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<b>C.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 12-1081</b>
	)	<b>Issued: December 5, 2012</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>TRANSPORTATION SECURITY</b>	)	
<b>ADMINISTRATION, Los Angeles, CA, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
 RICHARD J. DASCHBACH, Chief Judge  
 COLLEEN DUFFY KIKO, Judge  
 ALEC J. KOROMILAS, Alternate Judge

On April 10, 2012 appellant, through his representative, filed a timely appeal from the March 14, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his recurrence claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has established that he sustained a recurrence of disability on March 11, 2011.

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On November 25, 2008 appellant, a 51-year-old transportation security officer (screener), sustained a traumatic injury in the performance of duty while loading bags onto the loading belt. OWCP accepted his claim for lumbosacral strain and sprain and for displacement of lumbar intervertebral disc without myelopathy. Appellant received compensation for temporary total disability on the periodic rolls.

In 2009 appellant underwent a complete discectomy at L5-S1 with interbody fusion. On June 21, 2010 he returned to full-time limited duty.<sup>2</sup>

Appellant claimed a recurrence of disability beginning March 11, 2011. Dr. A. Michael Moheimani, his Board-certified orthopedic surgeon, examined him on March 10, 2011. Appellant complained of a worsening of his back and radicular pain, as well as increasing numbness in his hands “making even modified work, he is currently doing, not bearable.” At the same time, however, he reported no changes in his medical condition from that previously reported.

Dr. Moheimani described his findings on examination. Appellant had restricted lumbar motion with pain. Neurologically, his lumbar spine and lower extremities were normal. Previous neurodiagnostic studies showed moderate carpal tunnel syndrome on the left. Dr. Moheimani diagnosed status post spinal fusion and bilateral carpal tunnel syndrome. He noted that appellant was previously declared permanent and stationary. However, because of appellant’s increasing pain, Dr. Moheimani placed him on temporary total disability.

OWCP informed appellant that Dr. Moheimani offered no objective findings to support an injury-related disability. It asked appellant to obtain a detailed medical report describing the basis of his total disability beginning March 11, 2011 and how the disability was due the work injury.

Dr. Moheimani responded that appellant was having substantial difficulty working. He had ongoing back pain with radiation into his thighs, difficulty with bending, lifting and twisting, and difficulty carrying out his work activities. Appellant also complained of numbness in both hands and weakness on gripping. Dr. Moheimani again noted, however, that appellant reported no changes in his medical condition from that previously reported. Objective findings include tenderness in the lumbar paraspinals and limitation of lumbar motion. Knee and ankle jerks were 2+ and symmetrical. Babinski sign was negative. A detailed sensory examination of the lower extremities, testing dermatome L1 to S1, was normal. A detailed motor examination of the lower extremity, testing the same spinal roots, was normal. Appellant had a positive Phalen’s test. A neurodiagnostic study documented carpal tunnel syndrome bilaterally.

On the issue of disability for work, Dr. Moheimani stated that appellant had difficulty gripping and performing repetitive wrist motion activities due to residuals of his carpal tunnel syndrome. Appellant also continued to be symptomatic from his spinal fusion, with difficulty

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<sup>2</sup> The record indicates that appellant stopped work from August 6 to 20, 2010 and received wage-loss compensation. He returned to a temporary modified-duty position on August 23, 2010.

bending and lifting. Dr. Moheimani felt that it was unrealistic to require appellant to lift 70 pounds, as he was now reporting increasing lower back pain.<sup>3</sup>

In a May 16, 2011 decision, OWCP denied appellant's recurrence claim. It found that the medical evidence offered no objective findings to support his inability to work. Pain, OWCP explained, was a symptom and not an objective finding.

An OWCP hearing representative affirmed the denial of appellant's recurrence claim. He noted that appellant had provided contradictory testimony on whether his duties included patting down passengers, causing him to bend up and down repeatedly.<sup>4</sup> Asked what happened in March 2011, appellant testified that he was having problems with his knees shaking because he was standing most of the time, which was aggravating his back. He stated that he was required to stand more than the half-hour imposed by his restrictions. The hearing representative found that appellant provided no evidence to establish that the duties of his limited-duty assignment, which he performed until March 11, 2011, exceeded the work restrictions imposed by his treating physician. There was no evidence of any change in the nature and extent of appellant's limited-duty job requirements as of March 11, 2011. Further, Dr. Moheimani failed to show, on the basis of objective findings, a change in the nature and extent of appellant's low back condition. He attributed appellant's disability instead to increasing pain.

Appellant submitted a December 5, 2011 residual functional capacity questionnaire from Dr. Moheimani who indicated that appellant could stand for one hour at a time before needing to sit down or walk around for 10 minutes. Dr. Moheimani indicated that appellant could stand at least six hours in an eight-hour workday. He also indicated that appellant could lift 10 pounds frequently and 20 pounds occasionally. Appellant was able to twist, stoop/bend and crouch/squat rarely.

In a March 14, 2012 decision, OWCP reviewed the merits of appellant's case and denied modification of its prior decision. It found that appellant had submitted no factual evidence to corroborate his allegation that he was forced to work outside his restrictions. OWCP further found that appellant provided no medical evidence supporting a change in his accepted lumbar conditions.

### **LEGAL PRECEDENT**

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>5</sup> "Disability" means the incapacity, because

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<sup>3</sup> Appellant would later testify that his previous duties in the baggage area required lifting more than 70 pounds, but he was accommodated as a passenger screener with no lifting over 10 pounds.

<sup>4</sup> Appellant eventually testified that he did not do pat downs because that was one of the things his doctor recommended he not do. "I told them I wouldn't do it."

<sup>5</sup> 5 U.S.C. § 8102(a).

of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.<sup>6</sup>

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 injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>7</sup>

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a light-duty position, or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of his or her burden, the employee must show a change in the nature and extent of the light-duty job requirements or a change in the nature and extent of the injury-related condition.<sup>8</sup>

### ANALYSIS

Following his traumatic injury in 2008 and surgery in 2009, appellant returned to full-time modified duty. He stopped work, however, on March 11, 2011 and claimed compensation for temporary total disability. Appellant therefore has the burden to establish that his recurrence of disability was causally related to his 2008 work injury. To discharge that burden, he must show a change in the nature and extent of his light-duty job requirements or a change in the nature and extent of his injury-related condition.

As OWCP’s hearing representative indicated, appellant initially testified that his assignment involved patting down passengers. But when pressed, appellant explained that he did not do pat downs because it required a lot of bending, and his doctor had restricted him from bending. In the end, it appears that appellant did not stop work on March 11, 2011 because of any actual change in the physical demands of his modified assignment.

It appears instead that he stopped work because, as he explained, the standing required of his modified assignment was causing his knees to shake, which aggravated his back. But this is not supported by his orthopedic surgeon, Dr. Moheimani. On the day before appellant stopped work, Dr. Moheimani indicated that it was the increasing numbness in appellant’s hands that made even modified work unbearable. To the extent that appellant stopped work because of carpal tunnel syndrome -- a medical condition OWCP does not accept as being causally related to the November 25, 2008 work incident -- he has not established a recurrence of disability, as that phrase is defined.

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<sup>6</sup> 20 C.F.R. § 10.5(f).

<sup>7</sup> *Id.* at § 10.5(x).

<sup>8</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

Dr. Moheimani further indicated that he was taking appellant off work because of increasing pain. Appellant had complained that he was having a worsening of his back and radicular pain. Dr. Moheimani's normal findings on neurological examination did not substantiate this complaint. He did not explain any objective change in the nature and extent of appellant's injury-related condition. It appears instead that Dr. Moheimani allowed appellant to self-certify his disability on the grounds that he simply hurt too much to work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>9</sup>

Dr. Moheimani later explained that appellant had ongoing back pain with radiation into his thighs, difficulty with bending, lifting and twisting, and difficulty carrying out his work activities. Again, however, a detailed neurological examination of the lumbar spine and lower extremities was normal. Appellant did have tenderness in the lumbar paraspinals and limitation of lumbar motion, but Dr. Moheimani did not show that this was a change in the nature and extent of the injury-related condition or how this objectively demonstrated that appellant could no longer continue limited duty. He found it unrealistic to require appellant to lift 70 pounds, but the limited-duty assignment required no lifting over 10 pounds.

Dr. Moheimani's residual functional capacity questionnaire did not directly address the issue of recurrence. He did not explain how appellant's work capacities were inconsistent, beginning March 11, 2011, with the duties of his modified assignment.

Accordingly, the Board finds that appellant has not met his burden to establish that he sustained a recurrence of disability on March 11, 2011. Appellant did not show a change in the nature and extent of his light-duty job requirements or a change in the nature and extent of his injury-related condition. The Board will therefore affirm OWCP's March 14, 2012 decision denying his recurrence claim.

### **CONCLUSION**

The Board finds that appellant has not met his burden to establish that he sustained a recurrence of disability on March 11, 2011.

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<sup>9</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 14, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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