

recurrence of disability beginning July 27, 2009.² OWCP found that he had not established a recurrence of disability on July 27, 2009 as he was terminated on that date for cause. The Board determined that, while a termination for cause did not itself establish a compensable disability, appellant would be entitled to compensation if he was unable to earn the wages he was receiving at the time of his alleged recurrence of disability due to his work injury. It remanded the case for OWCP to adjudicate whether the medical evidence established that he was disabled beginning July 27, 2009 as a result of his employment injury. The facts of the case as set forth in the prior decision are hereby incorporate by reference.

In a report dated July 29, 2009, Dr. Alfred F. Faust, a Board-certified orthopedic surgeon, noted that appellant sustained a work injury on July 1, 2009 and diagnosed a lumbar sprain/strain with the work incident the “competent medical cause of this injury.” He found that appellant was disabled from work due to pain.

A magnetic resonance imaging (MRI) scan study dated August 24, 2009, revealed a disc herniation at T12 to L1 with mild cord encroachment, an extruded posterior disc herniation at L3-4 and L5-S12. On August 31, 2009 Dr. Faust indicated that appellant last worked on July 23, 2009. He diagnosed lumbar radiculopathy and a herniated nucleus pulposus of the lumbar spine.

On September 2, 2009 Dr. Arash D. Yadegar, a Board-certified physiatrist, related that he was treating appellant for a left leg injury occurring at work on July 1, 2009. He diagnosed a sprain/strain and herniated lumbar disc due to the injury and found that appellant was disabled from employment. In progress and duty status reports dated October 2009 through January 4, 2010, Dr. Faust and Dr. Yadegar continued to find that he was unable to perform his work duties.³

By letter dated November 20, 2009, OWCP referred appellant to Dr. Michael J. Katz, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated December 4, 2009, Dr. Katz diagnosed lumbosacral strain with radiculitis. He stated that appellant’s condition was related to his July 1, 2009 work injury “as well as a recurrence on [July 27, 2009].” Dr. Katz opined that an extruded disc at L3-4 caused appellant’s symptoms and recommended a surgical evaluation in two months. He stated, “Currently [appellant] is not capable of full[-]duty work as a letter carrier although he would be capable of very limited seated work with limited stooping, limited bending, no squatting and no lifting greater than 15 pounds. Dr. Katz is capable of working six hours per day.”

By decision dated April 4, 2011, OWCP found that appellant failed to establish an employment-related recurrence of disability beginning July 27, 2009. It found that his attending physicians diagnosed only pain and did not address disability as of July 27, 2009.

² Docket No. 10-1213 (November 23, 2010). OWCP accepted that on July 1, 2009 appellant, then a 44-year-old carrier, sustained lumbar sprain in the performance of duty. He stopped work on July 1, 2009 and returned to work on July 23, 2009.

³ In a duty status report dated February 9, 2010, Dr. Faust found that appellant could return to work on February 15, 2010.

On appeal appellant related that Dr. Faust advised him that he should not work. He maintained that the MRI scan study showed objective findings rather than a diagnosis of pain.

LEGAL PRECEDENT

When an appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified 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 this conclusion with sound medical reasoning.⁴

Section 10.5(x) of OWCP's regulations provide in pertinent part:

“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.”⁵

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.⁶ While the claimant has the responsibility to establish entitlement to compensation, it shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁷ Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.⁸

ANALYSIS

OWCP accepted that appellant sustained lumbar sprain as the result of a July 1, 2009 employment injury. Appellant stopped work on July 1, 2009 and returned to work on July 23, 2009. He filed a notice of recurrence of disability on July 27, 2009 after he was terminated for cause. On prior appeal, the Board remanded the case for OWCP to evaluate the medical evidence to determine whether it was sufficient to show that appellant was unable to work after that date due to disability from his accepted employment injury.

In a report dated July 29, 2009, Dr. Faust diagnosed a lumbar sprain/strain due to the July 1, 2009 work injury and found that appellant was disabled from employment due to pain. On August 31, 2009 he diagnosed lumbar radiculopathy and a herniated lumbar disc and found

⁴ *Ricky S. Storms*, 52 ECAB 349 (2001); *Helen Holt*, 50 ECAB 279 (1999).

⁵ 20 C.F.R. § 10.5(x).

⁶ *Vanessa Young*, 55 ECAB 575 (2004).

⁷ *Richard E. Simpson*, 55 ECAB 490 (2004).

⁸ *Melvin James*, 55 ECAB 406 (2004).

that he could not resume work. In a report dated September 2, 2009, Dr. Yadegar diagnosed a herniated disc and sprain/strain due to the July 1, 2009 employment injury and opined that he was disabled from work.

On November 20, 2009 OWCP requested that Dr. Katz perform a second opinion examination. In a December 4, 2009 report, Dr. Katz diagnosed lumbosacral strain and radiculitis. He attributed the diagnosed conditions to appellant's July 1, 2009 injury and to a recurrence of disability on July 27, 2009. Dr. Katz determined that he was not able to perform his usual employment but could work six hours per day in a limited-duty capacity.

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.⁹ Once it undertakes to develop the medical evidence further, it has the responsibility to do in a manner that will resolve the relevant issues in the case.¹⁰ The Board finds that Dr. Katz' opinion is generally supportive, unequivocal, bolstered by objective findings and based on a firm diagnosis and an accurate work history. It stands uncontroverted in the record and raises an inference of causal relationship sufficient to require further development by OWCP. Dr. Katz' report lacks only a rationalized explanation regarding whether appellant sustained a recurrence of disability beginning July 27, 2009. As OWCP referred appellant to Dr. Katz, it has the responsibility to obtain a medical opinion that will resolve the issue in this case.¹¹ Accordingly, the Board finds that the case must be remanded to OWCP. On remand, it should request that Dr. Katz submit a supplemental, clarifying report regarding whether appellant sustained a recurrence of disability on July 27, 2009. Following this and any other development deemed necessary, OWCP shall issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

⁹ *Jimmy A. Hammons*, 51 ECAB 219 (1999).

¹⁰ *See Melvin James*, *supra* note 8.

¹¹ *See Richard F. Williams*, 55 ECAB 343 (2004); *Mae Z. Hackett*, 34 ECAB 1421 (1983).

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: March 9, 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