

FACTUAL HISTORY

On June 22, 2010 appellant, then a 20-year-old firefighter, filed a traumatic injury claim (Form CA-1) alleging that on June 2, 2010 he sustained a bee sting to his left hand, which resulted in an allergic reaction, severe disorientation and poor level of consciousness.

In a June 2, 2010 medical report, Dr. Ray Andreassen, an osteopath, obtained a history that appellant was stung by a bee at his work site and immediately brought to the clinic for treatment. Appellant was unresponsive to verbal cues and was breathing spontaneously. Dr. Andreassen diagnosed bee sting anaphylactic reaction and discharged appellant with stable vital signs. In a June 2, 2010 attending physician's report (Form CA-20), he stated that appellant's allergic reaction was caused or aggravated by the bee sting from the June 2, 2010 employment incident. Dr. Andreassen noted that appellant could resume work on June 3, 2010 if no further problems occurred. In a June 3, 2010 follow-up note, John Winczura, a physician's assistant stated that appellant's condition had improved.

In a December 16, 2011 telephone note, an OWCP claims examiner stated that appellant reported that he was terminated from his employment at Tahoe Hotshots because he could not perform the duties of his position as a result of disorientation from his severe allergic reaction to the bee sting. Appellant further stated that he was unable to work as a firefighter and would like his case reopened.

On January 7, 2012 appellant filed a recurrence of disability. He stated that he stopped work on June 9, 2010 as a result of his recurrence. Appellant did not indicate if his recurrence was a result of medical treatment or time loss from work. He checked the box marked "no" when asked if he was in any way limited in performing his usual duties after returning to work following the original injury, noting that he did not return to work. Appellant also checked the box marked "no" when asked if accommodations were made after his June 2, 2010 injury. In a January 7, 2012 claim for compensation (Form CA-7), he requested leave without pay for the period June 28, 2010 January 7, 2012.

In an attached narrative statement, appellant reported that on June 2, 2010 he was stung by a bee on his left hand. He immediately informed the Emergency Medical Technician (EMT) because he knew he was highly allergic. The EMT did not inject him with an EpiPen, checked his basic operating functions and released him back to work. Appellant informed the EMT that he was not feeling well and was given Benadryl. A short while later he notified the EMT that his symptoms were worsening, causing him to go in and out of consciousness. At that point appellant was injected with an EpiPen and taken to the medical center. He was cleared by the hospital and released under EMT supervision for three days. On the third day, appellant's superintendent informed him that he could not continue working at Tahoe Hotshots because he was too much of a liability as a result of his bee allergy. Appellant had no duties to attend to upon his return to work and was forced to resign from his crew. He was offered a wrec crew job, which was basically a janitorial position at the base where the crew was stationed.

In a May 31, 2010 progress note, Mr. Winczura stated that appellant requested an EpiPen on May 31, 2010 due to his severe reactions to bee stings. The request was granted. On June 2,

2010 appellant was brought to the emergency room for an allergic reaction to a bee sting. He returned for follow-up treatment on June 3, 2010.

On June 23, 2012 OWCP accepted appellant's claim for toxic effect of venom, anaphylaxis due to bee sting. It stated that his claim was reopened due to the fact that he had filed a recurrence claim.

By decision dated January 30, 2012, OWCP denied appellant's recurrence claim finding that the medical evidence did not establish that he sustained a recurrence of disability causally related to the accepted June 2, 2010 employment injury. It noted that no medical evidence was submitted past June 2010.²

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.³ 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.⁴

An employee, who is prevented by employment-related residuals from returning to a job the employee held when injured does return to a light-duty position or when the medical evidence shows that the employee could perform the light-duty position, the employee must present reliable, probative and substantial evidence that he or she cannot perform in the light-duty position because of a recurrence of total disability. 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 light-duty requirements.⁵

OWCP's procedures provide that a recurrence of disability can be created by the withdrawal of a light-duty assignment made to accommodate an employee if the withdrawal is not due to misconduct or nonperformance of job duties.⁶

² The Board notes that appellant submitted additional evidence after OWCP rendered its January 30, 2012 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and therefore this additional evidence cannot be considered on appeal. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

³ 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

⁴ *Id.*

⁵ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3b(1)(c) (January 1995).

Although appellant must prove the facts alleged, proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish his or her claim, OWCP also has a responsibility in the development of the evidence.⁷ This is particularly true when the evidence is of the character normally obtained from the employing establishment or other government source.⁸ 20 C.F.R. § 10.118(a) states: The employer is responsible for submitting to OWCP all relevant and probative factual and medical evidence in its possession, or which it may acquire through investigation or other means. Such evidence may be submitted at any time.

ANALYSIS

The Board finds that this case is not in posture for decision as to whether appellant sustained a recurrence of total disability.

In its January 30, 2012 decision, OWCP found that appellant did not sustain a recurrence on the grounds that the medical evidence failed to establish that his alleged disability was causally related to the June 2, 2010 injury. Appellant, however, claimed that he sustained a recurrence of total disability when his position as a firefighter was withdrawn effective June 5, 2010 and he was forced to resign. He did not contend that his condition had worsened such that he was unable to perform the duties of his position as a firefighter. In his narrative statement, appellant reported that his superintendent told him that he was too much of a liability to be a firefighter due to his bee allergy. He stated that he had no duties to perform upon returning to work and was forced to resign after he was offered a wrec crew job, which was essentially a janitorial position.⁹

OWCP regulations provide that compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him from earning the wages earned before the work-related injury. An employee is not entitled to compensation for any wage loss claimed to the extent that the evidence contemporaneous with the period claim establishes that an employee had medical work restrictions in place; that light duty within those work restrictions was available; and that the employee was previously notified in writing that such duty was available.¹⁰

In its January 30, 2012 decision, OWCP did not make adequate findings regarding appellant's allegation that his regular employment was withdrawn, that he was offered work as a janitor and that he was ultimately not allowed to work at all. It is unclear in the record forwarded to ECAB whether appellant was offered an appropriate modified-duty position in writing or whether his regular position was withdrawn by the employing establishment on June 9, 2010. These questions must be clarified.

⁷ See *Claudia A. Dixon*, 47 ECAB 168 (1995).

⁸ *R.E.*, 59 ECAB 323 (2008); *Willie A. Dean*, 40 ECAB 1208 (1989).

⁹ The Board notes that, in a December 16, 2011 telephone note, appellant alleged that he was terminated from his employment. The status of appellant's employment subsequent to the June 2, 2010 injury is unclear.

¹⁰ 20 C.F.R. § 10.500(a).

OWCP must develop the case and make factual findings on the status of appellant's employment at the time that he claimed a recurrence of disability. This evidence is of the character normally obtained by the employing establishment and is therefore more readily accessible to OWCP than to appellant. It is a well established principle that OWCP must make findings of fact and offer a statement of reasons in its final decisions.¹¹ Once factual findings are made, OWCP should evaluate the evidence to determine whether a recurrence of disability was established.¹²

CONCLUSION

The Board finds that OWCP did not make factual findings on the issue of whether appellant sustained an employment-related recurrence of disability.

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2012 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this decision.

Issued: December 14, 2012
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹¹ See *Anrietta K. Cooper*, 5 ECAB 11 (1952); 20 C.F.R. § 10.126.

¹² *T.M.*, Docket Nos. 09-1090, 09-2226 (issued March 8, 2010); *T.D.*, Docket No. 07-2331 (issued June 19, 2008).