

physical therapy. As of March 24, 2009, Dr. Aris D. Yannopoulos, a Board-certified orthopedic surgeon, advised that appellant was returned to her regular work status.

Appellant's claim was accepted by OWCP for lumbar sprain and contusion. On April 9, 2009 she was examined by Dr. Yannopoulos, who noted that her muscle strain was improving and that she would be seen again on an as needed basis.

On January 22, 2010 appellant filed a claim alleging that she sustained a recurrence of the accepted medical condition on January 21, 2010. She was filing paperwork while sitting, then bent over and experienced severe pain in her legs. Appellant believed her present condition was related to the accepted injury. She did not stop work.

In a March 16, 2010 letter, OWCP advised appellant that the evidence of record was insufficient to establish her recurrence claim. It requested that she submit a statement with additional details concerning the claimed recurrence, together with a narrative medical report from her attending physician explaining how her condition on or after January 21, 2010 was related to the accepted work injury.

On April 8, 2010 appellant described the circumstances of her injury, her work and daily activities, as well as the history of medical treatment. She submitted several prescriptions for medication and physical therapy from Dr. Yannopoulos.

In an April 16, 2010 decision, OWCP denied appellant's claim. It found that she did not establish that her medical condition as of January 21, 2010 or need for medical treatment was due to the accepted work injury.

On April 27, 2010 appellant requested a review of the written record before the Branch of Hearings and Review. She submitted several medical reports from Dr. Yannopoulos. An April 7, 2010 progress note advised that appellant had returned for examination one year after her last visit, for complaints of back pain. Dr. Yannopoulos listed her medications as Prozac, Prevacid and Prednisone for systemic lupus. On physical examination, he noted that appellant's findings were essentially normal, except for sensitivity to light touch along the paraspinal muscles and sensitivity to flexion of the hips and knees indicative of a muscle strain. Dr. Yannopoulos recommended anti-inflammatory medication and a program of physical therapy.

In an April 13, 2010 report, Dr. Yannopoulos stated that appellant originally slipped and fell on December 31, 2008, sustaining lumbosacral muscle strain. He prescribed physical therapy and anti-inflammatories. While noting that the treatment rendered for appellant's lower back pain was the result of the December 31, 2008 incident, Dr. Yannopoulos advised that appellant did not require any further treatment as of April 7, 2010. There was no evidence of any pathology that warranted any further treatment.

On May 4, 2010 Dr. Yannopoulos stated that appellant's magnetic resonance imaging (MRI) scan revealed evidence of disc protrusions at L4-5 and L5-S1, but there was no evidence of any fracture, dislocation or other acute boney pathology. He listed findings on physical examination, noting no evidence of any radiculopathy in the lumbar region. Appellant complained of diffuse back pain and Dr. Yannopoulos advised of a 40 percent false positive rate

to MRI scan studies not supported by physical examination. Dr. Yannopoulos did not recommend surgery, injections or further treatment of appellant's back condition. He stated "there is nothing further to add to this patient's care from an orthopedic standpoint in my opinion."

Appellant also submitted a June 2, 2010 report from Dr. Hilary C. Onyiuke, a Board-certified neurosurgeon, who diagnosed appellant with lumbar spinal stenosis associated with degenerative disc disease and disc space collapse. A bi-level transforaminal inter-lumbar fusion was generally recommended.

In an October 22, 2010 decision, an OWCP hearing representative affirmed the April 16, 2010 decision. The hearing representative found that the record did not contain a rationalized medical narrative explaining how appellant's need for medical treatment on or after January 21, 2010 was due to the accepted injury of December 31, 2008.

LEGAL PRECEDENT

The recurrence of a medical condition is defined under the implementing federal regulations as a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment," nor is an examination without treatment.²

The individual who claims a recurrence due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the condition or disability for which compensation is claimed is causally related to the accepted employment injury. As part of this burden, the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition and supports that conclusion with sound medical reasoning.³

ANALYSIS

The Board finds that appellant did not submit sufficient medical evidence to establish a recurrence of her medical condition on January 21, 2010 due to her December 31, 2008 injury.

The December 31, 2008 injury was accepted by OWCP for a lumbar sprain and contusion. Appellant came under the treatment of Dr. Yannopoulos who prescribed physical therapy sessions and provided findings on physical examination. Dr. Yannopoulos initially restricted her to limited duty of no lifting over 10 to 15 pounds. On March 24, 2009 he noted an excellent range of motion, noted negative straight leg raising bilaterally, with deep tendon reflexes intact. Dr. Yannopoulos stated that appellant was doing much better and able to perform her regular duty at work. As of April 21, 2009, he advised that he recommended following

² 20 C.F.R. § 10.5(y).

³ *Bernard Snowden*, 49 ECAB 144, 148 (1997).

physical therapy guidelines and take occasional anti-inflammatory medication. Dr. Yannopoulos advised that he would see appellant again on an as needed basis.

Appellant filed a claim for a recurrence and sought medical treatment only as of January 21, 2010. On April 7, 2010 Dr. Yannopoulos saw her after a one-year absence. The record establishes that appellant did not obtain continuous treatment following the 2009 injury. She must therefore establish that her need for further medical treatment is for the accepted lumbar sprain or contusion condition. Dr. Yannopoulos noted only that appellant's symptoms were consistent with a diagnosis of muscle strain; but he did not address her return to full-duty work in April 2009 or explain how the accepted injury would cause or contribute to the medical condition for which she sought treatment in 2010. He made reference to her accepted condition, but also stated that there was "no evidence of any pathology that warrants any further treatment." Dr. Yannopoulos noted that appellant underwent diagnostic testing by MRI scan that showed evidence of disc protrusion at L4-5 and L5-S1; but he noted that he could not find any evidence of radiculopathy on physical examination. He advised that she was not a surgical candidate that commented about a 40 percent false positive rate to MRI scan testing.

The Board finds that Dr. Yannopoulos, the attending physician, did not provide sufficient medical rationale explaining how appellant's need for medical care commencing January 2010 related to the 2008 fall at work, accepted for a lumbar sprain and contusion. His May 4, 2010 report generally noted a history of treatment for the December 2008 injury, but he commented that her findings on examination did not support any disc condition or radiculopathy. Dr. Yannopoulos noted that appellant's back complaints did not warrant any further treatment, as of April 7, 2010.

Appellant was also seen by Dr. Oniyuke, who diagnosed lumbar spinal stenosis with degenerative disc, and disc space collapse, but the physician did not relate the diagnoses to appellant's December 2008 injury. The Board notes that these diagnoses are different than those listed by Dr. Yannopoulos. Dr. Oniyuke did not provide a narrative medical opinion explaining the causal relationship between the diagnoses made and appellant's accepted injury in 2008. Therefore, her opinion is of diminished probative value.

The Board finds that appellant failed to submit sufficient medical evidence to establish a recurrence of her accepted medical condition. Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish a recurrence of her accepted medical condition.

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: February 24, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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