



Cornwall, an attending Board-certified family practitioner, released appellant to return to full duty in her date-of-injury position.

On April 19, 2008 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability commencing April 7, 2008. On the claim form, Donald E. Overton, a supervisor, stated that appellant worked with restrictions from October 8, 2004 to June 15, 2005. Appellant was released by an attending physician to return to full duty in her date-of-injury position.

By letter dated May 8, 2008, the Office addressed the factual and medical evidence appellant needed to submit to establish her recurrence of total disability claim. Appellant was allowed 30 days to submit such evidence. She did not respond.

By decision dated June 18, 2008, the Office denied appellant's recurrence of total disability claim. It found the evidence of record insufficient to establish that she sustained a recurrence of total disability commencing April 7, 2008 causally related to her accepted employment-related injury.

In a June 15, 2008 letter, Mr. Overton stated that in March 2007 appellant bid into Tour 1 Automation. On April 10 and 12, 2008 appellant called in sick due to a thoracic muscle strain. Mr. Overton related that appellant performed light-duty work from April 12 to 30, 2008. Appellant performed her normal work duties from May 1 through 16, 2008 but asked to do so using Tier-3 data bar code sorting machines rather than Tier-4 machines. Beginning on May 17, 2008 she performed her normal work duties with no restrictions or accommodations. Mr. Overton stated that appellant never informed him that her light-duty work or accommodation on the Tier-3 machines was due to an old injury or any injury. It was not until he received the Form CA-2a that he became aware of her employment-related back injury. Appellant's leave and analysis records from January 22, 2005 to July 15, 2008 indicated that she was off work due to back problems.

In a July 22, 2008 letter, Gary Pitzl, an acting manager of distribution operations, stated that, since the closing of appellant's case on May 4, 2005, no accommodations were made related to her accepted employment injury. Appellant was absent 64 times from work through April 7, 2008 due to a nonwork-related neurological condition.

On August 13, 2008 appellant requested reconsideration. She stated that, following her October 4, 2004 employment injury, she returned to her flat sorter duties which involved removing flat mail from tubs and loading them onto a feeder. Subsequently, appellant worked in automation letters which involved loading trays filled with letters onto a ledge, sweeping a machine from ankle level to well above the shoulder, and pulling mail and twisting to place it in trays four stackers high. She suffered from severe migraines which caused her to miss many days from work. Appellant was diagnosed with Arnold Chiari malformation syndrome for which she underwent surgery and was off work for three months. She returned to a limited-duty work schedule, one or two days per week and worked on easier machines. Appellant continued to experience severe migraines and missed many days from work. She was subsequently diagnosed with post-traumatic stress disorder and at that time she worked one to two days per week and planned to gradually work more days over six months.

In an August 6, 2008 letter, Mary Hughes, a registered nurse, stated that appellant was evaluated on April 11, 15 and June 3, 2008 for back pain.

In a June 3, 2008 medical report, Dr. Jay L. Hawkins, an internist, stated that appellant was being followed for a recurrence of her accepted employment injury. Appellant experienced intermittent episodes of exacerbated left lower lumbar pain that radiated up towards the thoracic area and down into the left leg. Her pain worsened with lifting especially over the head, and prolonged standing and walking. Appellant's acute episodes improved with medication and rest. On physical examination, Dr. Hawkins reported tenderness to palpation over the left lower lumbar paraspinal muscles and into the superior gluteal region. There was no pain over the spinous processes or in the sacroiliac joints themselves. Positive straight leg raising was at approximately 60 degrees on the right and 45 degrees on the left. Dr. Hawkins stated that the maneuver reproduced pain in appellant's lower back but did not cause radiculopathy or sciatic-type pain. On neurological examination, he reported continued 1+ deep tendon reflexes which were equal bilaterally with 5/5 strength. Chronic neuropathy in the bilateral lower extremities was unchanged. Dr. Hawkins stated that a 2004 magnetic resonance imaging (MRI) scan demonstrated facet joint disease which caused mild central canal narrowing at L4-5 and degenerative facet joint disease at L3-4 and L5-S1. He opined that appellant's accepted employment-related lumbar muscle strain continued to be exacerbated by heavy lifting and prolonged standing. Dr. Hawkins stated that lumbar muscle strains were prone to recurrent exacerbation and often required prolonged management with medication and physical therapy.

By decision dated October 6, 2008, the Office denied modification of the June 18, 2008 decision. It found that the evidence submitted by appellant was insufficient to establish that she sustained a recurrence of disability commencing April 7, 2008.

### **LEGAL PRECEDENT**

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment, which caused the illness. The 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>1</sup>

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which she claims compensation is causally related to the accepted employment injury.<sup>2</sup> Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal

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<sup>1</sup> 20 C.F.R. § 10.5(x).

<sup>2</sup> *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

relationship between her recurrence of disability and her employment injury.<sup>3</sup> This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.<sup>4</sup> Moreover, the physician's conclusion must be supported by sound medical reasoning.<sup>5</sup>

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>6</sup> In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.<sup>7</sup> While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>8</sup>

### ANALYSIS

The Office accepted that appellant sustained a lumbar strain while in the performance of duty on October 4, 2004. Appellant returned to her regular duties as of May 4, 2005. She claimed a recurrence of total disability commencing April 7, 2008. The Board finds that appellant has failed to submit sufficient medical evidence to establish that her claimed recurrence was caused or aggravated by her accepted employment-related lumbar strain.

The August 6, 2008 letter of Ms. Hughes, a registered nurse, does not constitute probative evidence. A nurse is not defined as a physician under the Federal Employees' Compensation Act.<sup>9</sup> This letter does not constitute competent medical evidence to support appellant's recurrence of disability claim.

Dr. Hawkins' June 3, 2008 report provided findings on physical examination. He noted that appellant experienced pain in the left lower lumbar paraspinal muscles and into the superior gluteal region. Dr. Hawkins noted that a 2004 MRI scan showed a facet joint disease of the lumbar spine. He noted the original diagnosis of lumbar strain, from which appellant was able to return to regular duty. After reporting the results of his examination and diagnostic testing, Dr. Hawkins opined that heavy lifting and prolonged standing exacerbated appellant's accepted

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<sup>3</sup> *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

<sup>4</sup> *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

<sup>5</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

<sup>6</sup> *See Ricky S. Storms*, *supra* note 4; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

<sup>7</sup> For the importance of bridging information in establishing a claim for a recurrence of disability, *see Richard McBride*, 37 ECAB 748 at 753 (1986).

<sup>8</sup> *See Ricky S. Storms*, *supra* note 4; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>9</sup> *See* 5 U.S.C. § 8101(2); *G.G.*, 58 ECAB \_\_\_\_ (Docket No. 06-1564, issued February 27, 2007).

employment-related lumbar muscle strain. He stated that lumbar muscle strains were prone to recurrent exacerbation and often required prolonged management with medication and physical therapy. While Dr. Hawkins indicated that appellant's work duties of heaving, lifting and prolonged standing contributed to her current back condition, he failed to provide medical rationale explaining how the condition was caused by the accepted October 4, 2004 employment injury.<sup>10</sup> He noted that appellant's work duties following her return to regular duty resulted in a reexacerbation of her lumbar symptoms. Further, Dr. Hawkins did not provide any opinion addressing her disability for work commencing April 7, 2008. The Board finds that his report is insufficient to establish appellant's claim.

Appellant failed to submit rationalized medical evidence establishing that her disability commencing April 7, 2008 resulted from the effects of her employment-related lumbar strain. The Board finds that she has not met her burden of proof.

### **CONCLUSION**

The Board finds that appellant has failed to establish that she sustained a recurrence of total disability commencing April 7, 2008 causally related to her accepted employment-related injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 6 and June 18, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 21, 2009  
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

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<sup>10</sup> *Richard A. Neidert*, 57 ECAB 474 (2006); *Alice J. Tysinger*, 51 ECAB 638 (2000) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).