

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

W.S., Appellant)
and) Docket No. 10-1103
U.S. POSTAL SERVICE, POST OFFICE,) Issued: February 22, 2011
Spencer, IA, Employer)
)

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 15, 2010 appellant filed a timely appeal from December 15, 2009 and February 19, 2010 merit decisions of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she is entitled to wage-loss compensation for the periods May 9 through 29, 2009 and June 20 through July 17, 2009.

FACTUAL HISTORY

On January 7, 2009 appellant, a 29-year-old part-time flexible (PTF) clerk, filed a traumatic injury claim alleging that she sustained a back injury in the performance of duty when she reached for a tray of mail. The Office accepted her claim for an annular tear at L4-5 and L5-S1. Appellant stopped working on the date of injury.

Appellant was treated by Dr. Jason C. Hough, a Board-certified osteopath, specializing in orthopedic surgery. On February 19, 2009 Dr. Hough released her to return to limited duty with

restrictions, which included no standing or sitting for more than four hours, no squatting or kneeling, no overtime and no pushing, pulling or lifting more than 10 pounds.

On February 20, 2009 appellant returned to work in a light-duty job as a modified PTF carrier. The physical requirements of the position were in accord with Dr. Hough's restrictions. Appellant's duties included casing letters and flat mail for four hours per day; replacing case labels for one hour per day; delivering all city route express mail; and processing afternoon accountables for a half hour per day.

Appellant submitted an April 14, 2009 report from Dr. Daniel G. Tynam, a treating physician, who stated that she heard a snap in her back while bending over to lift a tray on January 2, 2009 and noted that she had been experiencing lower back and bilateral leg pain since the injury. A January 5, 2009 magnetic resonance imaging (MRI) scan revealed a minor disc bulge at L3-4; annular tear centrally and posteriorly at L3-4, L4-5 and L5-S1; and some disc desiccation at the level of the lower three discs. Dr. Tynam diagnosed probable discogenic lower back and bilateral leg pain from an annular tear.

On April 27, 2009 Dr. Hough provided additional restrictions, including no repeated bending or twisting; no work above the shoulder level; and limited squatting, kneeling and climbing. The record contains a report of an April 21, 2009 MRI scan, which reflected no significant change in appellant's back condition since January 5, 2009.

The record contains a note of a May 7, 2009 telephone conversation in which appellant informed Dr. Hough's office that she left work and went home due to increased back pain. She stated that "she twisted wrong at work" and "work is too much for her."

In a May 14, 2009 report, Dr. Hough noted appellant's complaints of continued low back pain and discomfort. Examination of the low back demonstrated paraspinal muscular tightness from L1 to L5; piriformis fossa tenderness; and negative straight leg raise bilaterally. Dr. Hough diagnosed low back pain and discomfort and recommended that appellant see a physiatrist and undergo lower extremity electromyograms (EMG). In a separate note dated May 14, 2009, he stated that she should be "off work" until June 3, 2009, after evaluation by a physiatrist. On May 27, 2009 Dr. Hough indicated that appellant "needs to be off work until June 11, 2009."

Appellant submitted a claim for wage-loss compensation for the period May 9 through 27, 2009.

In a letter dated June 1 2009, the Office informed appellant that the evidence and information submitted was insufficient to establish her claim. Appellant was advised to submit a medical report with objective findings, a diagnosis and a rationalized opinion as to whether her accepted condition had worsened to the degree that she was unable to perform the duties of her modified job and, if so, how her current condition was causally related to the accepted injury.

On June 19, 2009 the Office informed appellant that her claim for lost wages constituted a claim for a recurrence of disability.

Appellant submitted a June 3, 2009 report from Dr. James L. Lauck, a Board-certified osteopath specializing in rehabilitation medicine, who described her January 2, 2009 injury and

noted that she had experienced low back and leg pain since that time. The results of an MRI scan showed a small central disc herniation at L5-S1 and small broad-based central disc protrusions at L3-4 and L4-5. Dr. Lauck noted that twisting, bending, reaching, standing or sitting too long exacerbated appellant's symptoms, which included stabbing pain in the lower back. Examination revealed 5/5 strength in appellant's upper and lower extremities. Sensation was grossly intact to light touch, pinprick. Toes were down-going. Deep tendon reflexes were 2+ and symmetric in her upper and lower extremities. Appellant was able to heel walk, toe walk and heel-to-toe walk. Bilateral leg raise was negative, with some achiness in her low back. Straight leg raise was negative, but appellant did demonstrate tight hamstrings bilaterally with achy low back discomfort at about 60 degrees. Femoral stretch was negative. Appellant had decreased range of motion with forward flexion and extension of the lumbar spine. Right lateral bending and rotation was restricted when compared with the left visually. Appellant had significant discomfort with palpation of the lumbar spine primarily at L4-5 on the left, as well as discomfort and leg pain and pelvic and lumbar mechanical dysfunction. Dr. Lauck stated that he would keep appellant off for two weeks if she would follow his recommendations for a heel lift and physical therapy.

Appellant submitted a June 11, 2009 report from Dr. Stephen Frushour, a Board-certified orthopedic surgeon, who related that in January 2009 she was bending over to lift something at the employing establishment when she felt a "pop" in her back and had back pain. She spent six or seven days in the hospital on medications and in therapy. Appellant engaged in physical therapy both as an inpatient and outpatient. An MRI scan reflected some very minimal abnormalities that may or may not be pathology and they may have been present prior to her "injury." An EMG/nerve conduction velocity (NCV) was normal. The only abnormality found on physical examination was "tenderness and pain" on palpation of her back and moving of the extremity. Noting appellant's concern that, one leg was shorter than the other, Dr. Frushour assured her that if there was one leg shorter than the other, "this occurred long before any injury and has been there all of her life." He was unable to explain why she continued to have symptoms, which did not match the mild abnormalities reflected in the MRI scan. Appellant advised Dr. Frushour that she was much better until "they made her go back to work and then she started hurting once again." In a June 11, 2009 disability slip, Dr. Frushour placed a checkmark in a box indicating that appellant "may not return to work."

In a June 16, 2009 report, Dr. Hough stated that appellant had a "reexacerbation of her lower back pain." He was unable, however, to observe any objective findings on her MRI scan or EMG. On June 22, 2009 Dr. Hough noted that appellant was experiencing extreme pain, which was not managed with injections or oral medications. He opined that Dr. Lauck's plan would allow her to get back to work in a reasonable time frame. Dr. Hough stated that appellant appeared to have a radiculitis that affected her ability to stand and had increasing pain in the buttocks and legs with prolonged standing and sitting. An MRI scan and EMG did not reveal any physical source of her pain. In a June 22, 2009 duty status report, Dr. Hough recommended that appellant be placed off work. On June 29, 2009 he released her to return to work part time with restrictions, including lifting no more than 10 pounds for one hour; intermittent sitting, standing and walking; no climbing, kneeling, bending, stooping, twisting, pulling or pushing; and no reaching above the shoulder.

On June 25, 2009 Dr. Lauck provided a history of injury and treatment. He indicated that once appellant was back at work, which required reaching, lifting and bending, she developed lumbar and pelvic dysfunction. In addition to the initial annular tears, Dr. Lauck stated that the lumbar and pelvic dysfunctions by themselves could easily cause ongoing discomfort, which could be aggravated by reaching, bending and lifting unless treated with manual medicine or physical therapy. He opined that the objective findings of the pelvic and lumbar dysfunction and the long-standing discomfort with further activities was justification enough to keep appellant off work until she was mechanically more stable.

On June 29, 2009 Dr. Lauck stated that appellant could start slowly back to work, with two hours of sedentary work. He noted that she still had some discomfort when bending over, as well as along her left and right S1 joints, at the PSIS bilaterally and at L4-5 on the left, with paraspinal tightness. Appellant also had tightness and discomfort at T8 on the right. Her low back discomfort was improved. With the ongoing pelvic and lumbar dysfunction, however, Dr. Lauck opined that it was medically necessary to continue with work restrictions. Noting that appellant had returned to work in the past “with increase in her symptoms and more time off and work loss,” he recommended returning her to work slowly.

On July 1, 2009 appellant accepted a limited-duty job offer for a position as a PTF carrier. Required duties included cancelling flats for one hour and processing afternoon accountables for one hour. Physical requirements involved standing or sitting for no more than two hours and minimum lifting for 15 minutes.

In a letter dated July 1, 2009, Dr. Hough clarified his June 22, 2009 report. He stated that although he could identify no physical source for appellant’s pain, he believed that she did experience pain limiting her ability to work. On July 2, 2009 Dr. Hough stated that she had been removed from work completely because she was unable to stand or sit for any extended period of time greater than one hour without experiencing numbness and tingling within her leg and spasms in the back.¹ He opined that “it would benefit her to be off of work for approximately [four] weeks for her inflammation to slow.”

Appellant filed a claim for compensation for the period June 20 through July 3, 2009. In a July 20, 2009 letter, the Office informed her that her compensation claim for the period beginning June 20, 2009 could be construed as a claim for recurrence of disability. It advised appellant to submit a medical report with objective findings, a diagnosis and a rationalized opinion as to whether her accepted condition had worsened to the degree that she was unable to perform the duties of her modified job and, if so, how her current condition was causally related to the accepted injury.

By decision dated July 20, 2009, the Office denied appellant’s claim for wage-loss compensation for the period May 5 through 29, 2009. It found that he had not submitted sufficient medical evidence to establish that her accepted condition had worsened to the degree that she was unable to perform her light-duty job.

¹ The Board notes that Dr. Hough’s letter is actually dated July 2, 2007. The content of the letter reflects, however, that it was written in 2009.

On July 24, 2009 appellant requested a telephonic hearing.

Appellant submitted July 13, 2009 notes from Dr. Lauck reflecting improvement in her condition. Dr. Lauck diagnosed lower back pain and recommended that she return to a six-hour workday with restrictions. On July 28, 2009 he released appellant to work full time with restrictions as delineated in his June 29, 2009 report.

Appellant filed a claim for compensation for the period July 4 through 17, 2009. In an August 3, 2009 letter, the Office informed her that the evidence submitted in support of her claim was insufficient. It advised appellant to submit a medical report with objective findings, a diagnosis and a rationalized opinion as to whether her accepted condition had worsened to the degree that she was unable to perform the duties of her modified job and, if so, how her current condition was causally related to the accepted injury.

In a decision dated September 9, 2009, the Office denied appellant's claim for compensation for the period June 20 through July 17, 2009. It found that she had failed to establish that she sustained a recurrence of disability during the claimed period. The Office approved her request for compensation for four hours on each of the following days: June 22 through 29 and July 6 through 13, 2009.

On September 15, 2009 appellant requested an oral hearing.

In a letter dated October 6, 2009, appellant alleged that increased standing at work caused significant swelling and inflammation in her back, numbness and tingling in her legs and buttocks and spasms in her back, resulting in unbearable pain. The casing of the mail took its toll on her. While appellant was just sitting at her desk, she became stiff and sore.

At an October 23, 2009 hearing, appellant testified that she reinjured her back on May 7, 2009. On that day she "apparently reached or bent too far," resulting in extreme pain. Appellant stated that her physician had increased her restrictions "too much" and "that's what caused the inflammation and the swelling and the spasms." The more work she did, the more pain and discomfort she experienced.

In a November 3, 2009 letter, Dr. Hough stated that appellant sustained annular tears at L4-5 and L5-S1 on January 1, 2009. He opined that the progression of appellant's low back pain referenced in his July 1 and 2, 2009 reports was secondary to her muscle spasm within the low back. Dr. Hough reiterated that she did have an abnormal MRI scan that demonstrates annular tears and a small posterior disc. These do not associate with appellant's physical source of pain, as her pain is not in the area of the annular, but more in a paraspinal musculature. Dr. Hough stated that there were no objective findings on July 1, 2009, as she did not have any swelling at that time. He removed appellant from work because she was having increasing pain secondary to her muscle spasms.

In a November 11, 2009 narrative report, Dr. Lauck opined that appellant's low back and bilateral leg pain was secondary to her accepted annular tears, with compensatory pelvic and lumbar dysfunction increasing her discomfort. He noted that he first evaluated her on June 3, 2009, following her removal from the workplace by Dr. Hough on May 7, 2009. Dr. Lauck stated that appellant's symptoms and findings were consistent with chronic irritation seen with

annular tears and she had discomfort, tightness at L4-5 on his initial evaluation. He indicated that he felt it was prudent to continue appellant off work so that she could be monitored for her lumbar and pelvic dysfunction with new treatment consisting of manual medicine and physical therapy postural restoration techniques, which had not been tried in the past. Dr. Lauck noted that return to work would likely have only aggravated the annular tears, which had likely worsened her lumbar and pelvic dysfunction.

By decision dated December 15, 2009, the hearing representative affirmed the Office's July 20, 2009 decision, finding that appellant had not established a recurrence of disability for the period May 9 through 29, 2009. The hearing representative stated that he had received only one report subsequent to the October 26, 2009 hearing, namely the November 3, 2009 report from Dr. Hough, which he found insufficient to establish appellant's claim.

The record contains a transcript of a December 10, 2009 telephonic hearing regarding appellant's compensation claim for the period June 20 through July 17, 2009. Appellant testified that he did not sustain any new injuries after January 2, 2009.

Appellant submitted duplicates of previously submitted notes from Dr. Lauck for the period June 22 through November 16, 2009.

In a February 19, 2010 decision, an Office hearing representative affirmed the September 9, 2009 decision denying appellant's claim for wage-loss compensation from June 20 through July 17, 2009. He found that she had failed to establish a change in the nature of her accepted condition which would disable her from performing the duties of her modified position and therefore had failed to establish a recurrence of disability.

LEGAL PRECEDENT

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.²

Office procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change, demonstrated by objective findings, in the medical condition that resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.³

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish

² 20 C.F.R. § 10.5(x); see S.F., 59 ECAB 525 (2008). See 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997). Kenneth R. Love, 50 ECAB 193, 199 (1998).

by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he 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 requirements.⁴

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.⁵ 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.⁶ The physician's conclusion must be supported by sound medical reasoning.⁷

ANALYSIS

The Office accepted appellant's claim for annular tears at L4-5 and L5-S1. The record reflects that she returned to light duty on February 20, 2009. The issue is whether she has established that she sustained a recurrence of disability for the periods May 9 through 29 and June 20 though July 17, 2009 causally related to her accepted injury.

In the December 15, 2009 decision, the Office hearing representative affirmed the Office's July 20, 2009 decision, finding that appellant had not established a recurrence of disability for the period May 9 through 29, 2009. He stated that he had received only one report subsequent to the October 26, 2009 hearing, namely the November 3, 2009 report from Dr. Hough, which he found insufficient to establish appellant's claim. The record reflects, however, that appellant submitted a November 11, 2009 narrative report from Dr. Lauck, which was received by the Office on December 15, 2009. Dr. Lauck provided a history of injury and treatment and opined that her low back and bilateral leg pain was secondary to her accepted annular tears, with compensatory pelvic and lumbar dysfunction increasing her discomfort. He explained that he felt it was prudent to continue appellant off work so that she could be monitored for her lumbar and pelvic dysfunction with new treatment consisting of manual medicine and physical therapy postural restoration techniques, which had not been tried in the past. Dr. Lauck noted that return to work would likely have only aggravated the annular tears, which had likely worsened her lumbar and pelvic dysfunction.

As the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision,⁸ it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final

⁴ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁶ S.S., 59 ECAB 315 (2008).

⁷ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

⁸ 20 C.F.R. § 501.2(c).

decision.⁹ As the Board's decisions are final as to the subject matter appealed,¹⁰ it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office. The Board notes that the Office was required to consider all evidence submitted by a claimant and received by the Office prior to the issuance of its final decision, including evidence received on the date of the decision.¹¹ It makes no difference that the hearing representative may not have been directly in possession of the evidence. Indeed, the Board precedent envisions evidence received by the Office but not yet associated with the case record when the final decision is issued.¹² In the December 15, 2009 decision, the Office hearing representative made no reference to Dr. Lauck's November 11, 2009 report. Because it does not appear that he considered the November 11, 2009 report in reaching his December 15, 2009 decision, the Board cannot review such evidence for the first time on appeal.¹³ Accordingly, the Board finds that this case is not in posture for a decision as to whether appellant is entitled to wage-loss compensation for the period May 7 through 29, 2009.

In a February 19, 2010 decision, the Office hearing representative found that appellant had failed to establish entitlement to wage-loss compensation for the period June 20 through July 17, 2009. Appellant did not allege that her light-duty job requirements changed or that her position was withdrawn. Rather, she contended that her accepted condition worsened such that she was unable to perform her light-duty position. The medical evidence of record, however, fails to establish that she sustained a recurrence of disability due to her accepted injury.¹⁴

As noted, 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 resulting from a previous injury or illness without a new or intervening injury.¹⁵ Appellant submitted no rationalized medical evidence supporting that she experienced a spontaneous change in her medical condition due to the accepted injury. Rather, she reported to the Office and to her physicians that her pain was exacerbated by the activities required by her light-duty assignment. On June 11, 2009 Dr. Frushour indicated that appellant was much better until "they made her go back to work and then she started hurting once again." On June 16, 2009 Dr. Hough stated that she had a "reexacerbation of her lower back pain." On June 25, 2009 Dr. Lauck indicated that once appellant was back at work, which required reaching, lifting and bending, she developed

⁹ See *William A. Couch*, 41 ECAB 548 (1990).

¹⁰ See 20 C.F.R. § 601.6(c).

¹¹ See *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *supra* note 9 (Office did not consider new evidence received four days prior to the date of its decision); see *Linda Johnson*, 45 ECAB 439 (1994) (applying *Couch* where the Office did not consider a medical report received on the date of its decision).

¹² See *Yvette N. Davis*, *supra* note 11; *Linda Johnson*, *supra* note 11.

¹³ *Supra* note 8.

¹⁴ S.S., *supra* note 6.

¹⁵ *Mary A. Ceglia*, 55 ECAB 626 (2004).

lumbar and pelvic dysfunction. The Board finds that her claim does not meet the definition of a recurrence of disability.¹⁶

On April 14, 2009 Dr. Tynam stated that appellant heard a snap in her back while bending over to lift a tray on January 2, 2009 and noted that she had been experiencing lower back and bilateral leg pain since the injury. He described the results of a January 5, 2009 MRI scan, which revealed a minor disc bulge at L3-4; annular tear centrally and posteriorly at L3-4, L4-5 and L5-S1; and some disc desiccation at the level of the lower three discs. Dr. Tynam diagnosed probable discogenic lower back and bilateral leg pain from an annular tear. His report is of limited probative value on several counts. Dr. Tynam's diagnosis is speculative. Most significantly, his report does not contain a description of appellant's modified job duties or an opinion on her ability to perform those duties,¹⁷ or can his April 2009 report, which predates the period of her alleged disability, accurately reflect her ability to work in her limited-duty job in June and July 2009.

Dr. Hough's reports are insufficient to establish that appellant sustained a recurrence of disability. On May 14, 2009 he provided examination findings, diagnosed low back pain and discomfort and stated that she should be "off work" until June 3, 2009, after evaluation by a physiatrist. On May 27, 2009 Dr. Hough indicated that appellant "needs to be off work until June 11, 2009." He did not provide a definitive diagnosis¹⁸ nor an explanation as to how appellant's alleged inability to work was causally related to her accepted annular tears. Moreover, by virtue of the dates of the reports, they cannot speak to her alleged disability from June 20 through July 17, 2009.

In June 16 and 22, 2009 reports, Dr. Hough noted that appellant was experiencing extreme pain. He was not, however, able to identify any objective findings to explain the cause of the pain. On June 22, 2009 Dr. Hough recommended that appellant be placed off work; he did not, however explain why she was unable to work, in light of an absence of objective findings or how her current condition was causally related to the accepted annular tears. Therefore, these reports are of limited probative value. On June 29, 2009 Dr. Hough released appellant to return to work part time with new restrictions. As he did not explain how these new restrictions were causally related to her accepted condition, his report does not support her inability to perform the limited-duty job.

In a letter dated July 1, 2009, Dr. Hough emphasized that although he could identify no physical source for appellant's pain, he believed that she did experience pain limiting her ability to work. On July 2, 2009 he noted that she had been removed from work completely because she was unable to stand or sit for any extended period of time greater than one hour without experiencing numbness and tingling within her leg and spasms in the back.¹⁹ Dr. Hough opined

¹⁶ See *Bryant F. Blackmon*, 56 ECAB 752 (2005).

¹⁷ See *Terry R. Hedman*, *supra* note 4.

¹⁸ A physician's mere diagnosis of pain, without more by way of an explanation, does not constitute a basis for payment of compensation. *Robert Broome*, 55 ECAB 493 (2004).

¹⁹ The Board notes that Dr. Hough's letter is actually dated July 2, 2007. The content of the letter reflects, however, that it was written in 2009.

that “it would benefit [appellant] to be off of work for approximately [four] weeks for her inflammation to slow.” These reports do not contain a definitive diagnosis and are devoid of any opinion as to the cause of appellant’s condition. Medical evidence which does not offer an opinion regarding the cause of an employee’s condition is of limited probative value.²⁰

On November 3, 2009 Dr. Hough noted that appellant sustained annular tears at L4-5 and L5-S1 on January 1, 2009. He opined that the progression of her disabling low back pain referenced in his July 1 and 2, 2009 reports was secondary to her muscle spasm within the low back. Dr. Hough did not explain, however, how the muscle spasms were causally related to the accepted condition. Instead, he opined that the annular tears revealed on an MRI scan were not related to appellant’s physical source of pain, as her pain was not in the area of the annular, but more in a paraspinal musculature. Dr. Hough reiterated that there were no objective findings on July 1, 2009, as she did not have any swelling at that time. His report does not support a causal relationship between appellant’s alleged inability to work and her accepted annular tears.

On June 3, 2009 Dr. Lauck provided a history of injury, examination findings and MRI scan results, which revealed a small central disc herniation at L5-S1 and small broad-based central disc protrusions at L3-4 and L4-5. He stated that he would keep appellant off for two weeks if she would follow his recommendations for a heel lift and physical therapy. Dr. Lauck did not, however, provide an opinion either that she was unable to perform her limited-duty position or as to the cause of her current condition. Therefore, his report is of diminished probative value.

On June 25, 2009 Dr. Lauck stated that appellant’s limited-duty activities were responsible for her lumbar and pelvic dysfunction, which, in addition to the initial annular tears, could easily cause ongoing discomfort. He stated his belief that her pelvic and lumbar dysfunction and discomfort with further activities was justification enough to keep her off work until she was mechanically more stable. Dr. Lauck did not, however, provide a definitive diagnosis, but rather described symptoms. He did not explain how appellant’s newly developed pelvic and lumbar dysfunction was causally related to her accepted annular tears nor did he opine unequivocally that her condition had worsened since her return to work to the degree that she was unable to perform her light-duty job. In Dr. Lauck’s June 29, 2009 report, he opined that it was medically necessary to continue with work restrictions due to ongoing pelvic and lumbar dysfunction, noting that she had returned to work in the past “with increase in her symptoms and more time off and work loss.” The Board has consistently held that fear-of-future injury is not compensable.²¹ Dr. Lauck’s concerns of future exacerbation do not establish that appellant was currently unable to perform the duties of her light-duty job.

On November 11, 2009 Dr. Lauck opined that appellant’s low back and bilateral leg pain was secondary to her accepted annular tears, with compensatory pelvic and lumbar dysfunction increasing her discomfort. He did not, however, support his opinion with medical reasoning explaining the relationship between the accepted annual tears and the pelvic and lumbar

²⁰ A.D., 58 ECAB 149 (2006); *Michael E. Smith*, 50 ECAB 313 (1999).

²¹ See *Calvin E. King*, 51 ECAB 394 (2000).

dysfunction.²² Further, Dr. Lauck's assertion that it was prudent to continue appellant off work so that she could be monitored for her lumbar and pelvic dysfunction does not constitute an opinion on disability. Therefore, it does not support her recurrence claim.

Dr. Frushour's reports are also insufficient to establish appellant's recurrence claim. In a June 11, 2009 narrative report, he noted minimal MRI scan abnormalities that he stated may have been present prior to her injury. An EMG/NCV was normal. The only abnormality found on physical examination was "tenderness and pain" on palpation of appellant's back and moving of the extremity. Dr. Frushour was unable to explain why she continued to have symptoms, which did not match the mild abnormalities reflected in the MRI scan. As the report did contain an opinion on either the cause of appellant's current condition or whether she was able to perform the duties of her modified job, it is of diminished probative value. In a June 11, 2009 disability slip, Dr. Frushour placed a checkmark in a box indicating that she "may not return to work." The Board has held that a report that addresses causal relationship with a checkmark, without a medical rationale explaining how the work conditions caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.²³

The Board finds that appellant failed to establish a recurrence of disability from June 20 through July 17, 2009. The medical evidence fails to establish a change in the nature and extent of the injury-related condition resulting in her inability to perform the duties of her modified employment. As appellant has not submitted any probative medical evidence showing that she sustained a recurrence of disability due to her accepted employment injury, the Board finds that she has not met her burden of proof.

CONCLUSION

The Board finds that this case is not in posture for a decision as to whether appellant is entitled to wage-loss compensation for the period May 7 through 29, 2009. The Office hearing representative's December 19, 2009 decision will be set aside and remanded for consideration of Dr. Lauck's November 11, 2009 report. After such further development, the hearing representative will issue an appropriate decision.

The Board also finds that appellant did not meet her burden of proof to establish a recurrence of disability from June 20 through July 17, 2009.

²² Medical conclusions unsupported by rationale are of limited probative value. *Willa M. Frazier*, 55 ECAB 379 (2004).

²³ See *Calvin E. King, Jr.*, *supra* note 21; see also *Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2009 decision of the Office of Workers' Compensation Programs is set aside and remanded for action in accordance with this decision. The Board further finds that the February 19, 2010 decision of the Office is affirmed.

Issued: February 22, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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