

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

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M.S., Appellant	)	
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	)	<b>Docket No. 22-1386</b>
and	)	<b>Issued: May 18, 2023</b>
	)	
U.S. POSTAL SERVICE, ROGER P. MCAULIFFE	)	
POST OFFICE, Chicago, IL, Employer	)	
	)	

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*Appearances:* *Case Submitted on the Record*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

**DECISION AND ORDER**

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

**JURISDICTION**

On September 29, 2022 appellant, through counsel, filed a timely appeal from an August 10, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the August 10, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish a recurrence of total disability for the period June 22 through December 13, 2019, causally related to his accepted January 8, 2018 employment injury.

## **FACTUAL HISTORY**

On January 8, 2018 appellant, then a 59-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on January 8, 2018 he sustained a contusion/bruise with the skin intact on his left shoulder when he slipped on ice while in the performance duty. He stopped work on the date of injury and returned to work on January 10, 2018.<sup>4</sup> OWCP initially accepted the claim for left shoulder rotator cuff strain. It later expanded the accepted conditions to include complete rotator cuff tear and impingement syndrome of the left shoulder, and sprain of the left acromioclavicular (ACL) joint. On May 30, 2018 appellant underwent OWCP-authorized left shoulder arthroscopic surgery. OWCP paid him wage-loss compensation for disability from work on the supplemental rolls commencing March 5, 2018 and on the periodic rolls commencing April 1, 2018.

On March 20, 2019 appellant returned to a full-time, modified city carrier position.

OWCP received medical evidence from Dr. Gregory L. Primus, an attending orthopedic surgeon. In progress notes dated June 14, July 5, August 30, November 15, and December 13, 2019, Dr. Primus indicated that appellant presented for evaluation status post his OWCP-authorized May 30, 2018 arthroscopic left shoulder rotator cuff repair. Appellant informed Dr. Primus that his surgery was related to his January 8, 2018 employment injury and a re-tear on April 5, 2019. He indicated that, soon after his return to work, he experienced left shoulder pain when he pushed himself up from sitting in a low chair with his left shoulder a few times at work. Appellant denied having a new injury. Dr. Primus provided assessments that included anterior soft tissue impingement; complete rotator cuff tear or rupture of the left shoulder, not specified as traumatic; and sprain of left ACL joint, initial encounter. He opined that appellant's conditions were causally related to his accepted employment injury. Dr. Primus noted a need for left shoulder revision of the rotator cuff repair with possible reconstruction with dermal allograft. He opined that, based on appellant's history, and his review of pertinent records and examination findings, appellant's injuries were causally and directly related to his work injury. In the June 14, 2019 progress note, Dr. Primus placed appellant off work until his next reevaluation in three weeks due to increasing persistent pain because his restrictions were not accommodated by his job.

In work status and recommendation forms dated June 14, July 5, August 30, November 15, and December 13, 2019, Dr. Primus continued to advise that appellant's diagnosis of status post arthroscopic left shoulder rotator cuff repair was related to his employment and required left shoulder revision surgery. In the June 14, 2019 work status and recommendation

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<sup>4</sup> OWCP assigned the present claim OWCP File No. xxxxxx090. Appellant also filed a traumatic injury claim on October 12, 2019 for an April 5, 2019 left shoulder sprain, which OWCP assigned OWCP File No. xxxxxx842 and denied by decision dated November 25, 2019. OWCP administratively combined File Nos. xxxxxx090 and xxxxxx842, with the former serving as the master file.

form, he placed appellant off duty until his next appointment in three weeks. Dr. Primus placed appellant off duty for a period to be determined in the July 6, 2019 work status and recommendation form. In the August 30, 2019 report, he noted that appellant continued to have work restrictions. In the November 15 and December 13, 2019 work status and recommendation forms, Dr. Primus indicated that appellant was unable to work until his next appointment in four weeks.

In duty status reports (Form CA-17) dated October 16, November 15, and December 13, 2019, Dr. Primus noted appellant's date of injury as January 8, 2018. In the October 16, 2019 Form CA-17 report, he diagnosed left shoulder sprain due to injury. Dr. Primus indicated that appellant was unable to resume his regular work and unfit for duty. He again indicated appellant's need for shoulder surgery.

On January 10, 2020 appellant filed a claim for compensation (Form CA-7) for disability from work for the period June 22 through December 13, 2019. On the reverse side of the claim form, the employing establishment noted that he was off work due to his traumatic injury claim for his April 5, 2019 injury under OWCP File No. xxxxxx842, which was denied by OWCP. It also contended that appellant had not submitted any medical evidence to establish his present claim under OWCP File No. xxxxxx090.

OWCP continued to receive medical progress reports summarizing appellant's condition and medical treatment after December 13, 2019.

In a January 21, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical evidence necessary to establish his claim and afforded him 30 days to submit the required evidence. No additional evidence was submitted.

By decision dated March 8, 2022, OWCP denied appellant's claim for compensation for disability from work during the period June 22 through December 13, 2019, finding that he had not provided medical evidence to establish that he was totally disabled from work during the claimed period due to his January 8, 2018 employment injury. It noted that the evidence of record established that he sustained a new left shoulder injury.

On March 16, 2022 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on July 5, 2022.

By decision dated August 10, 2022, OWCP's hearing representative affirmed the March 8, 2022 decision.

### **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.<sup>5</sup> This term also means an inability to work because a light-duty assignment made

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<sup>5</sup> 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008).

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.<sup>6</sup> Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.<sup>7</sup>

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 occupational illness rather than an 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.<sup>8</sup>

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, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to employment injury and supports that conclusion with medical reasoning.<sup>9</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of total disability for the period June 22 through December 13, 2019, causally related to his accepted January 8, 2018 employment injury.

In support of his claim, appellant submitted progress notes, work status and recommendation forms, and Form CA-17 reports dated June 14 through December 13, 2019 from his attending physician, Dr. Primus. Dr. Primus opined that appellant was totally disabled from work commencing June 14, 2019 due to his continuing employment-related conditions.

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<sup>6</sup> *Id.*

<sup>7</sup> *See S.G.*, Docket No. 20-0828 (issued January 6, 2022); *M.F.*, Docket No. 20-0136 (issued August 5, 2021); *G.L.*, Docket No. 16-1542 (issued August 25, 2017); *Theresa L. Andrews*, 55 ECAB 719, 722 (2004). *See also Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *P.R.*, Docket No. 20-0596 (issued October 6, 2020); *D.T.*, Docket No. 19-1064 (issued February 20, 2020); *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

<sup>9</sup> *See J.S.*, Docket No. 19-1035 (issued January 24, 2020); *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>10</sup> *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

While Dr. Primus opined that the January 8, 2018 employment injury rendered appellant totally disabled from work for the claimed period, he did not explain with sufficient rationale as to how appellant's inability to work was due to his accepted left shoulder conditions, for which he underwent surgical repair on May 30, 2018, and would have rendered him unable to perform his work duties. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to accepted employment factors.<sup>11</sup> For this reason, the Board finds that the medical evidence from Dr. Primus is insufficient to establish appellant's burden of proof.

As appellant has not submitted sufficient medical evidence to establish total disability from work for the period June 22 through December 13, 2019, due to a spontaneous change or worsening of his January 8, 2018 employment injury, the Board finds that he has not met his 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 his burden of proof to establish a recurrence of total disability for the period June 22 through December 13, 2019, causally related to his accepted January 8, 2018 employment injury.

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<sup>11</sup> See *D.H.*, Docket No. 21-0102 (issued July 28, 2021); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 10, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 2023  
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