

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

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**M.B., Appellant**

**and**

**DEPARTMENT OF AGRICULTURE, DAIRY  
DIVISION, Chicago, IL, Employer**

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**Docket No. 11-1473  
Issued: January 13, 2012**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 8, 2011 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) April 4, 2011 merit decision denying her 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 sustained a recurrence of a medical condition.<sup>2</sup>

**FACTUAL HISTORY**

OWCP accepted appellant's April 12, 1985 traumatic injury claim for acute lumbar strain. Appellant received compensation and medical benefits until approximately

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

<sup>2</sup> This is the second time this case has been before the Board. By decision dated February 25, 2010, the Board set aside a January 12, 2009 OWCP decision denying reconsideration and remanded the case for merit review. Docket No. 09-1709 (issued February 25, 2010).

February 1986, when the case was closed. On October 11, 2007 she submitted a request to reopen her claim for further medical treatment and to include aggravation of lumbar degenerative disc disease at L5-S1.

In a decision dated November 26, 2007, OWCP denied appellant's recurrence claim, finding that the medical evidence was insufficient to establish that her current diagnosed condition was causally related to the accepted lumbar strain.

Appellant submitted a November 8, 2008 report from Dr. Leonard J. Cerullo, a Board-certified neurological surgeon, who provided responses, in the form of checkmarks, to questions regarding the relationship of her current condition to her accepted injury. Dr. Cerullo indicated that appellant had pain in the lumbar spine, as well as numbness and tingling in the lower extremities and that she exhibited a work-related aggravation of a preexisting lumbar degenerative disc condition as a result of impairment to S1. He opined that there was a causal relationship between the accepted lumbar sprain and her current condition and that her accepted condition should be expanded to include degenerative disc disease at L5-S1.

On November 11, 2008 appellant requested reconsideration of OWCP's November 26, 2007 decision. By decision dated January 12, 2009, OWCP denied her reconsideration request. By decision dated February 25, 2010, the Board set aside the January 12, 2009 decision and remanded the case to OWCP for merit review.

On remand, appellant submitted a March 16, 1999 report from Dr. Ranjit Wahi, a treating physician, who stated that appellant suffered from chronic lower back pain, which was caused by abnormal walking resulting from foot pain. She also submitted a January 12, 2006 report of an x-ray of the lumbar spine and a November 27, 2007 report of a magnetic resonance imaging (MRI) scan of the lumbar spine.

By decision dated March 23, 2010, OWCP denied modification of its prior decision.

On January 4, 2011 appellant again requested reconsideration, contending that her current herniated disc condition was causally related to the original April 1985 injury and that she had continued to experience intermittent back pain and numbness in both legs after strenuous activity or prolonged standing. She stated that she had reinjured her back on October 2, 1985 "while performing the same activities on the job." After leaving the employing establishment in 1989, appellant worked for the postal service for 13 years. As a result of heavy lifting and pulling, prolonged walking and standing, bending and twisting, her lumbosacral pain worsened. Appellant argued that her current condition was not due to an intervening, nonindustrial cause, but rather was due to her duties as a postal employee.

In a September 29, 2010 narrative report, Dr. Cerullo stated that he first examined appellant on November 8, 2008. At that time, appellant complained of lower back and knee pain and informed him that she had sustained a work-related back injury in April 1985. After returning to work, she reinjured her back, was diagnosed with acute lumbar myofascial syndrome and had experienced recurrent lower back pain ever since. Dr. Cerullo stated that appellant's degenerative disc disease was possibly aggravated or accelerated by her job and was, at least, partially responsible for her back pain.

In an April 9, 2009 report, Dr. Roberto P. Segura, a treating physician, performed neurological and electrophysiological evaluations. He noted that appellant complained of long-standing back pain following an April 17, 1989 work injury, which had worsened. On examination, appellant exhibited no evidence of polyneuropathy in the lower limbs or of acute lumbosacral radiculopathy. Dr. Segura diagnosed chronic lower back pain syndrome and stated that appellant's symptoms seemed to have originated following the initial injury in 1985.

In a January 15, 2008 report, Dr. Howard S. An, a Board-certified orthopedic surgeon, stated that appellant had experienced chronic low back pain since an April 12, 1985 work injury, and that in recent years the pain had worsened. An MRI scan reflected evidence of disc degeneration in the lower lumbar region. On examination, extension was to 15 degrees and lateral bending was to 20 degrees. Dr. An diagnosed discogenic back pain with some radicular symptoms in the lower extremities. Appellant submitted an April 16, 2010 report of a lumbar spine MRI scan.

By decision dated April 4, 2011, OWCP denied modification of its prior decisions. It found that the medical evidence did not establish a worsening of appellant's condition due to the original injury. Rather, the evidence suggested that any worsening of her condition was due to intervening events.

### **LEGAL PRECEDENT**

Appellant has the burden of establishing that she sustained a recurrence of a medical condition<sup>3</sup> that is causally related to her accepted employment injury. To meet her burden, appellant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>4</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>5</sup>

OWCP regulations define a recurrence of medical condition as the documented need for further medical treatment after release from treatment of the accepted condition when there is no work stoppage. Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment.<sup>6</sup>

OWCP's procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return PRN [as needed], or computed by the claims examiner from the date of last examination), a claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports

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<sup>3</sup> "Recurrence of medical condition" means 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 after release from treatment, nor is an examination without treatment. 20 C.F.R. § 10.5(y) (2002).

<sup>4</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>5</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004); *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>6</sup> 20 C.F.R. § 10.5(y).

causal relationship between the claimant's current condition and the previously accepted work injury.<sup>7</sup>

### ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of a medical condition on or subsequent to October 11, 2007. OWCP accepted her April 12, 1985 traumatic injury claim for acute lumbar strain. Appellant contended that her accepted condition worsened such that she now has lumbar degenerative disc disease causally related to her accepted condition. She failed, however, to submit sufficient rationalized medical opinion evidence to establish that she required further medical treatment for a continuing employment-related condition.

On March 16, 1999 Dr. Wahi stated that appellant suffered from chronic lower back pain, which was caused by abnormal walking resulting from foot pain. There is no evidence of record establishing that appellant received medical treatment for her accepted condition between March 16, 1999 and January 15, 2008, when she was treated by Dr. An.<sup>8</sup> Based on the date of the last medical appointment on March 16, 1999, the treatment of January 15, 2008 was rendered more than 90 days after appellant's release from medical care. Therefore, appellant was responsible for submitting an attending physician's report containing a description of the objective findings and supporting causal relationship between her current condition and the previously accepted work injury.<sup>9</sup>

On November 8, 2008 Dr. Cerullo indicated that appellant had pain in the lumbar spine, as well as numbness and tingling in the lower extremities, and that she exhibited a work-related aggravation of a preexisting lumbar degenerative disc condition as a result of impairment to S1. He opined that there was a causal relationship between the accepted lumbar sprain and her current condition, and that her accepted condition should be expanded to include degenerative disc disease at L5-S1. Dr. Cerullo did not, however, provide examination findings or a complete and accurate factual or medical background. He did not adequately explain the nature of the relationship between appellant's current condition and the accepted lumbar sprain, which occurred some 23 years ago.<sup>10</sup> The Board has held that a medical opinion not fortified by rationale is of diminished probative value.<sup>11</sup>

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<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003). The procedure manual provides, with certain exceptions, that, within 90 days of release from medical care (as stated by the physician or computed from the date of last examination or the physician's instruction to return PRN), a claims examiner may accept the attending physician's statement supporting causal relationship between appellant's current condition and the accepted condition, even if the statement contains no rationale. *Id.* at Chapter 2.1500.5(a).

<sup>8</sup> The Board notes that the record contains a January 12, 2006 report of an x-ray of the lumbar spine. To the degree that the x-ray report constitutes medical treatment for purposes of determining whether appellant sustained a recurrence of a medical condition, it was obtained more than 90 days after appellant's release from care.

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003).

<sup>10</sup> *Joe L. Wilkerson*, 47 ECAB 604 (1996); *Alberta S. Williamson*, 47 ECAB 569 (1996).

<sup>11</sup> *Cecilia M. Corley*, 56 ECAB 662 (2005).

On September 29, 2010 Dr. Cerullo related the history of injury as reported by appellant. He stated that appellant's degenerative disc disease was possibly aggravated or accelerated by her job and was, at least, partially responsible for her back pain. This report is vague and speculative and unsupported by examination findings. Moreover, it implies that appellant's condition was not causally related to the original injury, but rather was caused by a new injury. For these reasons, Dr. Cerullo's reports are of limited probative value and are insufficient to establish a recurrence of a medical condition or to support an expansion of the claim.<sup>12</sup>

In his March 16, 1999 report, Dr. Wahi stated that appellant experienced chronic lower back pain, which was caused by abnormal walking resulting from foot pain. He failed to provide examination findings or a definitive diagnosis.<sup>13</sup> More significantly, Dr. Wahi opined that appellant's back condition at the time of his examination was not due to her accepted injury, but instead was due to walking abnormally. Therefore, his report does not support appellant's claim.

Dr. Segura's April 9, 2009 report also fails to provide a specific diagnosis or an opinion as to the cause of appellant's chronic lower back pain. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.<sup>14</sup> Although Dr. Segura stated that appellant's symptoms seemed to have originated following the initial injury in 1985, he did not opine that the initial injury actually caused or led to his current condition. Such an explanation is particularly important given the intervening work activities in which appellant engaged.

Reports of MRI scans and x-rays, which do not contain an opinion as to the cause of appellant's condition, are of diminished probative value and are insufficient to establish appellant's claim.<sup>15</sup>

On appeal, appellant contends that OWCP erroneously determined that her current condition was not causally related to the original 1985 incident. She argues that her condition was not due to an intervening cause, but rather represented merely a worsening of her original condition. The record is replete, however, with statements made directly by appellant and through her physicians to the effect that her work activities subsequent to the original injury were at least in part responsible for her worsened back condition.

Appellant contends that OWCP erroneously refused to submit the case record to a district medical adviser for review, as it shares in the responsibility to develop the evidence. As noted, it is her burden to establish that she sustained a recurrence of her medical condition causally related to the accepted injury. OWCP is not required by statute or its procedures to submit the case record to the DMA for review.<sup>16</sup>

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<sup>12</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>13</sup> The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008); *see Robert Broome*, 55 ECAB 339, 342 (2004).

<sup>14</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>15</sup> *See Mary E. Marshall*, 56 ECAB 420 (2005).

<sup>16</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disability Management*, Chapter 2.600.3(b) (September 2010).

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there was a causal relationship between her claimed condition and her employment.<sup>17</sup> The Board finds that the evidence submitted was insufficient to establish that appellant sustained a recurrence of a medical condition and OWCP properly denied her claim.<sup>18</sup>

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of a medical condition that was causally related to her accepted injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 4, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>17</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001).

<sup>18</sup> 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.