



benefits, which OWCP accepted for back contusion, right rotator cuff syndrome, and sciatica. Appellant received compensation for total disability through July 29, 2009, when he returned to full duty.

On April 12, 2013 appellant filed a Form CA-2a claim for benefits, alleging that he sustained a recurrence of disability on April 10, 2013 which was causally related to his January 7, 2009 work injury. He returned to work full duty on April 15, 2013. OWCP accepted the claim for this period of disability. Appellant again stopped work on November 3, 2013 and returned to work on light duty on December 20, 2013. OWCP also paid wage-loss benefits for this period of disability.

On June 10, 2014 appellant filed a Form CA-2a claim for benefits, alleging that he sustained a recurrence of disability on May 20, 2014 which was causally related to his January 7, 2009 work injury.

In support of this claim of recurrence of disability, OWCP received an April 24, 2014 report from Dr. Bedros Barkirtzian, a specialist in orthopedic surgery. Dr. Barkirtzian stated that he was treating appellant for lower back and left leg pain. He related that appellant was considering undergoing surgery to ameliorate his lower back and sciatica conditions, but would first undergo a computerized axial tomography (CAT) scan and electromyogram/nerve conduction velocity study. Dr. Barkirtzian advised that appellant continued to complain of pain radiating down his left thigh over the posterior lateral aspect of his leg and into the dorsal and lateral aspect of his left foot. He stated that appellant was currently not working.

On examination Dr. Barkirtzian reported that appellant avoided sitting and that he was more comfortable in the standing position than in the sitting position. He diagnosed sciatica, radiculopathy, and noted lower back pain. Dr. Barkirtzian recommended that appellant undergo a fusion procedure to ameliorate his sciatica condition.

On May 1, 2014 Dr. Craig T. Montgomery, Board-certified in orthopedic surgery, administered a lumbar CAT scan to appellant. He reported that the results of this test indicated a mild loss of intervertebral disc space height at L5-S1, posteriorly; a diffuse disc bulge, mild narrowing of neural foramina on the left inferiorly at L3-4; and a large, diffuse central disc bulge with hypertrophy of facet joints resulting in moderate-to-severe central canal stenosis at L4-5.

In a May 29, 2014 report, Dr. Barkirtzian reported that appellant's lower back pain had worsened. Appellant advised that his legs felt as if they were going to "give out." Dr. Barkirtzian related that appellant was treated at urgent care and was taken off work. He reiterated that he was awaiting results of the diagnostic tests so that he could schedule surgery. Dr. Barkirtzian advised that appellant was experiencing persistent back pain and bilateral leg pain, radiating down both of his legs, worse on the left side. He asserted that appellant recently visited the emergency center because of increasing pain in his lower extremities. Dr. Barkirtzian reiterated the diagnoses of sciatica and radiculopathy. He recommended that appellant remain off work and rest as much as possible.

By letter dated June 20, 2014, OWCP advised appellant that it required additional factual and medical evidence, including a comprehensive medical report, to support his claim that his

condition/or disability as of May 20, 2014 was causally related to his previously accepted lower back and sciatica conditions from the 2009 injury. It requested factual and medical evidence to substantiate that his disability had resulted from the previous injury without an intervening injury or new exposure to factors causing the illness; or a withdrawal of a light-duty assignment made specifically to accommodate his condition due to the work-related injury.

By decision dated July 22, 2014, OWCP denied appellant's claim for a recurrence of his accepted lower back and sciatica conditions. It found that he had failed to submit medical evidence sufficient to establish that the claimed disability as of May 20, 2014 was caused or aggravated by his accepted conditions.

In a July 23, 2014 report, Dr. Montgomery reiterated the results of his May 1, 2014 CAT scan and stated that the results of a lumbar magnetic resonance imaging scan showed the following findings: claudication due to lumbar spinal stenosis; lumbar spondylosis; herniated nucleus pulposus at L5-S1; and herniated nucleus pulposus at L4-5. He recommended surgery to ameliorate these conditions.

On August 7, 2014 appellant requested a hearing.

In a report dated September 17, 2014, Dr. John Burnett, Board-certified in family practice and anesthesiology, stated that appellant had a history of back injury and was scheduled for back surgery in January 2015 to repair a disc herniation with significant impingement, causing sciatica down the left leg. He advised that appellant was experiencing significant leg pain radiating down along the lateral aspect of his left leg, causing numbness in the left aspect of his left foot as well as weakness with his left great toe and left foot. Dr. Burnett advised that appellant also suffered from spasms in several muscles, including his calf, thigh, and left ankle. These symptoms had worsened over the past few months.

In a report dated September 23, 2014, Dr. Burnett reported that he was treating appellant for lumbar disc disease and disc herniation resulting in significant neuropathic pain and muscle spasms to his left lower and right lower extremities, which caused him severe and incapacitating pain and other complications. He advised that his condition had steadily deteriorated, especially since his most recent exacerbation this past May 2014, which occurred during physical therapy. Dr. Burnett stated that appellant had undergone multiple trials of different medications as well as physical therapy and steroid injections, which did not produce definitive or complete relief of his symptoms. He opined that appellant was totally disabled and had major depression caused by his chronic, unrelieved pain from the lumbar disc herniation. Dr. Burnett recommended surgery to ameliorate his lumbar condition.

In a report dated September 30, 2014, an OWCP medical adviser, Dr. Andrew Merola approved the proposed L4-5 and L5-S1 decompression and fusion procedure surgery. He indicated that the surgery was being performed to correct lumbar radiculopathy. Dr. Merola did not address whether appellant sustained a recurrence of disability on May 20, 2014.

On January 30, 2015 Dr. Montgomery performed a lateral lumbar fusion at L4-5.

By decision dated March 3, 2015, an OWCP hearing representative affirmed the July 22, 2014 decision.<sup>2</sup>

### **LEGAL PRECEDENT**

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 light duty can be performed, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of disability. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.<sup>3</sup>

The Board will not require OWCP to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>4</sup>

### **ANALYSIS**

In the instant case, the record does not contain any medical opinion showing a change in the nature and extent of appellant's injury-related condition resulting in total disability as of May 20, 2014. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates disability as of May 20, 2014 to his accepted lower back and sciatica conditions. For this reason, he has not discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment conditions.

Appellant submitted reports from Drs. Barkirtzian, Montgomery and Burnett. Dr. Barkirtzian did not address the cause of appellant's condition. He advised that appellant was considering an L4-5 and L5-S1 decompression and fusion procedure to ameliorate his lower back and sciatica conditions. In his May 29, 2014 report, Dr. Barkirtzian stated that appellant's lower back pain had increased, noting that appellant visited urgent care and was taken off work. He asserted that appellant was experiencing persistent back pain and bilateral leg pain which radiated down both of his legs. Dr. Barkirtzian recommended that appellant remain off work and rest as much as possible.

Dr. Montgomery diagnosed herniated discs at L4-5 and L5-S1 and advised that appellant was preparing for an L4-5 and L5-S1 decompression and fusion procedure, but did not address whether appellant sustained a recurrence on May 20, 2014.

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<sup>2</sup> By decision dated March 18, 2015, OWCP authorized appellant's surgery and recurrence of disability as of January 30, 2015.

<sup>3</sup> *Terry Hedman*, 38 ECAB 222 (1986).

<sup>4</sup> *See W.T.*, Docket No. 13-1026 (issued September 10, 2013).

In his September 17 and 23, 2014 reports, Dr. Burnett noted findings on examination and advised that appellant was scheduled for back surgery in January 2015 to repair a disc herniation with significant impairment in impingement, which caused sciatica down the left leg. He opined that appellant's condition had steadily deteriorated and briefly noted that appellant had sustained an "exacerbation" of his condition in May 2014. None of the physicians of record have provided a probative, rationalized medical opinion which addressed or explained whether appellant sustained a recurrence of disability due to his accepted lower back and sciatica conditions on May 20, 2014. While OWCP's medical adviser approved the proposed L4-5 and L5-S1 decompression and fusion laminectomy procedure, and OWCP paid disability compensation as of January 30, 2015, he made no findings regarding whether appellant sustained a recurrence of disability as of May 20, 2014.

The reports from Drs. Barkirtzian, Montgomery and Burnett provided a diagnosis of appellant's current condition and indicated generally that he complained of disabling pain in May and June 2014, but did not constitute probative, rationalized medical evidence sufficient to establish that appellant's disability as of May 20, 2014 was causally related to his accepted lower back and sciatica conditions. Thus, the reports from these physicians do not constitute probative, rationalized evidence demonstrating that a change occurred in the nature and extent of the injury-related condition sufficient to warrant total disability.<sup>5</sup> Further, appellant did not submit any evidence indicating that there was a change in the nature and extent of his limited-duty assignment. Accordingly, OWCP properly denied compensation for a recurrence of appellant's work-related lower back and sciatica conditions for the period May 20, 2014 through January 30, 2015. The Board therefore affirms OWCP hearing representative's March 3, 2015 decision denying compensation based on a recurrence of his work-related disability as of May 20, 2014.

### **CONCLUSION**

The Board finds that appellant has not met his burden to establish a recurrence of disability from May 20, 2014 through January 30, 2015 causally related to his accepted January 7, 2009 injury.

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<sup>5</sup> *William C. Thomas*, 45 ECAB 591 (1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 3, 2015 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 14, 2015  
Washington, DC

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

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board