance of duty. OWCP denied his claim for an October 23, 2015 traumatic injury in February 29 and September 7, 2016 decisions under OWCP File No. xxxxxx509 and is not the subject of the present appeal.

⁶ Dr. Ibrahim added the notation, "Injury caused neck strain/pain."

By decision dated May 23, 2019, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a recurrence of disability, commencing October 23, 2015, causally related to his accepted September 29, 1998 employment injury.

On August 22, 2019 appellant requested reconsideration of the May 23, 2019 decision. He submitted a June 28, 2019 report from Dr. Siddiqui who indicated that the main diagnosis of the initial injury in 1998 was disc herniation at C6-7 with encroachment on the spinal cord. Dr. Siddiqui noted that in 2007 appellant had an aggravation of the initial injury. He indicated that it was important to note that there was no specific trauma in 2007. Dr. Siddiqui noted that the "incident in 2015" also was an aggravation of the prior injury from 1998. He advised that the motor vehicle accident in 2009 also may have caused some aggravation, but did not cause a break in the causal link with the original injury in 1998. Dr. Siddiqui opined that the fact that the degeneration was focused on the C6-7 area, the area of initial injury, showed that the degeneration was post traumatic in nature and was neither age related nor caused by general repetitive stress.

By decision dated November 4, 2019, OWCP denied modification the of May 23, 2019 decision. Appellant appealed to the Board and, by decision dated April 19, 2021,⁷ the Board affirmed OWCP's November 4, 2019 decision.

On December 14, 2021 appellant, through counsel, requested reconsideration of his claim. He submitted a December 7, 2021 report from Dr. Siddiqui who noted that in 1998 appellant was involved in a "two-man, noncompliant, take-down" where he was the noncompliant subject being taken down. Dr. Siddiqui indicated that, in the process of being taken down, appellant's arms were put in a t-shape and appellant was run across the mat-room, brought down airborne, and slammed face first onto his head, neck and chest. He noted that appellant sustained a work-related injury to his cervical spine that caused herniation to his C6-7. Dr. Siddiqui advised that, once appellant recovered from the acute phase of the injury, he continued to have episodic flares of pain on the average three to four times per year. He maintained that appellant was able to manage the pain with intermittent rest and anti-inflammatory medications and did not feel that he required further medical attention as the episodes were episodic and manageable. Dr. Siddiqui explained that in 2006 the episodes began to become more frequent and severe and the degeneration was worse at the site of the prior disc herniation that occurred in 1998. He opined that appellant's recurrent, lasting, and current neck pain was a direct result of the 1998 injury that resulted in a severe disc herniation at C6-7. Dr. Siddiqui mentioned that appellant was involved in a minor motor vehicle collision in 2009 that merely aggravated the symptoms that were already present from the disc herniation in 1998. He opined that the motor vehicle accident did not directly contribute to a new injury or change the trajectory of post-traumatic arthritis that he was already on from the 1998 employment injury. Dr. Siddiqui indicated that appellant continued to have significant pain from 2007 onward, but he received proper medical attention and was treated with proper medications that allowed him to work from 2007 to 2015. He noted that appellant underwent spinal epidural injection from 2009 to 2016 to help alleviate his pain and keep him as functional as possible. Dr. Siddiqui indicated that appellant suffered from the same symptoms since 1998 that become more severe over time as a result of the natural progression of his condition. He noted that appellant worked as long as he could, but his pain and dysfunction came to a level where he could

⁷ *Supra* note 3.

no longer safely perform the function of his job. Dr. Siddiqui opined that appellant “still suffers from the same symptoms, from the initial injury from 1998, which is within a reasonable medical certainty from his initial work-related injury, that continually affects each and every day of his life and will likely not change in the future.” He maintained that appellant’s work-related conditions prevented him from working.

By decision dated March 14, 2022, OWCP denied appellant’s claim, finding that he did not meet his burden of proof to establish a recurrence of disability, commencing October 23, 2015, causally related to his accepted September 29, 1998 employment injury.

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.⁸ 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.⁹

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.¹⁰

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.¹¹ Where no such rationale is present, the medical evidence is of diminished probative value.¹² 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

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

⁹ *Id.*

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

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

¹² *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

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.¹³ 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.¹⁴

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability, commencing October 23, 2015, causally related to his accepted September 29, 1998 employment injury.

The Board preliminarily notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's November 4, 2019 decision, which was considered by the Board in its April 19, 2021 decision. Findings made in prior Board decisions are *res judicata* and cannot be considered absent further merit review by OWCP under section 8128 of FECA.¹⁵

Appellant submitted a December 7, 2021 report from Dr. Siddiqui who described the September 29, 1998 employment injury when appellant was involved in a "two-man, non-compliant, take-down" and he was the non-compliant subject being taken down. Dr. Siddiqui noted that appellant sustained work-related injury to his cervical spine that caused herniation to his C6-7. He advised that, once appellant recovered from the acute phase of the injury, he continued to have episodic flares of pain on the average three to four times per year. Dr. Siddiqui maintained that appellant was able to manage the pain with intermittent rest and anti-inflammatory medications and did not feel that he required further medical attention as the episodes were episodic and manageable. He explained that in 2006 the episodes began to become more frequent and severe and the degeneration was worse at the site of the prior disc herniation that occurred in 1998. Dr. Siddiqui opined that appellant's recurrent, lasting, and current neck pain was a direct result of the 1998 employment injury that resulted in a severe disc herniation at C6-7. He mentioned that appellant was involved in a minor motor vehicle collision in 2009 that merely aggravated the symptoms that were already present from the disc herniation in 1998. Dr. Siddiqui opined that the accident did not directly contribute to a new injury or change the trajectory of post-traumatic arthritis that he was already on from the 1998 employment injury. He indicated that appellant continued to have significant pain from 2007 onward, but he received proper medical attention and was treated with proper medications that allowed him to work from 2007 to 2015. Dr. Siddiqui indicated that appellant suffered from the same symptoms since 1998 that become more severe over time as a result of the natural progression of his condition. He noted that appellant worked as long as he could, but his pain and dysfunction came to pain where he could no longer safely perform the function of his job. Dr. Siddiqui opined that appellant "still suffers from the same symptoms, from the initial injury from 1998, which is within a reasonable medical

¹³ 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).

¹⁴ *C.B.*, Docket No. 19-0464 (issued May 22, 2020); see *R.N.*, Docket No. 19-1685 (issued February 26, 2020).

¹⁵ *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020).

certainty from his initial work-related injury, that continually affects each and every day of his life and will likely not change in the future.” Dr. Siddiqui maintained that appellant’s work-related conditions prevented him from working.

The Board finds, however, that the December 7, 2021 report is of limited probative value because Dr. Siddiqui did not provide adequate medical rationale in support of his opinion on causal relationship. He did not adequately explain how the September 29, 1998 employment injury would have been competent to cause a recurrence of disability on or after October 23, 2015. The case record lacks bridging evidence for a number of years, particularly between late-1998 and early-2007,¹⁶ and Dr. Siddiqui failed to explain why appellant’s work stoppage on October 23, 2015 was due to a spontaneous recurrence of the September 29, 1998 employment injury, rather than due to a nonwork-related cause or due to the sustaining of a new work injury on October 23, 2015 or some other date. He opined that the September 29, 1998 employment injury caused post-traumatic arthritic changes in appellant’s cervical spine, but OWCP has not accepted an employment-related arthritic condition and Dr. Siddiqui has not provided a rationalized medical opinion establishing such a condition. 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.¹⁷ For these reasons, Dr. Siddiqui’s December 7, 2021 report is insufficient to establish appellant’s recurrence of disability claim.

As the medical evidence of record is insufficient to establish a recurrence of disability on or after October 23, 2015 causally related to his accepted September 29, 1998 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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability, commencing October 23, 2015, causally related to his accepted September 29, 1998 employment injury.

¹⁶ See *L.A.*, Docket No. 18-1570 (issued May 23, 2019) (regarding the importance of bridging evidence in establishing causal relationship).

¹⁷ *J.S.*, Docket No. 18-0944 (issued November 20, 2018).

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2022
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