United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 11-2086**
	)	**Issued: August 15, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Jersey City, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 23, 2011 appellant, through his attorney, filed a timely appeal from a decision of the Office of Workers' Compensation Programs (OWCP) dated June 27, 2011. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 sustained a recurrence of disability as of August 7, 2010 causally related to his accepted low back conditions.

FACTUAL HISTORY

On August 19, 2003 appellant, a 28-year-old mail handler, filed a Form CA-2, an occupational disease claim, alleging that he developed a low back condition causally related to employment factors; he stated that he first became aware of this condition on July 23, 2003.

[1] 5 U.S.C. § 8101 *et seq.*

OWCP accepted the claim for lumbosacral radiculopathy and lumbar disc herniation. Appellant stopped work and OWCP paid him compensation for total disability.

On July 5, 2006 appellant underwent an L4-5 percutaneous discectomy with discography to repair a herniated disc at L4-5.

On July 22, 2006 appellant returned to work as a modified mail handler for four hours per day. He began working full time, eight hours per day at the modified position in September 2006, with no lifting greater than 25 pounds.

In a June 2007 report, Dr. Monica Mehta, Board-certified in physical medicine and rehabilitation, stated that, while appellant had benefited from a physical medicine treatment program, he would require a functional capacity evaluation and work-hardening program so that he could return to full-duty work. She opined that for the present time appellant should be on restricted duty.

In order to determine whether appellant could return to full duty and to ascertain his precise work restrictions, appellant was referred to Dr. James A. Charles, Board-certified in psychiatry and neurology, for a second opinion examination. In a report dated September 12, 2007, Dr. Charles stated that appellant required no further treatment for his low back, including physical therapy or testing and that his neurological prognosis was excellent. He opined that appellant could continue working at his job without restrictions. Dr. Charles advised that, from a neurological perspective, there was no reason he could not work at full duty in his capacity as a mail handler.

OWCP determined there was a conflict in the medical evidence regarding appellant's ability to perform work and whether he required work restrictions. In order to resolve this conflict, it referred him to Dr. William B. Head, Board-certified in psychiatry, for a referee medical examination. In a report dated December 9, 2008, Dr. Head stated findings on examination, reviewed the medical evidence, the statement of accepted facts, and concluded that appellant could return to an eight-hour-per-day job with restrictions on pushing, pulling and lifting more than 50 pounds. He stated that appellant had no current work limitations based on objective findings, which were normal. Dr. Head opined, however, that, because appellant had undergone percutaneous discectomies at C5-6 and L4-5, he should be limited to lifting less than 50 pounds.

In CA-17 forms dated February 10 and March 12, 2009, Dr. Mark A.P. Filippone, Board-certified in physical medicine and rehabilitation, indicated that appellant could work an eight-hour day with restrictions on lifting no more than 25 pounds, no pulling more than 30 pounds and no pushing more than 40 pounds.

In May 2009 appellant bid a job which entailed working at a sack sorting machine (SSM) as a keyer with restrictions on lifting less than 50 pounds.[2]

[2] Appellant testified at the April 13, 2011 hearing that the SSM keyer position had restrictions of lifting more than 50 pounds.

On February 12, 2010 appellant filed a Form CA-2a claim for benefits, alleging that he sustained a recurrence of disability on February 8, 2010 which was causally related to his accepted back conditions. He indicated that he had been working his regular bid job, full time, as an SSM keyer with restrictions; he had been improving in his ability to engage in pushing, pulling, walking and mail handling, but not lifting and bending. For this reason, appellant was able to do his bid job but not other jobs requiring additional duties. He stated that on February 8, 2010 the pain flared up and worsened overnight so he went to Dr. Filippone on February 9, 2010 for treatment.

In a report dated March 1, 2010, Dr. Thomas R. Peterson, Board-certified in neurosurgery, stated that, since the July 23, 2003 work injury, appellant had experienced chronic low back pain and bilateral leg paresthesias, primarily in the left buttocks, posterior thigh and calf, and right buttocks and posterior thigh. Appellant's condition improved after he underwent a percutaneous discectomy in 2006 but he never became totally pain-free. Dr. Peterson related that since 2006 appellant had been able to work full-time, limited duty with mild chronic low back pain until February 8, 2010, when he was at work and had a recurrence of his low back pain and bilateral leg radiculopathy; he had been out of work since February 9, 2010. He stated that appellant's current pain level was a six on a scale of one to ten and that he was attempting to return to a manageable pain level. Dr. Peterson reviewed the results of a January 22, 2010 lumbar magnetic resonance imaging (MRI) scan, which showed a central disc herniation at L4-5. He did not believe appellant required surgical intervention at that time as he had only experienced a worsening of his symptoms for slightly more than two weeks. Dr. Peterson recommended physical therapy and some back strengthening exercises for the time being.

In a March 9, 2010 report, Dr. Filippone stated that, during his most recent examination of appellant on February 24, 2010, appellant continued to complain of low back pain. He stated, however, that he intended to release appellant to return to work at his bid job in accordance with restrictions listed on a March 9, 2010 Form CA-17. In the Form CA-17 dated March 9, 2010, Dr. Filippone indicated that appellant had restrictions on lifting more than 25 pounds and no pulling or pushing more than 50 pounds.

Appellant returned to full-time modified duty as an SSM operator on March 12, 2010. He signed a job offer which indicated that he could work an eight-hour day keying and scanning sacks of mail with restrictions on pushing or pulling no more than 50 pounds, and lifting and carrying no more than 25 pounds.

By decision dated June 15, 2010, OWCP denied appellant's February 12, 2010 claim for a recurrence of disability as of February 8, 2010.[3]

[3] By decision dated December 15, 2010, an OWCP hearing representative affirmed the June 15, 2010 decision. It found that appellant was presenting facts which indicated that he had sustained a new injury. Appellant subsequently filed a Form CA-2 claim for disability based on cervical and lumbar conditions on January 11, 2011, under case number xxxxxx484. OWCP denied this claim by decision dated March 11, 2011; an OWCP hearing representative set aside this decision and remanded the case for further development of the medical evidence by decision dated June 5, 2011.

In a report dated August 9, 2010, Dr. Filippone stated that management had sent appellant home on August 7, 2010 because he could not work full-time regular duty, despite the fact that he had completed a Form CA-17 on July 15, 2010 which outlined his work restrictions.

In a report dated August 18, 2010, Dr. Filippone stated that he reexamined appellant on August 9, 2010, at which time he noted no interval or intervening history of trauma or injury. Appellant continued to experience low back pain with lumbar paraspinals. Dr. Filippone asserted that appellant had been sent home by management on August 7, 2010 because the employing establishment had no work for him within his restrictions. He stated that he would keep appellant out of work consistent with the Form CA-20 he was attaching with his report. In this Form CA-20, dated August 18, 2010, Dr. Filippone diagnosed lumbosacral radiculopathy and checked a box indicating that the condition found was caused or aggravated by employment activity.

In a treatment note dated August 18, 2010, Dr. Filippone stated that appellant was in too much pain to work in any capacity.

In a report dated September 7, 2010, Dr. Filippone stated that appellant had experienced a flare up of mid-to-low back pain on August 19, 2010. He stated that appellant had complaints of pain at the cervical paraspinals, mid-to-lower thoracic paraspinals and lumbar paraspinals bilaterally. Dr. Filippone noted, however, that OWCP had not accepted the cervical and thoracic conditions. He reiterated that appellant remained unable to work in any capacity.

On September 10, 2010 appellant filed a Form CA-2a claim for benefits, alleging that he sustained a recurrence of disability on August 7, 2010 which was causally related to his accepted low back conditions. He stated on the form that when he awakened on August 7, 2010 he was experiencing more pain than usual and that his pain was worsening. Appellant asserted that this was the same pain he had experienced since his July 23, 2003 work injury. He returned to Dr. Filippone, who placed him off work. The employing establishment responded on the form that appellant was offered a limited-duty, eight-hour-per-day job which he accepted on March 12, 2010 with the following restrictions: lifting/carrying up to 25 pounds; pushing/pulling up to 50 pounds; alternating standing, walking, twisting, simple grasping/fine manipulation, including keying. Management further stated that, although appellant was alleging a recurrence of disability causally related to his July 23, 2003 employment injury, he did not cooperate with an incident investigation, choosing instead to file a Form CA-20.

In a statement dated September 30, 2010, appellant stated that he worked from May 2009 to February 8, 2010 as an SSM keyer. He asserted that the duties of this job entailed pulling, pushing and flipping sacks two to three feet long which weighed up to 70 pounds for five to six hours per day. Appellant was keying around 300 sacks per hour, 1,500 to 1,800 sacks per day. At other times he worked on a high-speed universal sorting machine as a keyer, which required him to engage in pushing and pulling to key big parcels two to three feet long weighing up to 70 pounds. Appellant stated that he worked on the high-speed machine for an average of six to seven hours per day while standing on his feet. He asserted that he was keying around 300 sacks per hour, 1,500 to 1,800 sacks per day. Appellant stated that he believed his back condition worsened and became more painful between May 2009 and February 8, 2010 due to the work he was doing.

On November 20, 2010 appellant filed another Form CA-2a, alleging that he sustained a recurrence of disability on August 7, 2010 which was causally related to his accepted lumbar conditions. He stated on the form that he was sent home by the employing establishment on August 7, 2010 because he refused to work full duty due to the fact that he had medical restrictions. The employing establishment responded on the form, stating that appellant was provided with a limited-duty job offer based on a 50-pound weight lifting restriction.

In a statement dated December 2, 2010, appellant reiterated that he started working as an SSM keyer in May 2009 in accordance with restrictions outlined by Dr. Filippone. He advised that he was working an average of eight hours per day, five days per week keying and processing large sacks and parcels of mail, which eventually resulted in an aggravation of his chronic back condition. Appellant advised that he experienced sharp, stabbing pain in his mid-back and lower back in February 2010, which improved enough by March 2010 so that Dr. Filippone released him to return to work with restrictions pursuant to management's March 2010 modified job; this offer described his duties as keying/scanning sacks.

Appellant stated that he was able to perform his bid job keying and scanning sacks from March to August 2010. On approximately July 17, 2010, however, he was processing large, heavy parcels "nonstop"; these parcels were getting stuck on top of each other so he needed to keep kneeling in order to lift these heavy parcels; this caused him to experience an increase in his back pain. Appellant asserted that he asked his supervisor if he could go home and relax, but was refused permission because they were understaffed in his section. As a result he had to remain at his job, which aggravated his pain and made it harder to stand and work at his job. When appellant went home he took a hot shower, medication and applied a heating pad which alleviated the pain somewhat until the next day, when his job duties aggravated his pain again. He related that this pattern occurred on a daily basis from the third week in July 2010 to August 7, 2010, when management asked him to perform regular, full-duty work without restriction or go home. Appellant stated that he had been placed on regular duty by a referee physician's June 3, 2009 report, which was a "misunderstanding." He alleged that he attempted to work without restrictions until August 7, 2010, when his back pain became intolerable and he had to go off work. Appellant stated that he did not want to leave work; however, the only work the employing establishment had available at that time was regular work without restrictions.

In a statement dated December 15, 2010, appellant's supervisor, Barbara Anderson, stated that appellant was offered and signed a limited-duty job offer; after signing the job offer, however, he alleged that he could not work within those limitations.

In a statement dated December 18, 2010, John Romano, appellant's manager, noted that appellant alleged a recurrence of disability on August 7, 2010 causally related to his July 23, 2003 work injury. He stated:

> "[Appellant] has a limited-duty job offer with a push/pull restriction of 50 pounds signed on March 12, 2010. He was returned to full duty by a referee doctor scheduled by the Department of Labor on June 3, 2009. Throughout this process [appellant] has made contradictory and confusing statements as to his ability to perform the duties of his bid position. He has not cooperated in management's attempts to investigate his allegations of not being able to work. [Appellant] has

> obfuscated all attempts at resolving his issues. He has continuously called both the Compensation Office and my office looking for some degree of assurance that he can come back to work, whereas his recent medicals state he is totally disabled. Simply put, [appellant] has been confrontational in his responses and has not cooperated in management's attempt to resolve his issues."

In a report dated November 22, 2010, received by OWCP on December 14, 2010, Dr. Alfred L. Mauro, Board-certified in anesthesiology, stated that appellant had been referred to him for treatment by Dr. Filippone. He evaluated appellant on May 4 and June 3, 2009 and stated:

> "This is in regards to the return to work letter dated May 29, 2009, which states that appellant may return to regular duties on June 3, 2009. Please note this letter was intended for [appellant] to continue with his previous light/limited duties prior to his procedure. Also please be advised that I am not the referee doctor and he was not scheduled by the Department of Labor."

By decision dated December 23, 2010, OWCP denied the claim for recurrence of disability as of August 7, 2010 on the grounds that the evidence of record did not establish either a change in the nature or extent of the claimant's injury-related disability or the nature and extent of his light-duty position.

In a report dated December 8, 2010, received by OWCP on January 3, 2011, Dr. Filippone essentially reiterated his previously stated findings and conclusions. He stated that appellant remained totally disabled and opined that his low back injuries had resulted from the repetitive nature of the work he performed for the employing establishment.

By letter dated December 30, 2010, appellant's attorney requested an oral hearing, which was held on April 13, 2011. At the hearing appellant stated that he began working as an SSM keyer for eight hours a day in May 2009 with restrictions of no pushing or pulling over 50 pounds and no lifting more than 50 pounds. Although he indicated that he continued to experience pain he stated that he was able to perform the modified job. Appellant testified that his back condition got worse, which caused him to miss work from February 8 to March 12, 2010, when he returned to work at the same modified position. He was able to work at this job until August 7, 2010, when his supervisor allegedly forced him to perform duties which exceeded his work restrictions of no pushing or pulling over 50 pounds and no lifting more than 25 pounds. While appellant was able to work keying mail on a conveyor belt and scanning mail sacks, which was within his restrictions, appellant alleged that on August 7, 2010 his supervisor told him to go to the middle volume section to make boxes. This required him to pick up a box lying on the floor and then band it, clip it and then pull it up. Appellant stated that when he told his supervisor that he could not do that job because of his restrictions, she told him that they had him on full duty with no limitations and that he was required to make boxes regardless of what he claimed his physician told him. His attorney stated at the hearing that, when appellant refused to make boxes, a task which exceeded his work restrictions, he was sent home. Counsel stated that this constituted a recurrence of disability because the employing establishment withdrew its limited-duty assignment.

In a February 3, 2011 report, Dr. Filippone stated that appellant became totally disabled as of February 9 through March 8, 2010, at which time he released him to return to work in accordance with work restrictions he outlined on the Form CA-17 dated March 2010, despite the fact that he still was experiencing some mid and low back pain. He advised that appellant continued working with those restrictions until his mid and low back symptoms worsened and radiated into his lower extremities; he stated that appellant asserted that his supervisor was making him exceed the work restrictions he outlined in March 9, 2010, which further aggravated his lower back symptoms. Dr. Filippone stated that appellant was sent home on two occasions in July 2010 and on August 7, 2010; he reported that appellant had not been permitted to return to the workplace since August 18, 2010. He advised that he examined appellant at that time and concluded that his work injuries rendered him totally disabled as of August 18, 2010.

Dr. Filippone diagnosed cervical radiculitis, lumbosacral radiculitis and thoracic radiculitis. He opined that all of these were job related, were partially aggravated by his 2008 motor vehicle accident, but preexisted the accident and have become worse since that time due to his work for the employing establishment. Dr. Filippone concluded that appellant's back conditions were actually improving until management forced him to work at a higher level. He opined that appellant had been totally disabled since August 18, 2010.

By letter dated May 25, 2011, appellant's attorney stated that he was attaching a copy of appellant's leave slips dated July 23 and 30 and August 7, 2010 which purportedly showed that appellant was sent home because he was asked to do heavy lifting and refused to exceed his light-duty work restrictions.

By decision dated June 27, 2011, an OWCP hearing representative affirmed the December 23, 2010 decision denying a claim for 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.[4]

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 of establishing 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 employment-related condition or a change in the nature and extent of the light-duty job requirements.[5]

[4] 20 C.F.R. § 10.5(x).

[5] *Barry C. Peterson*, 52 ECAB 120, 125 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

ANALYSIS

In the instant case, the record does not contain medical evidence showing a change in the nature and extent of appellant's injury-related condition as of August 7, 2010. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his condition or disability as of August 7, 2010 to a spontaneous worsening of his accepted low back 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.

The record shows that in 2006 the claimant returned to modified duty, first on a part-time and then a full-time basis. Dr. Head's December 9, 2008 referee report indicated that appellant could do a modified job with restrictions on pushing, pulling and lifting more than 50 pounds. In May 2009 appellant began working his bid job as an SSM keyer within Dr. Head's limitations. He stopped work on February 9, 2010 and returned to light duty on March 12, 2010, when he signed a modified job offer; this job restricted him from lifting more than 25 pounds and pushing or pulling more than 25 pounds. Appellant worked at this job until August 7, 2010, when he alleged that he sustained a recurrence of his accepted lumbar radiculopathy and herniated disc conditions. As indicated, it is his burden to submit medical evidence supporting his claim for a recurrence of disability.

The record contains several contemporaneous medical reports from Dr. Filippone. On appeal, appellant's attorney argues that Dr. Filippone's August 18 and September 7, 2010 reports presented medical evidence sufficient to establish that appellant sustained a recurrence of disability as of August 7, 2010 and "confirm" that he was sent home from his light-duty job on that date because they had no longer had work available to him within his restrictions.

Dr. Filippone's reports provided findings on examination and a diagnosis of appellant's condition from August through December 2010 but did not provide a probative, rationalized medical opinion sufficient to establish that his claimed disability as of August 7, 2010 was causally related to his accepted low back conditions. In his August 18, 2010 report, Dr. Filippone stated that when he reexamined appellant on August 9, 2010 appellant was experiencing low back pain with lumbar paraspinals. In his August 18, 2010 Form CA-20, he diagnosed lumbosacral radiculopathy and checked a box indicating that the condition found was caused or aggravated by employment activity. In his August 18, 2010 treatment note and September 7, 2010 report, Dr. Filippone stated that appellant was unable to work in any capacity. He indicated on September 7, 2010 that he had experienced a flare up of mid-to-low back pain on August 19, 2010, with complaints of pain at the cervical paraspinals, mid-to-lower thoracic paraspinals and lumbar paraspinals bilaterally. In his December 8, 2010 report, Dr. Filippone reiterated that appellant remained totally disabled and opined that his low back injuries resulted from the repetitive nature of the work he performed for the employing establishment.

In his February 3, 2011 report, Dr. Filippone reviewed appellant's work history and his treatment of appellant. He stated that appellant was totally disabled from February 9 through March 8, 2010, at which time he released him to return to work in accordance with work restrictions he outlined on the March 9, 2010 Form CA-17, despite the fact that he still was experiencing some mid and low back pain. Dr. Filippone related that appellant continued to work with those restrictions until his mid and low back symptoms worsened and radiated into his

lower extremities. Appellant stated that management was making him exceed the work restrictions he outlined in March 2010, which further aggravated his lower back symptoms. Dr. Filippone concluded that appellant's work injuries rendered him totally disabled as of August 18, 2010.

Dr. Filippone's reports failed to establish a spontaneous recurrence or worsening of appellant's accepted condition. At best, his reports suggest a worsening of his condition due to new work factors. As OWCP indicated, Dr. Filippone's reports describe a new injury, not a recurrence of disability. Therefore, Dr. Filippone's reports do not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment-related conditions and his previously accepted claim.[6]

Dr. Filippone noted that appellant alleged that he stopped working on August 7, 2010 because he refused to do work which exceeded his work restrictions and the employing establishment consequently sent him home. However, appellant stated in his initial Form CA-2a that he left work because he had experienced a worsening of low back pain which he could no longer tolerate and did not mention being forced to exceed his restrictions. Dr. Filippone also stated in his February 3, 2011 report that appellant was forced to leave work and became disabled as of August 18 not August 7, 2010. Thus, it was unclear as to whether he had an accurate history of appellant's condition. Dr. Filippone's report was therefore of limited probative value for the reason that it is generalized in nature and equivocal in that it only noted summarily that appellant's conditions were causally related to his accepted low back conditions. Moreover, he attributed appellant's alleged recurrence of disability, at least partially, to nonaccepted cervical and thoracic conditions. The reports submitted by Dr. Filippone failed to provide an explanation in support of appellant's claim that he was totally disabled due to his accepted low back conditions as of August 7, 2010.

In addition, the Board finds that appellant failed to submit evidence showing that there was a change in the nature and extent of appellant's limited-duty assignment such that he no longer was physically able to perform the requirements of his light-duty job. The record demonstrates that appellant returned to work on March 12, 2010 on modified duty. Although appellant stopped working as of August 7, 2010, he has not submitted sufficient factual evidence to support a claim that a change occurred in the nature and extent of his limited-duty assignment during the period claimed. The record demonstrates that he accepted a light-duty position within the restrictions outlined by Drs. Head and Filippone, for eight hours per day, in May 2009. Appellant worked at this position until February 8, 2010, when he alleged that he sustained a recurrence of disability and went off work. He accepted a similar bid position as a modified mail handler with the employing establishment and returned to work on March 12, 2010 at a job which required no lifting exceeding 25 pounds and no pushing or pulling more than 50 pounds. Appellant stopped working on August 7, 2010 and on September 10, 2010 he filed a Form CA-2a claim for benefits, alleging that he sustained a recurrence of disability on August 7, 2010 which was causally related to his accepted low back conditions. He stated on the form that when

[6] The form reports from Dr. Filippone that support causal relationship with a checkmark are insufficient to establish the claim, as the Board has held that, without further explanation or rationale, a checked box is not sufficient to establish causation. *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

he awakened on August 7, 2010 he was experiencing more low back pain than usual and that this pain, which he had continued to experience since his July 23, 2003 work injury, was worsening.

The employing establishment stated that appellant had accepted the modified work offer on March 12, 2010 and was able to perform the duties of the position until August 7, 2010, when he did not cooperate with an incident investigation, choosing instead to file a Form CA-20. In his December 2010 statement, appellant asserted that he had been keying, scanning and processing large sacks and parcels of mail, which eventually resulted in an aggravation of his chronic back condition. He related that he was able to perform his job from March to August 2010, when he had to stop due to a worsening of his work-related low back pain. Appellant asserted that, on approximately July 17, 2010, he was processing large, heavy parcels without a break and had to kneel down to separate and lift parcels which were getting stuck on top of each other so he needed to keep kneeling in order to lift these heavy parcels. He alleged that when he asked his supervisor if he could go home and relax he was denied permission because they were understaffed. Appellant related that this scenario continued until August 7, 2010, when management asked him to perform a regular, full-duty job without restrictions or go home. He also alleged that he had been placed on regular duty without restrictions by a referee physician's June 3, 2009 report, which was a "misunderstanding." Appellant alleged that he attempted to work without restrictions until August 7, 2010, when his back pain became intolerable and he had to go off work. He stated that he did not want to leave work; however, the only work the employing establishment had available at that time was regular work without restrictions.

The employing establishment refuted appellant's assertions. It stated that he signed a limited-duty job offer on March 12, 2010 but subsequently alleged that he could not work within the limitations to which he agreed. While Manager Romano did state in his December 18, 2010 statement that appellant was returned to "full duty" by the impartial examiner, Dr. Head, this appears to be a misstatement of the physician's opinion. Dr. Head found that appellant could return to an eight-hour job but with restrictions on lifting more than 50 pounds.[7] The employing establishment denied that it had forced appellant to exceed the restrictions outlined by Drs. Head and Filippone, *i.e.*, pushing/pulling more than 50 pounds, which were embodied in the March 12, 2010 job offer. Mr. Romano asserted that appellant made contradictory and confusing statements regarding his ability to perform the duties of his bid position and refused to cooperate with management's attempts to investigate his allegations of not being able to work. Although appellant alleged in his claims for recurrence and at the hearing that his accepted low back conditions were aggravated by the duties of this job, he submitted no documentation to support these assertions. He testified at the hearing that sometime in July 2010 his supervisor suddenly instructed him to work in the middle volume section making boxes, which come flat on the floor and had to be banded, clipped and lifted. Appellant stated that these duties required him to do work which exceeded his restrictions. He did not, however, explain how such duty exceeded his

[7] Appellant also misstated the date of Dr. Head's report, which was December 9, 2008.

work restrictions. Appellant further alleged that, when he refused to do this work, the employing establishment sent him home. However, he has provided no corroboration for these assertions.[8]

Notwithstanding appellant's allegations, the record indicates that he was able to work at the modified mail handler's job -- a position he bid on and agreed to accept -- from March 12 to August 7, 2010, when he alleged that he had to leave work due to his accepted low back condition. While appellant's attorney contends that the employing establishment acted to withdraw the limited-duty offer, which constituted a recurrence, the instant record indicates otherwise. The employing establishment provided him with modified work within his medical restrictions but denied that it forced appellant to exceed these restrictions and that it was responsible for sending him home on August 7, 2010.[9] In addition, as noted above, appellant appears to be describing a new injury in this incident, rather than a recurrence of disability. Although he alleged in his claims for recurrence and at the hearing that his accepted low back conditions were aggravated by the duties of this job, he submitted no documentation to support this assertion.[10] Based on the above evidence of record, therefore, appellant has failed to meet his burden to establish that there was a change in the nature and extent of his limited-duty assignment such that he no longer was physically able to perform the requirements of his light-duty job.

Accordingly, appellant has failed to submit sufficient evidence to meet his burden of proof in establishing that he sustained a recurrence of his employment-related disability as of August 7, 2010. OWCP properly found that appellant was not entitled to compensation based on a recurrence of disability. The Board will affirm the June 27, 2011 OWCP decision.

CONCLUSION

The Board finds that appellant has not met his burden to establish that he was entitled to compensation for a recurrence of disability as of August 7, 2010 causally related to his accepted low back conditions.

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.

[8] The leave slips dated July 23 and 30 and August 7, 2010 which appellant stated show that the employing establishment sent him home because he refused to do work exceeding his restrictions merely show that he made these allegations and that management approved his requests for leave on those dates.

[9] The evidence submitted by an employing establishment on the basis of their records will prevail over the assertions from the claimant unless such assertions are supported by documentary evidence. *See generally Sue A. Sedgwick*, 45 ECAB 211, 218 n.4 (1993); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computation of Compensation*, Chapter 2.900(b)(3) (September 1990).

[10] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 15, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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