

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

R.H., Appellant)	
)	
and)	Docket No. 24-0234
)	Issued: April 2, 2024
U.S. POSTAL SERVICE, POWDER SPRINGS)	
POST OFFICE, Powder Springs, GA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 5, 2024 appellant filed a timely appeal from an August 18, 2023 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 on or after June 17, 2023, causally related to his November 26, 2022 employment injury.

FACTUAL HISTORY

On November 27, 2022 appellant, then a 60-year-old city delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on November 26, 2022 he injured his upper right arm and shoulder lifting a tray of flats into a truck while in the performance of duty. He stopped

¹ 5 U.S.C. § 8101 *et seq.*

work on that date and returned to his full-time regular employment on November 29, 2022. OWCP accepted the claim for a sprain of the right rotator cuff capsule and a superior glenoid labrum lesion of the right shoulder.

A May 11, 2023 magnetic resonance imaging (MRI) scan of the right shoulder demonstrated rotator cuff tendinosis and bursal surface fraying of the supraspinatus and infraspinatus with no retracted tear or muscle atrophy, mild glenohumeral osteoarthritis with a small joint effusion, labral degeneration, long head biceps tendinosis, moderate acromioclavicular (AC) joint osteoarthrosis, mild subacromial/subdeltoid bursitis, and narrowing of the rotator cuff outlet.

In a work status form dated May 19, 2023, Dr. Phillip Langer, a Board-certified orthopedic surgeon, diagnosed a right rotator cuff strain and biceps tendinitis. He advised that appellant could work with limited use of his arm and lifting, pushing, and pulling up to 20 pounds.

On June 16, 2023 Jonathan Whittington, a licensed athletic trainer, provided an assessment of right shoulder bicipital tendinitis and a sprain of the right rotator cuff capsule. The athletic trainer recommended that appellant stop work and focus on physical therapy.

On June 30, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work for the period June 17 to 30, 2023. He continued to submit CA-7 forms requesting wage-loss compensation due to disability from employment.

In a development letter dated July 6, 2023, OWCP advised appellant of the definition of a recurrence of disability and of the deficiencies in his claim. It noted that he had performed his usual employment from November 29, 2022 until June 17, 2023. OWCP requested that appellant submit a rationalized report from a physician addressing how his employment-related condition had changed such that he was disabled from employment. It afforded him 30 days to submit the requested information.

Subsequently, OWCP received physical therapy reports dated June 1 through July 7, 2023.

In a June 16, 2023 work status form, Dr. Langer diagnosed right shoulder strain and opined that appellant was unable to work beginning June 17, 2023.

In a July 11, 2023 response to OWCP's development letter, appellant related that he had experienced continual pain since his November 26, 2022 employment injury and that the pain worsened on days that he worked. He further related that his physician believed that he had only a sprain and that the MRI scan had been delayed.

Appellant continued to submit reports from Mr. Whittington.

In a work status note dated August 3, 2023, Dr. Michael Ferrell, a Board-certified orthopedic surgeon, opined that appellant was unable to work from August 3 to September 1, 2023. He provided work restrictions and diagnosed a rotator strain and biceps tendinitis.

By decision dated August 18, 2023, OWCP found that appellant had failed to establish a recurrence of disability beginning June 17, 2023, causally related to his accepted November 26, 2022 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁴ Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁵

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁶ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁷ An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability as that term is used in FECA.⁸

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.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 an occupational illness rather than an

² *Id.*

³ *See D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *G.S.*, Docket No. 23-0056 (issued July 3, 2023); *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *William A. Archer*, 55 ECAB 674 (2004); *see also Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

⁵ *See G.S., id.*; *K.C.*, Docket No. 17-1612 (issued October 16, 2018).

⁶ 20 C.F.R. § 10.5(f); *J.R.*, Docket No. 23-0215 (issued July 28, 2023); *S.T.*, Docket No. 18-0412 (issued October 22, 2018).

⁷ *See S.H.*, Docket No. 23-0024 (issued July 19, 2023); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁸ *See S.W.*, Docket No. 21-1227 (issued July 13, 2023); *M.W.*, Docket No. 20-0722 (issued April 26, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

⁹ 20 C.F.R. § 10.5(x); *see W.H.*, Docket No. 21-0139 (issued October 26, 2021); *A.E.*, Docket No. 20-0259 (issued April 28, 2021); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

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

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability on or after June 17, 2023, causally related to his November 26, 2022 employment injury.

Following his November 26, 2022 employment injury, appellant returned to preinjury full-time job on November 29, 2022. He stopped work on June 17, 2023, and requested wage-loss compensation due to disability from employment beginning that date.

In support of his claim, appellant submitted work status notes from Dr. Langer and Dr. Ferrell. On May 19, 2023 Dr. Langer diagnosed a right rotator cuff strain and biceps tendinitis and found that appellant could work with restrictions. On June 16, 2023 he diagnosed right shoulder strain and advised that appellant was unable to work beginning June 1, 2023. On August 3, 2023 Dr. Ferrell diagnosed rotator strain and biceps tendinitis and opined that appellant was unable to work from August 3 to September 1, 2023. Neither Dr. Langer nor Dr. Ferrell, however, provided an opinion regarding the cause of appellant's work restrictions and disability. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹³ Therefore, the Board finds that their reports are insufficient to meet appellant's burden of proof to establish a recurrence of disability.

Appellant additionally submitted physical therapy reports and reports from Mr. Whittington, an athletic trainer. These medical reports do not constitute competent medical evidence because neither an athletic trainer nor a physical therapist is considered a physician as

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *P.R.*, Docket No. 22-1392 (issued June 12, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹¹ *M.S.*, Docket No. 22-1386 (issued May 18, 2023); *L.O.*, Docket No. 19-0953 (issued October 7, 2019); *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

¹² *M.G.*, Docket No. 19-0610 (issued September 23, 2019); *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

¹³ *R.B.*, Docket No. 23-0395 (issued October 2, 2023); *J.V.*, Docket No. 22-1347 (issued May 1, 2023); *K.G.*, Docket No. 22-0970 (issued February 24, 2023); *L.B.*, *supra* note 10; *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

defined under FECA and are therefore not competent to provide medical opinions.¹⁴ Consequently, this evidence is also insufficient to establish appellant's claim.

OWCP also received the results of an MRI scan of appellant's right shoulder. However, diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address causation.¹⁵

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 on or after June 17, 2023, causally related to his November 26, 2022 employment injury.

¹⁴ 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. § 10.5t. 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 *Y.H.*, Docket No. 18-1618 (issued January 21, 2020) (physical therapists are not physicians under FECA).

¹⁵ *O.R.*, Docket No. 23-0156 (issued August 22, 2023); *K.R.*, Docket No. 20-1103 (issued January 5, 2021); *F.S.*, Docket No. 19-0205 (issued June 19, 2019).

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 2024
Washington, DC

Alec J. Koromilas, 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