

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

R.C., Appellant)	
)	
and)	Docket No. 24-0863
)	Issued: November 14, 2024
DEPARTMENT OF THE AIR FORCE, JOINT)	
BASE ELMENDORF-RICHARDSON AIR)	
FORCE BASE, AK, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 23, 2024 appellant, through counsel, filed a timely appeal from an August 8, 2024 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 disability from work during the period commencing May 7, 2023, causally related to his accepted employment condition.

FACTUAL HISTORY

On August 15, 2022 appellant, then a 40-year-old engineering equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on August 12, 2022 he injured his left side from his back to his leg when he tripped on a curb and a piece of loose asphalt in a bucket he was loading landed on top of him, while in the performance of duty. He stopped work on August 12, 2022. OWCP accepted the claim for multiple fractures of the pelvis without disruption of the pelvic ring. It paid wage-loss compensation on the supplemental rolls commencing September 27, 2022, and on the periodic rolls from December 4, 2022 through March 25, 2023.

Appellant returned to full-duty work on March 29, 2023.

In a May 11, 2023 work status note, Dr. Mark T. Caylor, an orthopedist, reported appellant was seen in his office that day. He advised that appellant was unable to work until his next evaluation scheduled for May 23, 2023.

OWCP received May 17, 2023 bilateral hip magnetic resonance imaging (MRI) scans. The left hip MRI scan revealed very tiny but likely paralabral cysts at the anterosuperior aspect of the left hip labrum, given cam deformities of the left hip, a labral tear was suspected. Degenerative disease was also noted throughout the L5-S1 disc level.

Dr. Caylor, in a May 23, 2023 work status note, recounted that appellant still experienced discomfort in his hip joint, and had increased posterior muscle spasms and groin pain with increased activities. He advised appellant would continue to need light-duty work, with work restrictions of no prolonged sitting or standing; no lifting more than 30 pounds; no excessive, squatting, stooping, bending, or twisting; no kneeling or being in uncomfortable positions for too long; may operate heavy machinery as tolerated, and rest when uncomfortable every 30 minutes as needed.

Appellant filed a claim for compensation (Form CA-7) for intermittent disability from work during the period May 7 through 20, 2023.

A May 24, 2023 accommodation availability election form for appellant noted that light duty to accommodate his current work restrictions was not available. K.P., engineering equipment foreman, noted that medical documentation providing appellant's work restrictions had been received for the period commencing August 12, 2022.

In a development letter dated May 25, 2023, OWCP informed appellant of the deficiencies of his Form CA-7 claim for disability compensation. It advised him of the type of factual and medical evidence necessary to establish his claim and afforded him 30 days to submit the necessary evidence.

On June 5, 2023 OWCP received progress notes dated May 11 and 23, 2023 from Dr. Caylor. In the May 11, 2023 note, Dr. Caylor related that appellant was nine months post left inferior pubic rami and left anterior acetabular wall fractures. Appellant related that he felt he had returned to work too soon, and that he had a lot of pressure on the left acetabulum area developing sharp pain on the lateral side of the hip that radiated into the thigh. Dr. Caylor diagnosed healed bilateral acetabular fractures, healed left superior/inferior rami fracture, and continued left hip pain worse with activity. He observed that appellant was getting to the point he should be at maximum medical improvement (MMI), but that he had a setback with his recent increased work activity. Dr. Caylor concluded that appellant was restricted to light work activity. In a May 23, 2023 note, he related that appellant was nine months status post pelvic fracture sustained from a crush injury. Appellant was treated conservatively, with no residual fracture seen on the most recent MRI scan, however, he was continuing to have chronic pain and was not able to return to full duties at work.

On June 7, 2023 appellant filed a Form CA-7 claim for disability from work during the period May 21 through June 3, 2023.

In a development letter dated June 7, 2023, OWCP informed appellant of the deficiencies of his claim for disability from work commencing May 21, 2023. It advised him of the type of additional medical evidence needed and afforded him 30 days to respond.

OWCP subsequently received a June 5, 2023 report from Dr. Marc D. Uscola, a chiropractor, who discussed the employment injury and provided examination findings. Dr. Uscola diagnosed cervicalgia; other cervical disc degeneration, cervicothoracic region; left hip and low back pain; and other intervertebral disc disorders, lumbar region.

On July 10, 2023 appellant filed Form CA-7 claims for disability from work during the period June 14 through July 1, 2023.

By decision dated July 11, 2023, OWCP denied appellant's claims for wage-loss compensation for disability from work commencing May 7, 2023.³

OWCP subsequently received additional medical evidence. In a report dated August 22, 2023, Dr. John W. Ellis, a Board-certified family practitioner, recounted appellant's history of injury and medical course. He noted the accepted conditions of multiple fractures of pelvis without disruption of the pelvic ring, and related that despite extensive treatment, appellant continued to have ongoing pain in his abdomen, pelvis and hips, as well as pain in his neck and upper back. Dr. Ellis related that appellant had been in temporary total disability status from August 12, 2022 until March 27, 2023. Appellant returned to work on March 28, 2023; however, by May 11, 2023, he realized he was unable to continue his work-related activities. Dr. Ellis related that no modified position within appellant's restrictions had been offered by the employing establishment. Thus, he found appellant totally disabled from work commencing May 2023.

Dr. Ellis also requested expansion of the claim to include cervical strain/whiplash injury, lumbar spine strain, acute post-traumatic headache, bilateral acetabulum fracture, aggravation of

³ OWCP paid appellant wage-loss compensation on the supplemental rolls for four hours during the period May 7 to 11, 2023.

preexisting lumbar spinal stenosis, aggravation of preexisting lumbar disc disease, and aggravation preexisting lumbar radiculopathy and consequential conditions of bilateral shoulder impingement syndrome, bilateral carpal tunnel syndrome, and bilateral elbow lateral epicondylitis as consequential injuries.

On May 1, 2024 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a series of questions, for a second opinion evaluation with Dr. James R. Schwartz, a Board-certified orthopedic surgeon, as to the nature and extent of appellant's injury-related residuals and disability and whether the claim should be expanded to include additional and consequential conditions causally related to his accepted August 12, 2022 employment injury.

On May 13, 2024 appellant, through counsel, requested reconsideration of the July 11, 2023 decision.

In a report dated June 6, 2024, Dr. Schwartz reviewed appellant's medical record and the SOAF. On examination, he reported symmetric hip range of motion. Dr. Schwartz opined that the accepted multiple fractures of the pelvis without disruption of the pelvic ring, initial encounter for closed fracture had resolved without residuals or disability. He found appellant could perform his date-of-injury job with regard to the pelvis fractures. In an attached work capacity evaluation (Form OWCP-5c) of even date, Dr. Schwartz diagnosed pelvic fractures and found appellant capable of performing his usual job without restrictions.

Dr. Schwartz, in a supplemental report dated July 9, 2024, related "the disability from work was May 7, 2023, until appellant was declared at MMI and sent back to work approximately three months post injury. At that point if it was felt he could not return to work at that time, then light duty could have been recommended and undertaken."

By decision dated August 8, 2024, OWCP denied modification of the July 11, 2023 decision.

LEGAL PRECEDENT

OWCP's procedures require that, in cases where recurrent disability for work is claimed within 90 days or less from the first return to duty, the claimant is not required to produce the same evidence as a recurrence claimed long after apparent recovery and return to work.⁴ Thus, in cases where a recurrence is claimed within 90 days of the first return to duty, the focus is on disability rather than causal relationship of the accepted condition(s) to the work injury.⁵

The Board has held that, if recurrent disability from work is claimed within 90 days or less from the first return to duty, the attending physician should describe the duties which the employee

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 (June 2013); *see also* *R.B.*, Docket No. 24-0110 (issued April 10, 2024); *R.E.*, Docket No. 20-0421 (issued May 17, 2021); *R.W.*, Docket No. 17-0720 (issued May 21, 2018).

⁵ *Id.* at Chapter 2.1500.5a; *R.B.*, *id.*; *S.B.*, Docket No. 22-0082 (issued April 14, 2023); *K.R.*, Docket No. 19-0413 (issued August 7, 2019).

cannot perform and demonstrate objective medical findings that form the basis for the renewed disability from work.⁶

ANALYSIS

The Board finds that this case is not in posture for a decision.

Appellant initially stopped work on August 12, 2022 and returned to full-duty work with no restrictions effective March 29, 2023. He stopped work again on May 7, 2023 and filed Form CA-7 claims for disability from work commencing that date.

As noted above, OWCP's procedures require that, in cases where recurrent disability from work is claimed within 90 days or less from the first return to duty, the claimant is not required to produce the same evidence as for a recurrence claimed long after apparent recovery and return to work. Thus, in cases where a recurrence is claimed within 90 days or less from the return to work, the focus is on disability rather than causal relationship.⁷ Because appellant claimed disability within 90 days of his first return to duty, OWCP should have adjudicated the claim under the proper standard, emphasizing disability rather than causal relationship.⁸

The Board thus finds that this case must be remanded for further development applying the appropriate standard.⁹ Following any such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁰

CONCLUSION

The Board finds that this case is not in posture for decision.

⁶ *R.B., id.*; *M.H.*, Docket No. 19-1552 (issued February 2, 2021); *A.B.*, Docket No. 18-0978 (issued September 6, 2019); *J.F.*, 58 ECAB 124 (2006).

⁷ *Supra* notes 4 and 5.

⁸ *Id.*; see *S.B., supra* note 5; see also *Order Remanding Case, D.K.*, Docket No. 18-0604 (issued October 21, 2019).

⁹ *Id.*

¹⁰ See generally *B.N.*, Docket No. 17-0787 (issued July 6, 2018); *C.D.*, Docket No. 17-1074 (issued August 28, 2017).

ORDER

IT IS HEREBY ORDERED THAT the August 8, 2024 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 14, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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