

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

M.V., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chino, CA, Employer**

)
)
)
)
)
)
)
)
)

**Docket No. 17-0882
Issued: July 17, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 13, 2017 appellant filed a timely appeal from a February 1, 2017 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 established a recurrence of disability beginning October 6, 2016 causally related to his accepted employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances outlined in the Board's prior decision are incorporated herein by reference. The facts relevant to this appeal are set forth below.

On November 4, 1999 appellant, then a 39-year-old part-time flexible letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained disc degeneration, a herniated disc, and a possible bone spur causally related to factors of his federal employment. OWCP accepted the claim for an aggravation of a cervical osteophyte at C5-6 and cervical radiculitis. On July 25, 2001 appellant underwent an anterior cervical discectomy and fusion at C5-6 and C6-7. He sustained intermittent periods of employment-related disability for which he received compensation. Appellant filed a claim for a schedule award (Form CA-7) on January 5, 2007.

By decision dated March 25, 2009, OWCP denied appellant's claim for a schedule award. Appellant appealed to the Board. In a decision dated May 7, 2010, the Board affirmed the March 25, 2009 decision.³

Appellant stopped work completely on May 30, 2012. On October 15, 2012 Dr. John W. Skubic, a Board-certified orthopedic surgeon, performed an authorized anterior cervical discectomy and fusion at C4-5 and the removal of anterior instrumentation at C5-6. On June 5, 2013 appellant accepted an assignment as a modified city carrier.

In a state workers' compensation progress report form dated October 17, 2016, Dr. Jonathan K. Lee, a Board-certified physiatrist, provided examination findings and diagnosed cervical spondylosis and cervical radiculopathy following a fusion at C5-6 and C6-7. He obtained a history of appellant waking up after sleeping on his stomach with significant neck pain on October 5, 2016. Dr. Lee opined that he was totally disabled pending further evaluation.

Appellant, in a November 1, 2016 statement, related that his neck condition had "recently worsened" and that his physician took him off of work. He stopped work on October 5, 2016.

On November 4, 2016 appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation from October 6 to 28, 2016. He continued to submit claims for compensation for total disability.

By letter dated November 18, 2016, OWCP informed appellant of the definition of a recurrence of disability. It requested that he submit a detailed report from his attending physician addressing the causal relationship between his claimed disability and his accepted work injury.

² *Id.*

³ Docket No. 09-2045 (issued May 7, 2010).

Dr. Skubic completed a state workers' compensation progress report on November 22, 2016. He obtained a history of appellant waking up on October 5, 2016 "with a strained neck...." Dr. Skubic related that a magnetic resonance imaging (MRI) scan study dated November 15, 2016 revealed adjacent segment degenerative changes, but no significant impingement or stenosis of the spinal cord. He diagnosed status post cervical fusion at C4-7 with "chronic neck pain and adjacent segment cervical disc degenerative changes," but without significant stenosis. Dr. Skubic noted that appellant's symptoms had improved after an exacerbation and found that he should be able to resume his employment in one week.

In a state workers' compensation form report dated November 30, 2016, Dr. Lee diagnosed cervical spondylosis and cervical radiculitis. He noted that appellant awoke on October 5, 2016 with "severe neck pain." Dr. Lee found that he was temporarily totally disabled and referred him for cervical epidural steroid injections.

On December 28, 2016 Dr. Lee noted that appellant's condition had improved after the steroid injections, but found that he remained totally disabled. On January 11, 2017 he opined that appellant could return to work with his previous restrictions.

By decision dated February 1, 2017, OWCP found that appellant had not established an employment-related recurrence of disability beginning October 6, 2016. It determined that the medical evidence of record was insufficient to show a worsening of his condition due to his accepted work injury.

LEGAL PRECEDENT

Where an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-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 cannot perform such light duty. 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 job requirements.⁴

OWCP regulations provide that 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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵ This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn, (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-

⁴ *Richard A. Neidert*, 57 ECAB 474 (2006); *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ 20 C.F.R. § 10.5(x).

in-force) or when the physical requirements of such an assignment are altered so that they exceed the established physical limitations.⁶

ANALYSIS

OWCP accepted that appellant sustained an aggravation of a cervical osteophyte at C5-6 and cervical radiculitis due to factors of his federal employment. Appellant underwent an anterior cervical discectomy and fusion at C5-6 and C6-7 on July 25, 2001 and a discectomy and fusion at C4-5 on October 15, 2012. He returned to modified employment on June 5, 2013. Appellant stopped work and filed claims for compensation for disability (Forms CA-7) beginning October 6, 2016.

Appellant has not alleged a change in the nature and extent of his light-duty job requirements. Instead, he attributed his recurrence of disability to a change in the nature and extent of his employment-related conditions. Appellant must thus provide medical evidence to establish that he was disabled due to a worsening of his accepted work-related conditions.⁷

Dr. Lee, on October 17, 2016, discussed appellant's symptoms of increased neck pain after he awakened from sleeping on his stomach on October 5, 2016. He diagnosed cervical spondylosis and cervical radiculopathy after a C5-6 and C6-7 fusion. Dr. Lee found that appellant was totally disabled. He did not, however, specifically relate the increase in disability to the accepted work injury. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.⁸ Additionally, Dr. Lee did not address whether the neck pain that occurred when appellant awoke on October 5, 2016 was due to the accepted employment injury or represented a possible intervening injury. A recurrence of disability is a spontaneous change in a medical condition which results from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁹ 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

On November 30, 2016 Dr. Lee provided a history of appellant awakening with significant neck pain on October 5, 2016. He diagnosed cervical radiculitis and spondylosis. Dr. Lee found that appellant was totally disabled but did not, however, specifically address the cause of the diagnosed conditions or disability or provide any medical explanation of how the accepted employment injury caused neck pain on October 5, 2016. On December 28, 2016 he

⁶ *Id.*

⁷ See *Jackie D. West*, *supra* note 4.

⁸ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

⁹ 20 C.F.R. § 10.5(x); see also *R.P.*, Docket No. 15-1335 (issued October 6, 2016).

¹⁰ OWCP procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change, demonstrated by objective findings, in the medical condition that resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2(b) (June 2013). *Kenneth R. Love*, 50 ECAB 193 (1998).

diagnosed cervical radiculitis and spondylosis and found appellant totally disabled. However, Dr. Lee did not directly address causation and thus his report is of little probative value on the issue of causal relationship.¹¹ Appellant has the burden of proof to furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.¹²

In a report dated November 22, 2016, Dr. Skubic diagnosed status post C4-7 cervical fusion with continued neck pain and adjacent segment degenerative changes but no stenosis as demonstrated by MRI scan study. He noted that appellant awoke on October 5, 2016 with a strained neck. Dr. Skubic related that his symptoms had improved following an aggravation and that he should be able to return to work in one week. He did not, however, address the cause of the increased neck pain, and thus his opinion is of diminished probative value.¹³

As appellant has not submitted sufficient medical evidence to establish a recurrence of disability due to his accepted employment injury, the Board finds that he has not met his burden of proof.¹⁴

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established a recurrence of disability beginning October 6, 2016 causally related to his accepted employment injury.

¹¹ See *supra* note 8.

¹² See *S.S.*, 59 ECAB 315 (2008).

¹³ See *K.W.*, 59 ECAB 271 (2007).

¹⁴ See *J.F.*, Docket No. 16-1915 (issued March 10, 2007); *William A. Archer*, 55 ECAB 674 (2004).

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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