

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

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C.M., Appellant	)	
	)	
and	)	Docket No. 11-1254
	)	Issued: February 15, 2012
U.S. POSTAL SERVICE, POST OFFICE,	)	
Pittsburgh, PA, Employer	)	
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Appearances: *Case Submitted on the Record*  
 Alan J. Shapiro, Esq., for the appellant  
 Office of Solicitor, for the Director

**DECISION AND ORDER**

Before:  
 ALEC J. KOROMILAS, Judge  
 COLLEEN DUFFY KIKO, Judge  
 MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On April 27, 2011 appellant, through his attorney, filed a timely appeal from a March 30, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his recurrence claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 met his burden of proof to establish that he sustained a recurrence of his medical condition commencing October 9, 2009 causally related to his January 9, 2002 employment injury.

On appeal appellant's attorney contends that the March 30, 2011 OWCP decision is contrary to fact and law.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On January 14, 2002 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a back injury after he slipped and fell on snow and ice on January 9, 2002 while in the performance of duty.

By decision dated March 22, 2002, OWCP accepted appellant's claim for thoracic and lumbar strain.

On August 15, 2005 appellant filed a recurrence claim. He reported that he experienced continued pain which was ongoing since January 9, 2002.

By decision dated October 31, 2005, OWCP denied appellant's recurrence claim on the basis that the medical evidence submitted was insufficient to establish that he sustained a recurrence of his medical condition commencing August 15, 2005 causally related to the employment injury.

On October 9, 2009 appellant filed a notice of recurrence. He advised that he was receiving ongoing pain management and switched from a walking route to a mounted route and dismounted from a vehicle multiple times a day. Appellant reported that he had a hernia in 2007 and another in 2008. The employing establishment indicated that he returned to work following the January 9, 2002 employment injury: he fell and injured his left knee on June 26, 2003 and returned to full duty on August 11, 2003; bruised his ribs after slipping on steps on February 7, 2003 and did not stop work; underwent hernia surgery on October 31, 2007 and returned to work on December 12, 2007; underwent another hernia surgery on December 15, 2008 and returned to work on January 12, 2009; and experienced migraine headaches on February 23, 2009 and returned to work on March 2, 2009.

By letter dated November 18, 2009, OWCP acknowledged that appellant was claiming additional medical care and requested additional factual and medical information. It allotted him 30 days to submit evidence in response to its inquiries.

Appellant submitted a December 16, 2009 narrative statement indicating that he never stopped receiving treatment for his injury. He returned to work but was receiving pain management. Appellant's hobbies included fishing, hunting and spending time with his family. Since his employment injury, he had a left inguinal hernia on October 31, 2007, a right inguinal hernia on December 15, 2008 and migraine headaches on February 23, 2009. Appellant opined that his hernia surgeries were a result of adjusting his lift techniques due to his back condition.

In a July 30, 2009 report, Dr. Patrick A. Finn, a chiropractor, reported that he saw appellant on July 28 and 30, 2009 for acute exacerbation of low back pain. He opined that appellant's condition was directly related to his work duties, which included mounting and dismounting from his vehicle.

On July 30, 2009 Robert J. Mollica, a physical therapist, evaluated appellant for continued complaints of lower back pain as well as bilateral knee pain. He indicated that appellant's symptoms were consistent with sacroiliac dysfunction in the lower back as well as osteoarthritic changes in both knees. Mr. Mollica stated that appellant's symptoms were

exacerbated upon entering and exiting his mail truck and advised that his recovery would be benefited if he did not have to jump from his vehicle as it would minimize compressive forces and torque to his sacroiliac and both knees.

In a November 18, 2009 report, Dr. Gregory E.A. Austin, Board-certified in family medicine, stated that appellant had been followed for lumbosacral spinal disease and herniated nucleus pulposus for a number of years with a recent exacerbation of the same. He reported that appellant had failed conservative measures to date with ongoing back pain and increasing disability. Dr. Austin referred appellant to a spinal orthopedic surgeon for further management of his disease by surgical measures, as well as a narcotic pain management program to continue until the time of his surgery.

By decision dated December 28, 2009, OWCP denied appellant's recurrence claim on the basis that the medical evidence submitted was insufficient to establish that he sustained a recurrence of his medical condition beginning October 9, 2009 causally related to the January 9, 2002 employment injury.<sup>2</sup>

On December 22, 2010 appellant, through his attorney, requested reconsideration and submitted medical forms related to a back surgery scheduled for January 4, 2010.

By decision dated March 30, 2011, OWCP denied modification of the December 28, 2009 decision finding that the medical evidence submitted was insufficient to establish that appellant sustained a recurrence of his medical condition.

### **LEGAL PRECEDENT**

A recurrence of a medical condition is defined as a documented need for further medical treatment after release from treatment for the accepted condition or injury.<sup>3</sup> Continuous treatment for the original condition or injury is not considered a recurrence of a medical treatment nor is an examination without treatment.<sup>4</sup> As distinguished from a recurrence of disability, a recurrence of a medical condition does not involve an accompanying work stoppage.<sup>5</sup> It is the employee's burden to establish that the claimed recurrence is causally related to the original injury.<sup>6</sup> Causal relationship is a medical issue that can generally be resolved only by rationalized medical opinion evidence.<sup>7</sup>

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<sup>2</sup> OWCP noted that there was no request for change of physician so it was unaware as to how appellant came under the care of Dr. Austin for treatment as it had not been authorized by OWCP.

<sup>3</sup> 20 C.F.R. § 10.5(y).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at § 10.5(x).

<sup>6</sup> *Id.* at § 10.104. *See also Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

<sup>7</sup> *See Jennifer Atkerson*, 55 ECAB 317 (2004).

## ANALYSIS

OWCP accepted that on January 9, 2002 appellant sustained thoracic and lumbar strains. Appellant continued to work. On October 9, 2009 he submitted a recurrence claim for medical treatment, noting that he was receiving ongoing pain management and switched from a walking route to a mounted route and dismounted from a vehicle multiple times a day. The issue is whether appellant established a recurrence of his medical condition commencing October 9, 2009 causally related to his accepted employment injury. The Board finds that he did not submit sufficient evidence to establish a recurrence of his medical condition.

On November 18, 2009 Dr. Austin stated that appellant had been followed for lumbosacral spinal disease and herniated nucleus pulposus for a number of years with a recent exacerbation of the same. He reported that appellant failed conservative measures to date with ongoing back pain and increasing disability. Dr. Austin referred appellant to a spinal orthopedic surgeon for further management of his disease by surgical measures, as well as a narcotic pain management program to continue until the time of his surgery. The report from Dr. Austin, while generally supportive of a work-related condition, is insufficient to establish that appellant sustained a recurrence of his accepted medical condition. He failed to provide sufficient medical rationale addressing how appellant's symptoms beginning on October 9, 2009 were causally related to the January 9, 2002 employment injury. For this reason, the Board finds that appellant did not meet his burden of proof.

With his request for reconsideration, appellant submitted medical forms related to a back surgery scheduled for January 4, 2010. The Board has held that medical evidence that 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>8</sup> These forms are insufficient to establish appellant's claim.

The July 30, 2009 report of Dr. Finn, a chiropractor, is of no probative value. The Board has held that a chiropractor is a physician as defined under FECA only to the extent that the reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.<sup>9</sup> Dr. Finn saw appellant for acute exacerbation of low back pain and opined that his condition was directly related to his work duties. The report does not support that Dr. Finn diagnosed a subluxation as demonstrated by x-ray to exist. The Board finds that Dr. Finn is not a "physician" as defined under FECA and his report does not constitute competent medical opinion evidence.

The July 30, 2009 report from Mr. Mollica, a physical therapist, is of no probative value as he is not a physician under FECA.<sup>10</sup> The Board finds that appellant did not meet his burden of proof with this submission.

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<sup>8</sup> See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997).

<sup>9</sup> 20 C.F.R. § 10.311(a). *Cf.*, *D.S.*, Docket No. 09-860 (issued November 2, 2009).

<sup>10</sup> 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

The evidence submitted by appellant lacks adequate rationale to establish a causal relationship between a recurrence of his medical condition and the accepted employment injury. Appellant did not meet his burden of proof to establish a claim for a recurrence of a medical condition.

On appeal appellant's attorney contends that the March 30, 2011 OWCP decision is contrary to fact and law. For the reasons stated, the Board finds counsel's argument is not substantiated.

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 did not meet his burden of proof to establish a recurrence of his accepted medical condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 30, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 15, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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