



On appeal, counsel asserts that OWCP incorrectly found that an increase in pain caused by accepted complex regional pain syndrome did not constitute a recurrence of disability. He noted that the accepted condition was a pain syndrome and that its documented spontaneous increase was therefore a recurrence of disability. Counsel asserted that the opinion of an attending pain management specialist was sufficient to establish the claimed recurrence of disability.

### **FACTUAL HISTORY**

OWCP accepted that on June 2, 2009 appellant, then a 31-year-old full-time program assistant, sustained a right ankle contusion with reflex sympathetic dystrophy/complex regional pain syndrome when struck by a metal wheelchair footrest. Appellant stopped work on June 2, 2009 and received compensation for temporary total disability. She first sought treatment from Dr. Edward L. Chairman, an attending podiatrist. In a June 4, 2009 report, Dr. Chairman noted that she had surgery on her right Achilles tendon in September 2009 and a previously accepted occupational injury to the right foot on November 4, 2008. Dr. Jason H. Lee, an attending physician Board-certified in physiatry and pain medicine, treated appellant beginning on June 23, 2009. As conservative measures did not resolve appellant's pain symptoms or the objective skin temperature and color changes in the right foot, Dr. Lee implanted a spinal stimulator on November 24, 2009, approved by OWCP.

Appellant returned to work for four hours a day as a program assistant on April 19, 2010. She received wage-loss compensation for the remaining four hours a day through January 14, 2011. Appellant remained under treatment.

On January 24, 2011 appellant filed a recurrence of disability, asserting that the accepted condition worsened on January 13, 2011 such that she could no longer perform her modified position. She explained that she experienced a sudden intensification of right foot and leg pain while sitting at her desk at work. Appellant then sought treatment at a hospital emergency room. She stopped work on January 14, 2011. Appellant claimed compensation for total disability from January 20, 2011 onward. OWCP continued to compensate her for four hours a day of wage loss.

In a January 19, 2011 report, Dr. John Park, an attending physician Board-certified in pain management, noted examining appellant on January 14, 2011. He opined that she could not work due to chronic pain caused by the accepted reflex sympathetic dystrophy syndrome. Dr. Park recommended stress reduction therapy. He held appellant off work through February 18, 2011.

In a February 9, 2011 letter, OWCP advised appellant of the type of evidence needed to establish her claim, including a narrative report from her physician documenting a spontaneous worsening of the accepted condition disabling her from performing her part-time position.

Dr. Park submitted February 9 and March 1, 2011 reports noting that appellant had poor pain control despite the spinal cord stimulator and medication. He found her totally disabled for work due to complex regional pain syndrome.

On April 4, 2011 OWCP obtained a second opinion from Dr. Mohammad Aslam, a Board-certified neurologist, who reviewed medical records and a statement of accepted facts provided by OWCP. Dr. Aslam related appellant's symptoms of bilateral lower extremity pain. On examination, he noted stocking anesthesia in both legs and muscle tightness in the right foot and knee. Dr. Aslam diagnosed complex regional pain syndrome/reflex sympathetic dystrophy with an emotional overlay. He found appellant able to resume working four hours a day, noting that there was no objective evidence that the accepted condition worsened as of January 13, 2011.

By decision dated May 4, 2011, OWCP denied appellant's claim for a recurrence of disability on the grounds that the medical evidence was insufficient to establish a worsening of the accepted reflex sympathetic dystrophy syndrome on January 15, 2011. It accorded the weight of the medical evidence to Dr. Aslam as he was a Board-certified neurologist while Dr. Park was Board-certified in pain management.

In a May 11, 2011 letter, appellant, through counsel, requested a telephonic hearing, held August 3, 2011. At the hearing, she stated that, in mid-January 2011, she observed an objective increase in swelling in the right calf and knee, with muscle spasms in the right leg. Appellant's physician also observed increased atrophy in the right calf. Counsel asserted that Dr. Park's May 10, 2011 opinion created a conflict with that of Dr. Aslam, requiring appointment of a referee medical specialist. Appellant submitted additional evidence.

Dr. Park noted worsening right lower extremity pain with muscle spasms on March 24<sup>3</sup> and April 19, 2011. In a May 10, 2011 report, he diagnosed worsening chronic regional pain syndrome and neuropathic pain. Dr. Park contended that reflex sympathetic dystrophy syndrome was a pain syndrome treated by pain management specialists, not neurologists and that his expertise in the condition was superior to that of Dr. Aslam. He explained that appellant's subjective reports of increased pain beginning on January 13, 2011 correlated well with the objective findings on January 14, 2011 examination of "increased allodynia and hyperesthesia. In addition, [appellant had] discoloration and swelling of the lower extremities ... consistent with RSD [reflex sympathetic dystrophy]." Dr. Park characterized her as honest and realistic in describing her symptoms. He submitted June 14 and August 30, 2011 reports finding increased swelling of both legs.

By decision dated and finalized September 27, 2011 an OWCP hearing representative affirmed OWCP's May 4, 2011 decision, finding that appellant had not established a recurrence of disability on and after January 15, 2011. The hearing representative found that Dr. Park presented insufficient objective evidence of a worsening of the claimed complex regional pain syndrome.

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<sup>3</sup> In a March 23, 2011 report, Dr. Shailen Jalali, an attending physician Board-certified in pain management and an associate of Dr. Park, observed allodynia and hyperesthesia in the lower extremities. He diagnosed chronic regional pain syndrome and neuropathic pain.

## LEGAL PRECEDENT

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> 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 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 such that the position exceeds the employee's physical limitations.<sup>5</sup> An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.<sup>6</sup>

Section 8123 of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination.<sup>7</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>8</sup>

## ANALYSIS

OWCP accepted that appellant sustained a right ankle contusion with consequential reflex sympathetic dystrophy/complex regional pain syndrome. Appellant remained off work from June 2, 2009 to April 18, 2010. She returned to work for four hours a day on April 19, 2010. Appellant claimed a recurrence of disability commencing January 13, 2011 while working four hours a day. She described a sudden, spontaneous worsening of her right lower extremity symptoms while sitting at her desk at work.

Dr. Park, an attending physician Board-certified in pain management, found appellant totally disabled for work as of January 14, 2011 due to complex regional pain syndrome of the right lower extremity. He noted that medication and a spinal cord stimulator did not alleviate her

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<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 Philip L. Barnes*, 55 ECAB 426 (2004).

<sup>5</sup> *J.F.*, 58 ECAB 124 (2006); *Carl C. Graci*, 50 ECAB 557 (1999); *Mary G. Allen*, 50 ECAB 103 (1998); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>6</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>7</sup> 5 U.S.C. § 8123; *see Charles S. Hamilton*, 52 ECAB 110 (2000).

<sup>8</sup> *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

symptoms. On April 4, 2011 appellant obtained a second opinion from Dr. Aslam, a Board-certified neurologist, who found that the accepted complex regional pain syndrome did not disable appellant from working four hours a day. Dr. Aslam stated that the medical record did not support a worsening of the accepted condition in mid-January 2011. OWCP denied appellant's recurrence claim on May 4, 2011 based on his report as the weight of the medical evidence.

Following an August 3, 2011 hearing, Dr. Park responded to Dr. Aslam's opinion in a May 10, 2011 letter. He explained that, on January 14, 2011 examination, appellant exhibited an objective increase in allodynia and hypoesthesia, with swelling and discoloration of the lower extremities. Dr. Park opined that these clinical findings, correlated well with appellant's account of increased pain beginning on January 13, 2011. He assessed appellant as honest and realistic in describing her symptoms. OWCP affirmed the denial of her recurrence claim on September 27, 2011, again according Dr. Aslam the weight of the medical evidence.

Dr. Park opined that objective findings on a January 14, 2011 examination were consistent with appellant's account of a worsening of symptoms on January 13, 2011. In contrast, Dr. Aslam found that the medical evidence did not support a worsening of the accepted condition in mid-January 2011. The Board therefore finds that there is an outstanding conflict of medical opinion between Dr. Park and Dr. Aslam regarding whether she sustained a recurrence of disability on and after January 15, 2011 due to the accepted reflex sympathetic dystrophy syndrome, disabling her from her modified position. The case will be remanded to OWCP for selection of an impartial medical examiner to resolve the conflict of opinion.<sup>9</sup> Following this and any other development deemed necessary, OWCP shall issue an appropriate decision in the case.

### CONCLUSION

The Board finds that the case is not in posture for a decision due to a conflict of medical opinion.

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<sup>9</sup> *Supra* note 7.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 27, 2011 is set aside and the case remanded to OWCP for further action consistent with this opinion.

Issued: January 7, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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