



## **FACTUAL HISTORY**

On August 1, 1996 appellant, then a 36-year-old mail handler, filed an occupational disease claim alleging that on July 12, 1996 she sustained a herniated disc due to loading and unloading mail on various floors of a building. She stopped work on July 22, 1996 and returned to work on August 1, 1996.<sup>3</sup> OWCP accepted appellant's claim for herniated disc at L4-L5, herniated cervical disc, other unspecified arthropathies, lumbar radiculitis, degeneration of the lumbar intervertebral disc and hyperactive bladder.<sup>4</sup>

On June 28, 2010 appellant filed a recurrence of disability claim (Form CA-2a) beginning July 12, 1996.

By letter dated July 1, 2010, OWCP requested that appellant submit factual and medical evidence, including a rationalized medical opinion from an attending physician explaining whether or how her current condition was causally related to the accepted employment injuries.

In an undated narrative statement, appellant described her work duties as a mail handler and related that following her accepted employment injuries she underwent three back surgeries in March and August 2002 and June 2004. After her surgeries, she was placed on light-duty status. Appellant listed her physical limitations due to her back condition. She was either partially or totally disabled on intermittent dates from August 26, 1993 through October 9, 1999.

In medical reports dated August 2, 2000 through February 14, 2008 Dr. Charles N. Narrow, a Board-certified physiatrist, Dr. Reginald J. Davis, a Board-certified neurologist, Dr. Brian M. Block, a Board-certified anesthesiologist, Dr. Louis M. Panlilio, a Board-certified anesthesiologist, Aaron R. Noonberg, Ph.D., a clinical psychologist, and a physician whose signature is illegible, addressed appellant's back treatment and emotional conditions. Surgical notes dated August 29, 2001, March 25, 2002 and September 17, 2008 indicated that appellant underwent lumbar fusions or received epidural injections to treat her accepted conditions. Diagnostic test reports dated May 8 and December 15, 2003 and February 10, 2010 by Dr. Lee A. Goodman, a Board-certified radiologist, Dr. Courtney Perez, a radiologist, and an unknown physician also addressed appellant's lumbar and cervical conditions.

In an August 20, 2010 report, Dr. Davis noted appellant's complaint of neck pain that radiated to her shoulders and bilateral upper extremities. She also had numbness and tingling in her bilateral upper extremities accompanied by weakness. Dr. Davis reviewed appellant's medical records and found that her complaints of the cervical spine and upper extremity numbness occurred following her lumbar spine surgery. He diagnosed cervical myeloradiculopathy, but concluded that the cause of her condition could not be determined.

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<sup>3</sup> Appellant retired from the employing establishment on June 5, 2005.

<sup>4</sup> By letter dated July 17, 2003, OWCP accepted that appellant sustained a recurrence of disability as of March 25, 2002 causally related to the accepted injuries.

In an October 12, 2010 decision, OWCP denied appellant's recurrence of disability claim. The medical evidence of record was found insufficient to establish that she was totally disabled commencing June 28, 2010<sup>5</sup> due to her accepted employment-related injuries.<sup>6</sup>

### **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>7</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 he claims compensation is causally related to the accepted employment injury.<sup>8</sup> 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.<sup>9</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>10</sup> Moreover, the physician's conclusion must be supported by sound medical reasoning.<sup>11</sup>

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>12</sup> In this regard, medical evidence

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<sup>5</sup> In the October 12, 2010 decision, OWCP stated that it was not clear as to why appellant claimed that she sustained a recurrence of disability on July 12, 1996. It found that June 30, 2010, the date she signed her Form CA-2a, was the date her claimed recurrence of disability began. The Board notes, however, that appellant signed her Form CA-2a on June 28, 2010. It was received by OWCP on June 30, 2010.

<sup>6</sup> Following the issuance of OWCP's October 12, 2010 decision, OWCP received additional evidence. The Board may not consider evidence for the first time on appeal which was not before OWCP at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>7</sup> 20 C.F.R. § 10.5(x).

<sup>8</sup> *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

<sup>9</sup> *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

<sup>10</sup> *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

<sup>11</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

<sup>12</sup> *See Ricky S. Storms*, *supra* note 10; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.<sup>13</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>14</sup>

### ANALYSIS

OWCP accepted that appellant sustained herniated disc at L4-L5, herniated cervical disc, other unspecified arthropathies, lumbar radiculitis, degeneration of the lumbar intervertebral disc and hyperactive bladder while in the performance of duty. Appellant claimed a recurrence of total disability commencing June 28, 2010. 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 injuries.

Dr. Davis' August 20, 2010 report noted appellant's complaints of neck pain that radiated to her shoulders and bilateral upper extremities, and numbness and tingling in her bilateral upper extremities accompanied by weakness. After reviewing her medical records, he determined that these cervical spine and upper extremity symptoms occurred following her lumbar spine surgery. Dr. Davis found that appellant had cervical myeloradiculopathy, but stated that the cause of the condition could not be determined. The Board has held that a physician's opinion, which does not address causal relationship, is of diminished probative value.<sup>15</sup> Dr. Davis did not provide an opinion addressing how appellant's cervical condition in 2010 was due to the accepted lumbar and bladder conditions. He did not provide any opinion addressing her disability for work commencing June 28, 2010. The Board finds that Dr. Davis' report is insufficient to meet appellant's burden of proof in establishing a recurrence of disability.

The other medical evidence dated August 2, 2000 through September 17, 2008 predate the alleged recurrence of disability commencing June 28, 2010 and, thus, does not render any opinion on causal relationship. The Board finds that these reports do not establish appellant's claim for a recurrence of disability.

Appellant failed to submit rationalized medical evidence establishing that her disability commencing June 28, 2010 resulted from the residuals of her accepted lumbar and bladder conditions.<sup>16</sup> She has not met her burden of proof.<sup>17</sup>

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<sup>13</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>14</sup> See *Ricky S. Storms*, *supra* note 10; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>15</sup> See *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>16</sup> *Cecelia M. Corley*, 56 ECAB 662 (2005).

<sup>17</sup> *Tammy L. Medley*, 55 ECAB 182 (2003).

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 failed to establish that she sustained a recurrence of disability commencing June 28, 2010 causally related to her accepted employment injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 12, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 2011  
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