

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

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S.T., Appellant)	
)	
and)	Docket No. 24-0519
)	Issued: June 21, 2024
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF INVESTIGATION, Louisville, KY,)	
Employer)	
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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 April 19, 2024 appellant filed a timely appeal from an April 11, 2024 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 her burden to establish a recurrence of the need for medical treatment, causally related to the accepted April 16, 2010 employment injury.

FACTUAL HISTORY

On July 15, 2010 appellant, then a 36-year-old criminal investigator, filed a traumatic injury claim (Form CA-1) alleging that on April 16, 2010, she injured her right shoulder when

¹ 5 U.S.C. § 8101 *et seq.*

ground fighting in a training class at the employing establishment academy in Quantico, Virginia, while in the performance of duty. OWCP accepted the claim for closed dislocation of the right shoulder, and unspecified arthropathy of the right shoulder.

On January 6, 2011 appellant underwent an OWCP-authorized right open distal clavicle excision. In a March 9, 2011 treatment note, Dr. Ty Richardson, a Board-certified orthopedic surgeon, noted that appellant was under his care for right shoulder pain and released her to work that day, with no restrictions.

The case lay dormant until 2024 when OWCP received medical evidence. In a February 1, 2024 report, Dr. Jeffrey Noblin, a Board-certified orthopedic surgeon, noted that appellant was treated for evaluation of right shoulder pain and that her current symptoms began suddenly without specific trauma. He related that appellant had experienced an injury to her shoulder at work in 2011, and that it appeared that she had an acromioclavicular (AC) joint resection. Dr. Noblin noted that she described her symptoms as constant, associated with pain and loss of motion, and provoked by athletic participation. He diagnosed AC arthritis, right. Dr. Noblin opined that appellant noticed increased pain, grinding, and crepitus in the right shoulder over the last several years and sought treatment. He further opined that “[i]t does sound like it [is] somewhat related we need more information in terms of x-rays, magnetic resonance imaging (MRI) scans and possibly a previous operative note to be definitive with that...”

On February 2, 2024 appellant filed a notice of recurrence (Form CA-2a) alleging that on November 20, 2023 she sustained a recurrence of the need for medical treatment for her shoulder causally related to her April 16, 2010 work injury. She noted that after she had surgery due to the original injury, she returned to work with no limitations; however, since performing a physical fitness test and doing push up for years in training, the injury had resurfaced.

In a development letter dated February 6, 2024, OWCP informed appellant of the deficiencies of her recurrence claim. It advised her of the type of factual and medical evidence necessary to establish her recurrence claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a February 7, 2024 statement, appellant noted that she was currently unemployed and that for the past year her shoulder soreness had progressively worsened. She noted having problems sleeping in November 2023, and she had the same crunching noise and sensation as she had at the time of the original injury. Appellant related that when she sought medical treatment, she was informed that she needed to have her claim reopened. She denied any other injuries or illness since the original injury and confirmed that she had not received medical care for her shoulder following surgery until February 1, 2024. Appellant explained that her physician wanted to obtain x-rays and an MRI before commencing treatment.

By decision dated March 15, 2024, OWCP denied appellant’s recurrence claim, finding that she had not established that she required additional medical treatment due to a worsening of the accepted work-related conditions.

Appellant resubmitted a copy of Dr. Noblin’s February 1, 2024 report.

On March 24, 2024 appellant requested reconsideration. She indicated that she was requesting that her case be reopened because she had a recurrence of the same right shoulder condition she had sustained in April 2010. Appellant again recounted that her right shoulder had been sore, and she developed a crunchy feeling over the past year, which was the same condition she encountered in 2010 when she injured her shoulder during a training exercise at the employing establishment academy.

By decision dated April 11, 2024, OWCP denied modification of the March 15, 2024 decision.

LEGAL PRECEDENT

The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.²

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.³ An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury without intervening cause.⁴

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal relationship between the employee's current condition and the original injury in order to meet his or her burden.⁵ To meet this burden, the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.⁶ Where no such rationale is present, medical evidence is of diminished probative value.⁷

² 5 U.S.C. § 8103(a).

³ 20 C.F.R. § 10.5(y).

⁴ *R.B.*, Docket No. 22-0980 (issued October 18, 2022); *B.B.*, Docket No. 21-1358 (issued May 11, 2022); *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *M.P.*, Docket No. 19-0161 (issued August 16, 2019); *E.R.*, Docket No. 18-0202 (issued June 5, 2018); *Mary A. Ceglia*, Docket No. 04-113 (issued July 22, 2004).

⁵ Federal (FECA) Procedural Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4b (June 2013); *see also M.F.*, Docket No. 21-1221 (issued March 28, 2022); *J.M.*, Docket No. 09-2041 (issued May 6, 2010).

⁶ *S.P.*, *supra* note 4; *A.C.*, Docket No. 17-0521 (issued April 24, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

⁷ *M.F.*, *supra* note 5; *M.P.*, *supra* note 4; *Michael Stockert*, 39 ECAB 1186 (1988).

ANALYSIS

The Board finds that appellant has not met her burden to establish a recurrence of the need for medical treatment, causally related to the accepted April 16, 2010 employment injury.

Regarding appellant's current condition, he related that appellant's symptoms began suddenly without specific trauma; and that appellant had experienced increased pain, grinding, and crepitus in the right shoulder over the last several years. Dr. Nolan did not provide medical findings and rationale to substantiate that the accepted conditions of closed dislocation of the right shoulder, unspecified arthropathy of the right shoulder of AC separation required further medical treatment. Rather, he related appellant's current diagnosis as right shoulder AC arthritis.⁸ Dr. Nolan diagnosed AC arthritis, right, and opined that it "does sound like it [is] somewhat related," but he added that x-rays, MRI scans and possibly a previous operative note were needed to establish the diagnosis and causal relationship. The Board finds that this opinion was couched in speculative terms. The Board has held that medical opinions that are speculative or equivocal are of diminished probative value.⁹ Dr. Noblin's report was, therefore, insufficient to establish a recurrence of the need for medical treatment for appellant's accepted conditions.

As appellant has not submitted medical evidence sufficient to establish a recurrence of the need for medical treatment causally related to her accepted April 16, 2010 employment injury, the Board finds that she has not met her 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 her burden to establish a recurrence of the need for medical treatment, causally related to the accepted April 16, 2010 employment injury.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); *M.B.*, Docket No. 20-1275 (issued January 29, 2021); *see R.D.*, Docket No. 18-1551 (issued March 1, 2019).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.5(3) (September 2010); *D.S.*, Docket No. 20-0384 (issued October 8, 2020); *H.A.*, Docket No. 18-1455 (issued August 23, 2019).

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 21, 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