

FACTUAL HISTORY

On May 11, 2006 appellant, then a 40-year-old mail handler filed an occupational disease claim (Form CA-2) alleging that on March 27, 2006 she first became aware of her lumbar injury with radiculopathy and realized that this condition was caused by operating a forklift and lifting and carrying mail.² She stopped work on March 27, 2006. OWCP accepted appellant's claim on October 19, 2007 for lumbosacral strain based on the September 21, 2007 medical opinion of Dr. Jeffrey F. Lakin, a Board-certified orthopedic surgeon and OWCP referral physician.³ In his September 21, 2007 report, Dr. Lakin also found that appellant had preexisting lumbar degenerative disc disease since 2004 which caused her to stop work on March 27, 2006. He opined that the diagnosed condition was not causally related to her employment. Dr. Lakin advised that appellant could not return to regular-duty work as a mail handler and forklift operator, but she could perform modified-duty work with restrictions. He further advised that her accepted lumbosacral strain condition did not require any further medical treatment. Effective December 24, 2007, appellant began working in a full-time modified mail handler/equipment operator position.

On March 31, 2010 appellant filed a claim for a recurrence of disability on January 5, 2010. She was sent home by the employing establishment because it could no longer provide her with work. On the claim form, the employing establishment stated that, following the accepted injury, it gave appellant a light-duty assignment because she could not drive a powered motor vehicle.

Surgical reports dated January 21 and February 18, 2010 from Dr. Alfred L. Mauro, a Board-certified anesthesiologist, indicated that appellant received an epidural injection to treat her thoracic and lumbosacral neuritis and radiculitis. In other reports dated February 8 and 18, 2010, he advised that appellant had low back pain with left-sided leg pain.

Reports dated January 21 and March 18 through 30, 2010 from appellant's physical therapists addressed the treatment of her thoracic/lumbosacral neuritis/radiculitis.

In a February 3, 2010 report, Dr. Mark A.P. Filippone, a Board-certified physiatrist, advised that appellant had continuing low back pain for which she was treated. He stated that she was sent home from work due to his failure to specifically identify the number of hours she could manually grasp. In another February 3, 2010 report, Dr. Filippone advised that appellant had lumbar radiculopathy and listed her physical restrictions.

² Prior to the instant claim, appellant filed a Form CA-2 under OWCP File No. xxxxxx846 for a back injury sustained on September 29, 2005. On December 30, 2005 OWCP denied the claim, finding that the medical evidence was insufficient to establish that she sustained an injury causally related to her alleged employment factors. On the instant Form CA-2, appellant stated that following her September 29, 2005 injury she returned to light-duty work. At the time she filed the instant claim, she was performing light-duty work as a mail handler and forklift operator.

³ Dr. Lakin further advised that appellant's underlying lumbar degenerative condition could be treated with pain management.

By letter dated April 22, 2010, OWCP advised appellant that the medical evidence of record indicated that her preexisting lumbar degenerative disc disease and not the accepted lumbar condition prevented her from returning to her date-of-injury position and that she no longer had any residuals of the accepted condition. It appeared that the employing establishment did not remove a limited-duty assignment stemming from a work injury, but rather removed a light-duty assignment which accommodated appellant's nonwork-related condition. If so, OWCP advised appellant that her recurrence claim would not be compensable. It addressed the factual and medical evidence she needed to submit to establish her claim. OWCP requested that the employing establishment review appellant's allegations and provide an explanation for the removal of her light-duty job within 30 days. The employing establishment did not respond.

In reports dated March 22, April 22 and June 3, 2010, Dr. Filippone reported appellant's continuing back pain, listed findings on physical examination and addressed her treatment plan. In the April 22, 2010 report, he stated that, despite setting forth her restrictions, the employing establishment had not allowed her to return to work.

In reports dated April 6 through June 10, 2010, appellant's physical therapists addressed the treatment of her thoracic/lumbosacral neuritis/radiculitis.

By letter dated May 17, 2010, OWCP referred appellant for a second opinion, together with the medical record and statement of accepted facts, to Dr. Wayne J. Altman, a Board-certified orthopedic surgeon. In a June 7, 2010 report, Dr. Altman obtained a history of appellant's employment and medical background including, her back problems. He noted her complaints of pain in her upper and lower back and left leg. Dr. Altman reviewed appellant's medical records and listed findings on physical examination. He diagnosed osteoarthritis in the lumbar spine. Dr. Altman advised that there was no evidence to establish a work-related link to the diagnosis. It had not been proven that driving a hi-lo for 15 years would cause osteoarthritis in an individual. Dr. Altman advised that appellant could return to work eight hours a day with permanent restrictions related to the ongoing degenerative process in her back. He concluded that she was not a candidate for orthopedic surgery based on his clinical findings and review of her medical records.

In a June 24, 2010 decision, OWCP denied appellant's claim for a recurrence of disability commencing January 5, 2010 based on Dr. Altman's medical opinion as the weight of the medical evidence.

On July 19, 2010 appellant requested an oral hearing before an OWCP hearing representative.

In an April 30, 2009 report, Dr. Deepak V. Patel, a Board-certified orthopedic surgeon, advised that appellant had chronic low back pain with left lower extremity radiculopathy and recently developed right lower extremity radiculopathy that were likely caused by the alleged September 29, 2005 injury.

In prescriptions dated December 15 and 30, 2009, Dr. Filippone addressed appellant's inability to work since December 9, 2009 due to a significant flare-up of low back pain radiating to her leg. On December 30, 2009 he released her to return full-time limited-duty work as of

January 4, 2010. In reports dated June 15 through November 29, 2010, Dr. Filippone noted appellant's complaint of continuing back pain and disability for work on intermittent dates from February 2 to December 9, 2009. He also noted management's refusal to allow her to return to work despite the physical restrictions he established for full-time limited-duty work. Dr. Filippone listed findings on physical examination and diagnostic testing. He advised that other than a low back injury sustained as a result of a minor motor vehicle accident in 1989 which improved after a few months with physical therapy, appellant had no history of back pain or radicular complaints outside the claimed work injury. In the June 15 and November 29, 2010 reports, Dr. Filippone advised that she had lumbosacral disc herniation at L1-2 and bilateral lumbar radiculopathy at L5-S1. In the June 15, 2010 report, he opined that the diagnosed conditions were solely caused by the strain placed on appellant's body while performing her work duties at the employing establishment for over 18 years. In the November 29, 2010 report, Dr. Filippone opined that her bilateral lumbar radiculopathy at L5-S1 was related to the accepted injury.

Reports dated April 28 and 30, 2010 from appellant's physical therapist addressed the treatment of her thoracic/lumbosacral neuritis/radiculitis.

During the November 5, 2010 hearing, appellant testified that on January 5, 2010 the employing establishment advised her that it did not have any work available within her 10-pound lifting restriction and she was sent home. Her attorney contended that she sustained a recurrence of disability due to the withdrawal of her light-duty work assignment.

In a December 21, 2010 decision, OWCP's hearing representative affirmed the June 24, 2010 decision, finding that the withdrawal of appellant's limited-duty assignment did not constitute a recurrence of disability commencing January 5, 2010 based on the medical opinions of Dr. Altman and Dr. Lakin, who found that the accepted lumbar condition had resolved as of 2007. The hearing representative also found there was no evidence establishing that appellant's limited-duty assignment was provided due to her accepted condition. Appellant's physical restrictions related to her preexisting lumbar degenerative disc disease which had not been accepted as employment related by OWCP.

LEGAL PRECEDENT

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴ 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 (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the

⁴ 20 C.F.R. § 10.5(x).

physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁵

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that 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 she cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁶

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁷

ANALYSIS

OWCP accepted that appellant sustained a lumbosacral strain while in the performance of duty. Following this injury, she returned to full-time modified-duty work effective December 24, 2007. Appellant claimed a recurrence of disability commencing January 5, 2010. She must demonstrate either that her work-related condition has changed such that she could not perform the activities required by her modified job or that the requirements of the modified light-duty job had changed. The Board finds that the record contains no evidence that the modified light-duty job requirements were changed or withdrawn or that her employment-related condition has changed such that they precluded her from performing the modified-duty work.

OWCP relied on the September 21, 2007 medical opinion of Dr. Lakin and the June 7, 2010 report of Dr. Altman, OWCP's referral physicians, in denying appellant's recurrence claim. Dr. Lakin found that the accepted lumbosacral strain condition did not require any further medical treatment. He also found that although appellant could not return to her regular work duties as a mail handler and forklift operator, she could perform modified-duty work with restrictions. Dr. Lakin advised that her preexisting nonemployment-related lumbar degenerative disc disease which she had since 2004 caused her disability for work on March 27, 2006. He stated that the degenerative condition could be treated with pain management.

Dr. Altman found that appellant had lumbar osteoarthritis, that she could work eight hours a day with permanent restrictions related to the ongoing degenerative process in her back and that she was not a candidate for orthopedic surgery. He reviewed her medical record and listed physical examination findings. Dr. Altman advised that there was no evidence to establish

⁵ *Id.* See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3b(1)(c) (January 1995).

⁶ *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁷ *James H. Botts*, 50 ECAB 265 (1999).

a causal relationship between the diagnosed condition and appellant's employment. He stated that there was no proof that driving a hi-lo for 15 years would cause osteoarthritis in an individual. The Board finds that the reports of Dr. Lakin and Dr. Altman establish that the accepted lumbosacral strain had resolved prior to the employing establishment's December 24, 2007 limited-duty job offer and that the limited job that had been offered for his lumbar osteoarthritis was not work related. Therefore, the Board finds that the evidence shows that appellant did not establish a recurrence of disability commencing January 5, 2010.

The Board finds that the weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of a physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁸ Dr. Lakin and Dr. Altman fully discussed the history of injury and related their comprehensive examination findings in support of their opinion that appellant had no residuals or disability causally related to her accepted lumbosacral strain.

Dr. Filippone, an attending physician, submitted several reports which found that appellant had low back pain radiating to her leg, lumbar disc herniation at L1-2 and bilateral lumbar radiculopathy at L5-S1. He advised that she could return to work with restrictions and addressed her treatment plan. While Dr. Filippone found in a June 15, 2010 report that appellant's diagnosed lumbar conditions were related to the work duties she performed over 18 years, he did not describe the specific duties she had been performing during this period. Further, in a November 29, 2010 report, he did not explain how or why appellant's bilateral lumbar radiculopathy at L5-S1 was causally related to the accepted injury. The Board has held that a medical opinion not fortified by rationale is of diminished probative value.⁹ Dr. Filippone did not provide a rationalized opinion to explain why appellant's total disability for the claimed period was due to her accepted condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰ Dr. Filippone's prescriptions dated December 15 and 30, 2009 which addressed appellant's disability for work, predate the alleged recurrence of disability and are, therefore, of diminished probative value as to the claimed period of disability. The Board finds that his reports and prescriptions are insufficient to establish appellant's claim.

Dr. Mauro's reports found appellant had thoracic and lumbosacral neuritis and radiculitis which were treated with an epidural injection. He also found she had low back pain with left-sided leg pain. The Board has consistently held that pain is a symptom, not a compensable medical diagnosis.¹¹ Moreover, Dr. Mauro did not provide an opinion addressing whether appellant's disability for work commencing January 5, 2010 or how any disability was causally

⁸ See *Ann C. Leanza*, 48 ECAB 115 (1996).

⁹ *Cecilia M. Corley*, 56 ECAB 662 (2005).

¹⁰ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Willie M. Miller*, 53 ECAB 697 (2002); *Michael E. Smith*, 50 ECAB 313 (1999).

¹¹ *C.F.*, Docket No. 08-1102 (issued October 10, 2008); *Robert Broome*, 55 ECAB 339 (2004).

related to the accepted lumbar condition.¹² The Board finds that his reports are insufficient to establish appellant's claim.

Dr. Patel's April 30, 2009 report found that appellant's chronic low back pain with left lower extremity radiculopathy and recently developed right lower extremity radiculopathy were likely caused by the alleged September 29, 2005 work injury. The Board notes that OWCP has not accepted that appellant sustained a work-related injury on September 29, 2005. OWCP denied appellant's claim for this injury on December 30, 2005. The only condition it has accepted as employment related is lumbosacral strain. For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.¹³ Dr. Patel provided no rationale explaining how appellant's conditions were caused or related to the established work duties.¹⁴ For the stated reasons, the Board finds that his report is insufficient to establish appellant's claim.

The reports from appellant's physical therapists are of no probative medical value because a physical therapist is not a physician as defined under FECA.¹⁵ The Board finds, therefore, that these reports are insufficient to establish appellant's claim.

Appellant has not met her burden of proof to establish that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the limited light-duty requirements which would prohibit her from performing the limited light-duty position she assumed after she returned to work.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a recurrence of disability commencing January 5, 2010 causally related to her accepted injury.

¹² *Id.*

¹³ *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁴ *Supra* note 9.

¹⁵ *See* 5 U.S.C. § 8101(2); A.C., Docket No. 08-1453 (issued November 18, 2008).

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 2, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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