

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

M.C., Appellant

and

**U.S. POSTAL SERVICE, PROCESSING &
DELIVERY CENTER, City of Industry, CA,
Employer**

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**Docket No. 11-822
Issued: January 25, 2012**

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 15, 2011 appellant, through her attorney, filed a timely appeal from a January 12, 2011 decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for a recurrence. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on or after April 12, 2010 due to her December 26, 2008 accepted employment injury.

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 2, 2009 appellant, then a 54-year-old mail handler, filed a traumatic injury claim alleging that on December 26, 2008 she strained her low back when she missed her stool seat, fell backwards towards the floor and twisted to her side to break the fall. On February 20, 2009 OWCP accepted her claim for lumbar strain. On October 30, 2009 it expanded appellant's accepted conditions to include lumbar degenerative disc disease.

Appellant returned to modified-duty work for the employing establishment. However, she was out of work commencing April 23, 2009 because there was no available modified-duty work at the employing establishment. Appellant returned to work full time on March 30, 2010. This position involved prepping at the feed station for six and one-half hours a day and operational rotation to dispatch for one and one-half hours a day. The physical requirements of the position were lifting flat tubs for one and one-half hours, prepping mail for five to six hours and pushing and pulling containers of no more than 50 pounds for one hour.

On May 14, 2010 appellant filed a claim for a recurrence of the December 26, 2008 employment injury commencing on April 18, 2010. She alleged that the recurrence happened spontaneously without intervening cause, gradually to the point of intolerable pain on April 18, 2010. Appellant stated that she believed her current condition was related to the original injury because the symptoms returned and worsened, that she did not have this condition prior to the original injury and that she did not have any intervening injuries.

Appellant submitted work status reports from Kaiser Permanente. The emergency room notes indicate that on April 19, 2010 appellant saw Dr. Carolyn Anne Hardy, a Board-certified internist, for recurrent left lower back pain into her thigh. In an April 18, 2010 report, Dr. Gerald David Pallay, a Board-certified internist, indicated that appellant was placed off work from April 19 through 23, 2010.

In reports dated April 22 and May 6, 20 and 28, 2010, Dr. James Joseph Mitchner, a physician Board-certified in occupational medicine, indicated that appellant had restrictions of no lifting over 10 pounds, no pushing or pulling over 20 pounds, no repeated bending and that appellant may sit or stand to comfort level. He also noted that standing was limited to 30 minutes an hour. In his April 28, May 6 and 20, 2010 reports, Dr. Mitchner noted that there was no electrodiagnostic evidence for a left lumbar radiculopathy. In a May 27, 2010 report, he noted mild L4-5 degenerative disc disease associated with a broad-based disc bulge and chronic low back pain, probable S1 dysfunction and trochanteric bursitis. In a May 28, 2010 progress report, Dr. Mitchner listed appellant's diagnoses as chronic low back pain, somatic dysfunction of sacroiliac joint and trochanteric bursitis.

By decision dated June 18, 2010, OWCP denied appellant's claim for a recurrence.

On July 13, 2010 appellant requested an oral hearing before an OWCP hearing representative.

In further support of her claim, appellant submitted a May 28, 2010 narrative report of Dr. Mitchner who stated, "[Appellant's] clinical course improved after she was not

accommodated at work, which was from April 2010 to current.” Dr. Mitchner opined that appellant’s increased low back pain was not due to a change in her medical condition as the physical demands changed from being home *versus* in a work setting with little time to acclimate to workplace demands. He noted that patients who are at home who are not in active physical therapy often experience deconditioning of multiple muscle groups which make the return to work more difficult and can even cause a worsening in symptomatology. Dr. Mitchner indicated that the factors that produced the recurrence included a combination of increased demand for standing throughout the workday as well as deconditioning from the patient being home for some time prior to returning to her work duties. He stated that there had been no new incidents or occurrences causing the need to add additional diagnoses. Dr. Mitchner indicated that appellant’s original occupational injury has a natural history of periodic increase in symptoms she may feel in the form of pain and sometimes paresthesias. He stated that there are no known precipitating factors capable of causing the condition itself. However, Dr. Mitchner noted that appellant already had an ongoing diagnosis for which precipitating factors included increased standing for more than an hour which may cause the condition to worsen temporarily and periodically. He further noted that patients with a history of sciatica may have periodic worsening in their condition after the increased demand of prolonged standing on the low back.

Dr. Mitchner continued to submit supplemental progress reports noting continued treatment for chronic pain and continued restrictions. In an August 3, 2010 report, he noted that on October 12, 2009 appellant reached maximum medical improvement and was given permanent restrictions. Dr. Mitchner stated that she returned to work with restricted duties resulting in “significantly increased standing time,” which she believed caused a worsening of her low back pain, thereby necessitating her coming back to see him on April 22, 2010. He noted that, on that visit, appellant was found to have reduced forward flexion on physical examination. Dr. Mitchner stated that given OWCP’s definition of recurrence, the worsening of her condition may be more in line with an aggravation of her medical condition. He concluded that it is “medically probable” that the “increase in physical demand upon returning to restricted work duties triggered the increase in symptoms from [appellant’s] low back.” Dr. Mitchner explained that often time away causes deconditioning of the core muscles in most individuals.

At the hearing held on November 5, 2010 appellant testified that she was not presently working because the employing establishment claimed that there was no work within her medical restrictions. She noted that she was not receiving any workers’ compensation benefits. Appellant testified that in April 2009 she stopped working because there was no work within her restrictions. She indicated that the deterioration in her condition may have been caused by standing and noted that there was no particular injury. Appellant testified that she was not always able to get her breaks in a timely manner.

By decision dated January 12, 2011, the hearing representative affirmed the June 18, 2010 decision denying the claim for a recurrence.²

LEGAL PRECEDENT

² The hearing representative noted that subsequent to the hearing, appellant filed an occupational disease claim (Form CA-2) alleging a new work injury on or after March 30, 2010 which would be adjudicated separately from this case under OWCP File No. xxxxxx868.

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³

Where an employee claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing that the recurrence of disability is causally related to the original injury.⁴ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.⁵ The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁶

ANALYSIS

OWCP accepted that appellant suffered from lumbar strain and lumbar degenerative disc disease causally related to the December 26, 2008 employment injury. Appellant returned to work on March 30, 2010 and alleged a recurrence of the December 26, 2008 employment injury on April 18, 2010. The Board finds that she failed to meet her burden of proof to establish that her claimed disability was causally related to the December 26, 2008 employment injury.

The medical evidence does not support a spontaneous recurrence of appellant's accepted December 26, 2008 employment injury. The reports of Drs. Hardy and Pallay do not address the issue of causal relationship. Dr. Mitchner's reports do not support a spontaneous change in appellant's medical condition. In fact, he concluded in his August 3, 2010 report that her injuries may be more in line with an aggravation of her medical condition. Dr. Mitchner concluded that it was "medically probable" that the factors that produced appellant's current symptoms were due to an increased demand for standing throughout the workday and deconditioning from appellant being home for some time period prior to returning to work. Furthermore, he notes new medical conditions that have not been accepted by OWCP, including trochanteric bursitis. Accordingly, appellant's new work duties were listed as the cause of appellant's condition. The alleged new exposure to the work environment takes the instant claim outside the realm of a recurrence of disability as that term is defined under the implementing regulations.⁷ Accordingly, the evidence does not establish a recurrence. Appellant therefore did not meet her burden of proof to establish that her claimed disability was causally related to her original injury.

³ 20 C.F.R. § 10.5(x).

⁴ *Id.* at § 10.104(b); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁵ *Helen K. Holt*, 50 ECAB 279, 282 (1999).

⁶ Federal (FECA) Procedure Manual, Part 2 -- *Claims, Causal Relationship*, Chapter 2.805.2 (March 2011).

⁷ See *Patricia Pignataro*, Docket No. 06-203 (issued March 13, 2006).

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 has not met her burden of proof to establish that she sustained a recurrence of total disability on or after April 12, 2010 due to her December 26, 2008 accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 12, 2011 is affirmed.

Issued: January 25, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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