



sustained a low back injury due to repetitive work activities of bending and lifting. In decisions dated October 11, 2005, October 18, 2006 and October 12, 2007, the Board set aside merit decisions of OWCP that denied appellant's claim and remanded the case for further development.<sup>2</sup>

On January 28, 2008 OWCP accepted the claim for a temporary aggravation of degenerative lumbar intervertebral disc. It found the temporary aggravation had ceased as of November 20, 2006, based on the reports of an orthopedic surgeon selected as a second opinion examiner, Dr. Anil Agarwal. According to the employing establishment, appellant worked in a light-duty position from November 27, 2004 and then stopped work on August 11, 2007.

On March 8, 2010 the Board reversed a May 6, 2009 OWCP decision regarding the accepted condition. The Board found that OWCP did not meet its burden of proof to establish the accepted aggravation had resolved by November 20, 2006. The facts and the law contained in the Board's prior decisions are incorporated herein by reference.

On March 17, 2010 OWCP accepted the claim for degeneration of lumbar or lumbosacral intervertebral disc. On October 22, 2010 appellant submitted a claim for compensation Form CA-7 commencing August 12, 2007.

With respect to the evidence regarding appellant's stoppage of work in 2007, there is a note dated June 1, 2007 from her stating that she was requesting a light-duty job to accommodate her work restrictions. By letter dated June 5, 2007, appellant's supervisor acknowledged that she had requested light duty "under the new restrictions" from her physician. The supervisor stated that the documentation did not list the current restrictions in their entirety but referred back to an April 13, 2005 duty status report. The supervisor noted that the restrictions had shown no improvement since 2005, and "in review of your file your current medical limitations are too restrictive to reasonably accommodate at this time." In a letter dated August 7, 2007, appellant stated that, due to her medical condition, she was no longer able to perform her work duties. She stated that she was resigning effective August 11, 2007.

The record contains e-mail correspondence from the employing establishment to OWCP dated April 1, 2008 with respect to appellant's work stoppage. Appellant resigned August 10, 2007. In response to a question as to whether the light-duty job remained available, the employing establishment stated, "Yes."

The record contains a June 21, 2007 "return to work certification" from Dr. Kevin Folchert, a family practitioner, who indicated that the "date to return to work" was July 16, 2007, and he provided work restrictions that included a 25-pound lifting restriction. In a report dated July 23, 2007, Dr. Folchert stated that appellant was not working due to back pain. He provided a history and diagnosed chronic low back pain. Dr. Folchert stated that appellant's back pain is "exacerbated from her work" and therefore work restrictions had been given. By report dated July 31, 2008, he stated that she had chronic back pain "secondary to a previous work[-]related injury." Dr. Folchert stated that appellant had a permanent disability.

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<sup>2</sup> Docket No. 05-1395 (issued October 11, 2005); Docket No. 06-1549 (issued October 18, 2006); Docket No. 07-1214 (issued October 12, 2007).

In a letter dated November 3, 2010, an employing establishment personnel specialist stated that limited-duty work was available on or after June 5, 2007 and limited-duty work would have been available if appellant had not resigned. A worksheet dated March 5, 2007 indicated that appellant's work duties were "prep flats only."

By decision dated January 13, 2011, OWCP denied a recurrence of disability. It found the medical evidence was insufficient and the factual evidence established the light-duty job remained available.

### **LEGAL PRECEDENT**

OWCP's regulation defines the term recurrence of disability as follows:

*"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. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn ... or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."*<sup>3</sup>

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>4</sup> To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.<sup>5</sup>

### **ANALYSIS**

In the present case, appellant had been working in a modified position from November 27, 2004. She claimed compensation as of August 12, 2007, although it appeared from the medical evidence that she was not working in June or July 2007. As the above legal precedent indicates, appellant may establish a recurrence of disability if she shows a change in

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<sup>3</sup> 20 C.F.R. § 10.5(x).

<sup>4</sup> *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>5</sup> *Maurissa Mack*, 50 ECAB 498 (1999).

the nature and extent of an injury-related condition or a change in the nature of the light-duty job. If the light-duty job is withdrawn, this would establish a change in the nature of the light-duty job.

The record does not establish a change in the nature and extent of the employment-related condition on or about August 12, 2007. Appellant submitted medical evidence to the employing establishment in early June 2007, but it is not clear from the record what evidence was submitted. It is her burden of proof to submit the evidence necessary to establish her claim.<sup>6</sup> Dr. Folchert did not provide a narrative report that discussed a change in the accepted employment-related condition of lumbosacral degeneration of intervertebral disc or a period of disability. The June 21, 2007 report is a form report noting work restrictions. In the July 23, 2007 report, Dr. Folchert referred to back pain being exacerbated by work, without further explanation. To the extent he was indicating that the modified-duty job was exacerbating appellant's underlying condition, this would be a claim for a new injury.<sup>7</sup> Dr. Folchert briefly stated in the July 31, 2007 report that appellant had chronic back pain secondary to a previous work injury, without providing medical rationale to support the opinion. The Board finds the medical evidence does not contain a rationalized medical opinion, based on a complete background, establishing a change in the nature and extent of an employment-related condition at the time appellant stopped working in 2007.

As to whether the modified-duty job was withdrawn by the employing establishment, the evidence reflects that appellant sought a new modified position on June 1, 2007 and submitted evidence regarding new work restrictions. The employing establishment did not provide a new position and appellant resigned effective August 11, 2007. It advised that the modified job she had been performing would have remained available had she not resigned from federal employment. There is, therefore, no probative evidence establishing a change in the nature and extent of the modified-duty position.

The Board finds that appellant has not established a change in the nature and extent of an injury-related condition at the time she stopped working in 2007 or a change in the nature and extent of the light-duty job. Appellant has therefore not established entitlement to compensation for wage loss as of August 12, 2007.

On appeal, counsel argues that the January 13, 2011 OWCP decision is not consistent with the Board's March 8, 2010 decision. He noted that the Board placed the burden of proof on OWCP to demonstrate that the accepted condition had resolved by November 20, 2006, and had reversed OWCP's decision, but the issue in this case is appellant's claim for wage-loss compensation commencing August 12, 2007. Appellant was working in a modified-duty position and it is her burden of proof to establish entitlement to compensation after she resigned from federal employment.

Counsel also argued that light duty was not available to appellant, noting the June 5, 2007 letter from the postmaster. The evidence of record, however, reflects that it was appellant who

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<sup>6</sup> *J.F.*, 58 ECAB 124 (2006).

<sup>7</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997).

requested a new light-duty job and submitted new medical evidence. The June 5, 2007 letter was a response to appellant's June 1, 2007 request. In addition, appellant submitted a resignation letter stating she could not perform her job duties. The employing establishment clearly stated that the light-duty job remained available. There was no probative evidence presented that OWCP had withdrawn the light-duty job that appellant had been performing prior to June 1, 2007. The Board notes that 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 established an employment-related disability commencing on or about August 12, 2007.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 13, 2011 is affirmed.

Issued: January 24, 2012  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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