

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

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**E.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Cleveland, OH, Employer**

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**Docket No. 11-1234  
Issued: January 4, 2012**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 26, 2011 appellant, through her attorney, filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) merit decision dated March 15, 2011 denying a period of disability. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant established a recurrence of disability for the period March 22 to April 23, 2010 due to her accepted right-sided L4-5 herniated disc condition.

**FACTUAL HISTORY**

On August 10, 1987 appellant, then a 29-year-old machine operator, filed a claim alleging that she hurt her back during the performance of her duties on July 11, 1987. OWCP accepted the claim for right side L4-5 herniated disc. Appellant also hurt her back on May 21, 1988, which OWCP accepted for a lumbar strain. OWCP paid wage-loss benefits and by

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

decision dated May 19, 2003, awarded appellant a schedule award for four percent impairment of the right upper extremity. Appellant was working light duty when she submitted claims for wage-loss compensation (Form CA-7) for the period March 22 to April 23, 2010. She also submitted medical reports from Dr. Daniel J. Leizman, a Board-certified physiatrist, dated March 22 to May 13, 2010.

On March 22, 2010 Dr. Leizman noted that appellant reported that she could not work due to severely increased lumbar back pain.<sup>2</sup> Objective findings on examination included severe restriction of the lower back, moderate tenderness to palpation in the paraspinal musculature at the lumbosacral junction, bilateral lower extremity pain and a slow and deliberate gait. Dr. Leizman stated that appellant's symptoms appeared to begin at the L4-5 level and assessed low back pain and displacement of lumbar intervertebral disc. He noted that approval was necessary for lumbar steroid injection as treatment medically necessary for the work-related injuries. Dr. Leizman advised that appellant was totally disabled effective March 22, 2010 until approximately June 22, 2010 and that she needed an ergonomic chair with back support for work.

On March 26, 2010 Dr. Leizman noted that appellant's pain had improved. Appellant's symptoms began at L4-5 level. Dr. Leizman assessed low back pain and displacement of lumbar intervertebral disc after noting similar findings as in his prior report. Appellant remained totally disabled and he recommended a lumbar magnetic resonance imaging (MRI) scan and x-rays. On April 19, 2010 Dr. Leizman discussed the April 5, 2010 MRI scan findings and x-ray results. He stated that approval for lumbar epidural steroid injections was requested and medically necessary due to appellant's work-related injuries. On April 29, 2010 Dr. Leizman found that appellant could return to light duty with restrictions and an ergonomic chair with back support as of April 30, 2010. In a May 13, 2010 report, he noted that her lumbar back pain had improved, but was constant in nature and variable in degree. Appellant had mild tenderness to palpation with moderate restriction and a normal gait. Dr. Leizman stated that appellant's symptoms came from L4-5. He diagnosed low back pain and lumbar disc displacement and opined that she could continue light-duty work with restrictions.

In a July 8, 2010 letter, OWCP informed appellant to submit additional evidence to establish her claim. It noted that the reports from Dr. Leizman failed to provide sufficient explanation for why she was disabled from all work or how her inability to work was related to the accepted work injury of July 11, 1987.

OWCP received a May 24, 2010 "TENS Recheck Form" and a July 13, 2010 report from Dr. Leizman noting that appellant received a lumbar epidural steroid injection.

By decision dated August 13, 2010, OWCP denied wage-loss compensation from March 22 to April 23, 2010 on the basis that there was insufficient medical evidence to establish that appellant was disabled from work due to the accepted low back condition.

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<sup>2</sup> Dr. Leizman previously indicated that appellant could work light duty with permanent restrictions on lifting greater than 10 to 20 pounds, and prolonged standing and bending.

On August 19, 2010 appellant, through counsel, requested a telephonic hearing with an OWCP hearing representative, which was held on December 15, 2010. Appellant testified that on March 22, 2010 she experienced severe back pain and Dr. Leizman took her off work. She indicated that she was treated with medication and physical therapy and returned to work on April 30, 2010.

Reports from Dr. Sami Moufawad, a Board-certified physiatrist and pain specialist, dated September 21, October 20, November 22, December 2 and 20, 2010 and January 6, 2011 were received. He noted the history of injury and appellant's treatment. Dr. Moufawad provided an impression of L4-5 disc displacement and treated appellant with lumbar transforaminal steroid injections.

By decision dated March 15, 2011, an OWCP hearing representative affirmed the prior decision.

### **LEGAL PRECEDENT**

Where 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 establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she 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.<sup>3</sup>

OWCP's implementing regulations define a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>4</sup> 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-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>6</sup> Rationalized medical

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<sup>3</sup> *Richard A. Neidert*, 57 ECAB 474 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005); *Terry R. Hedman*, 38 ECAB 222 (1986); *A.M.*, Docket No. 09-1895 (issued April 23, 2010).

<sup>4</sup> 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). *See also Phillip L. Barnes*, 55 ECAB 426 (2004).

<sup>5</sup> *Id.* at § 10.5(x). *See Hubert Jones, Jr.*, 57 ECAB 467 (2006); *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *K.S.*, Docket No. 08-2105 (issued February 11, 2009).

<sup>6</sup> *A.D.*, 58 ECAB 149 (2006); *D Wayne Avila*, 57 ECAB 642 (2006); *Y.J.*, Docket No. 08-1167 (issued October 7, 2008).

opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>8</sup>

Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial evidence.<sup>9</sup> Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.<sup>10</sup> The Board has held that when a physician's statements regarding an employee's ability to work consist of only a repetition of the employee's complaints that he or she hurt too much to work, without objective signs 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>11</sup> While there must be a proven basis for the pain, due to an employment-related condition can be the basis for the payment of compensation.<sup>12</sup> The Board, however, will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.<sup>13</sup> To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>14</sup>

### ANALYSIS

OWCP accepted that appellant sustained right side L4-5 herniated disc and a lumbar strain in 1987 and 1988. Appellant worked light duty following her accepted injuries. She claimed compensation for total disability from March 22 to April 23, 2010. On July 8, 2010 OWCP advised appellant of the factual and medical evidence needed to establish her claim. The Board notes that she has not alleged and there is no evidence to establish a change in the nature and extent of the light-duty job requirements or that appropriate light duty was not available during the claimed period. Appellant alleged that her back pain increased to the point she could not work. She has the burden to establish that her disability for the period March 22 to April 23, 2010 is due to the accepted low back condition. The Board finds appellant has not met her

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<sup>7</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>8</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>10</sup> *See Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>11</sup> *John L. Clark*, 32 ECAB 1618 (1981).

<sup>12</sup> *Barry C. Peterson*, 52 ECAB 120 (2000).

<sup>13</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>14</sup> *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

burden of proof to establish that her disability during the claimed period March 22 to April 23, 2010 was due to the accepted condition.

Appellant submitted a series of treatment records from Dr. Leizman, who took her off work from March 22 to April 29, 2010. Dr. Leizman attributed appellant's disability for the period March 22 to April 30, 2010 to low back pain and displacement of the lumbar disc. While he provided findings on examination and he offered no explanation regarding how her medical treatment commencing in March 2010 was related to her prior accepted conditions or why she became unable to work her light-duty position for the claimed period of disability. To establish a change in the nature and extent of the injury-related condition, the medical opinion must be based on a complete and accurate factual and medical history and supported by sound medical reasoning that the disabling condition is causally related to employment factors.<sup>15</sup> Dr. Leizman offered no discussion explaining how his findings related to appellant's accepted work injury or how her inability to work was due to the accepted L4-5 disc condition. He did not provide a complete medical history of her treatment prior to March 2010. Therefore, Dr. Leizman's opinion is insufficient to meet her burden of proof.

Appellant also submitted reports from Dr. Moufawad and a May 24, 2010 "TENS Recheck" form. However, neither of these reports addressed her disability for work during the claimed period causally related to the accepted injury. The reports are insufficient to meet appellant's burden of proof.

Appellant failed to establish by the weight of the reliable, probative and substantial evidence, a change in the nature and extent of the injury-related condition resulting in her inability to perform the duties of her modified employment, or provide rationalized opinion evidence establishing that she was physically disabled during the claimed period of March 22 to April 23, 2010 as a result of her accepted condition. She did not provide a well-reasoned medical opinion addressing total disability for the period claimed.

On appeal, counsel asserts that OWCP's March 15, 2011 decision is contrary to fact and law. As noted, the medical evidence is not sufficient to establish total disability for work from March 22 to April 23, 2010.

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 did not establish that she sustained a recurrence of disability for the period March 22 to April 23, 2010 due to her accepted employment injuries.

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<sup>15</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005); K.C., Docket No. 08-2222 (issued July 23, 2009).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated March 15, 2011 is affirmed.

Issued: January 4, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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