

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

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C.M., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Hillsboro, OH, Employer )

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**Docket No. 11-26  
Issued: January 23, 2012**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge

ALEC J. KOROMILAS, Judge

JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 4, 2010 appellant, through her attorney, filed a timely appeal from a July 21, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 has established a recurrence of disability commencing October 15, 2009.

**FACTUAL HISTORY**

The case has been before the Board on a prior appeal. By decision dated June 1, 2005, the Board affirmed a December 6, 2004 OWCP decision denying a recurrence of disability

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

commencing August 31, 2004.<sup>2</sup> OWCP had accepted the claim for an acute lumbosacral sprain and herniated L4-5 disc, resulting from an October 10, 2000 incident when appellant attempted to stop a cart moving downhill. The history of the case as noted in the Board's prior decision is incorporated herein by reference.

Appellant had returned to work in her regular, full-time position as of December 3, 2002. On June 9, 2006 OWCP issued a schedule award for an eight percent permanent impairment to the left leg. The award commenced on December 15, 2005.

On December 4, 2009 appellant filed a claim for a recurrence of disability, Form CA-2a, commencing October 15, 2009. She indicated that her back pain continued to get worse.

The treating osteopath, Dr. William Miles, submitted a duty status report, Form CA-17, dated October 15, 2009 describing his findings as severe pain syndrome, limited range of motion in the lumbosacral region and antalgic gait. He provided work restrictions and stated that appellant had difficulty meeting every job demand. In a November 19, 2009 Form CA-20 report, Dr. Miles diagnosed an L3-4 condition, bilateral sacroilitis, left leg radiculopathy and somatic dysfunction of sacrum. He checked a box "yes" that the conditions were employment related.

In a report dated January 14, 2010, Dr. Miles stated that he had treated appellant since July 17, 2008 for conditions secondary to an October 10, 2000 work injury. He stated that she could not sit or stand for prolonged periods without pain. Dr. Miles noted that appellant underwent a spinal fusion surgery in 2001. With respect to disability, he opined "since October 15, 2009 [she] cannot meet the requirements of her job in order to safely remain employed and not be a hazard to herself and others."

By decision dated January 27, 2010, OWCP denied the claim for a recurrence of disability. It found the medical evidence was insufficient to establish a recurrence of disability commencing October 15, 2009. In addition, OWCP noted that a recurrence of disability is a spontaneous change in an employment-related condition without intervening injury.

On February 4, 2010 appellant requested reconsideration of her claim. She submitted an October 15, 2009 narrative report from Dr. Miles, who noted that her overall examination was unchanged. According to Dr. Miles, appellant had sustained a new injury in February 2009 when she fell on ice, but "she was advised by her boss at work that this would simply be included in her present claim and that no new claim would be initiated."

In a report dated June 8, 2010, Dr. Miles provided a history and results on examination. He stated that, if appellant tries to do any activity, the radicular pain in her left leg is increased and precludes her from gainful employment as a rural mail carrier. Dr. Miles stated that she had slipped and fallen on her buttocks in February 2009. He indicated that appellant worked until October 15, 2009 when the pain and problems substantially aggravated by her intervening fall in February 2009 on ice when her conditions prevented her from continuing to work as a rural mail carrier. Dr. Miles stated that she suffered from "multiple additional diagnoses" that "have never

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<sup>2</sup> Docket No. 05-543 (issued June 1, 2005).

been appropriately added to her recognized claim conditions,” and referred to L3-4 disc herniation, facet arthropathy L3-S1 and lumbar radiculopathy.

By decision dated July 21, 2010, OWCP’s hearing representative affirmed the January 24, 2010 decision.

### **LEGAL PRECEDENT**

A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>3</sup>

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”<sup>4</sup>

### **ANALYSIS**

The July 21, 2010 decision on appeal is a denial of a claim filed on December 4, 2009 for a recurrence of disability commencing October 15, 2009. As the above definition indicates, a recurrence of disability is a change in an employment-related condition, without an intervening injury, that causes disability. If there is a new employment incident, even if the injury may be to the same part of the body as a prior accepted condition, it is a new injury.<sup>5</sup> It is not clear what advice appellant may have received regarding the filing of a new claim, but it is well established that, if a new employment incident aggravates a condition, this is a claim for a new injury.

Appellant’s attending physician, Dr. Miles, stated in his October 15, 2009 report that appellant’s examination was “essentially unchanged,” noting that she continued to complain of pain and was struggling to continue working. He also briefly referred to a severe depressive disorder, without further explanation. In his June 8, 2010 report, Dr. Miles stated that appellant was disabled as of October 15, 2009, but he does not relate the disability to a spontaneous change in the October 10, 2000 employment-related condition. He indicated that the fall in February 2009 “substantially aggravated” her condition, and he appeared to indicate that this

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<sup>3</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997). This section provides that a recurrence of disability does not include: “A condition which results from a new injury, even if it involves the same part of the body previously injured, or by renewed exposure to the causative agent of a previously suffered occupational disease. If a new work-related injury or exposure occurs, Form CA-1 or Form CA-2 should be completed accordingly.”

intervening injury caused disability. This does not, as noted above, establish a recurrence of disability commencing October 15, 2009. The evidence may be relevant to a claim for a new injury, but that issue is not before the Board on this appeal.

The Board notes that Dr. Miles opined that appellant had sustained additional conditions resulting from the October 10, 2000 injury. Dr. Miles specifically noted, for example, a November 8, 2000 magnetic resonance imaging scan, which is in the record and does include a diagnosis of L3-4 disc herniation and facet arthropathy. While the hearing representative correctly noted that L3-4 disc herniation had not been accepted, his finding that there was “no objective evidence” with respect to the opinion on causal relationship is not supported by the record. On return of the case record OWCP should review the evidence on the issue of any additional conditions causally related to the October 10, 2000 employment injury and issue an appropriate decision.

With respect to a recurrence of disability commencing October 15, 2009, even if additional conditions are accepted as causally related to the October 10, 2000 employment injury, it is still appellant’s burden of proof to establish the claimed recurrence of disability. The probative evidence must establish a spontaneous change in the employment-related condition as of October 15, 2009. For the reasons noted, the medical evidence is not of sufficient probative value to meet appellant’s burden of proof in this case.

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 her burden of proof to establish a recurrence of disability commencing October 15, 2009.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 21, 2010 is affirmed in part and remanded for further action consistent with this decision.

Issued: January 23, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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