

magnetic resonance imaging (MRI) scan showed a large, broad posterior central and left-sided extruded disc herniation at L4-5 causing marked compression of the emerging left L5 nerve root. OWCP accepted appellant's claim for displacement of lumbar intervertebral disc without myelopathy. Appellant underwent an L4-5 microdiscectomy and received wage-loss compensation before being medically released to full duty in September 2006.

On September 8, 2009 appellant filed a recurrence claim alleging a recurrence of medical condition on June 18, 2009 and a recurrence of disability on August 11, 2009. She described the circumstances of the recurrence of disability and why she believed her present condition was related to the employment injury: "Chronic lower lumbar pain, suffered severe nerve damage. My left leg has numbness and feet and toes are numb. Tend to drag left foot. Symptoms are aggravated in weight-bearing position." Asked to describe all injuries and illnesses suffered between the date she returned to work following the employment injury and the date of the claimed recurrence, appellant noted that she slipped on an icy driveway on February 5, 2009.

Responding to OWCP's request for additional information, appellant explained that she was not doing one specific activity that made her suffer a recurrence. She stated that her job as a city carrier was very physical and labor intensive. Appellant acknowledged that she fell on an icy driveway while delivering mail. She stated that she filed an accident report with her supervisor on February 5, 2009. Appellant described the progress of her condition from the date she first returned to work to the date of the claimed recurrence. She stated that she still had back pain when she returned to work. "I had to work with pain and did all I could do to alleviate the pain." Appellant stated that she was struggling with the pain, "and now it becomes a question of my quality of life if I remain in this physically demanding and labor intensive job." She stated that her work did not help her pain in any way; it only aggravated it more. Appellant explained that she started undergoing spinal decompression on June 18, 2009, a noninvasive and drug-free way to treat her chronic back pain. She described the requirements of her job, all of which she described as really very challenging for her with her chronic back pain.

Also responding to OWCP's request for additional information, Dr. Michael Rouhana, a chiropractor, indicated that appellant's first examination was on June 18, 2009, at which time she was fitted with a lumbosacral orthotic for lumbar support. He identified numerous dates for physical therapy appointments. Dr. Rouhana stated that appellant had reported symptoms of low back pain and left leg numbness aggravated by working and by household tasks such as vacuuming. He described his findings on June 18, 2009 and offered a firm diagnosis of lumbar degenerative disc disease and lumbar radiculopathy. Dr. Rouhana stated that appellant was taken off work in August 2009 after a recommendation to allow her to reduce her walking speed was denied. Appellant's primary restriction, he stated, was reduced expectation of walking speed.

In a decision dated January 12, 2010, OWCP denied appellant's recurrence claim. It found that she did not meet her burden to establish that the claimed recurrence and subsequent work stoppage were related to the accepted employment injury. OWCP explained that Dr. Rouhana was not a physician within the meaning of FECA. As there was no medical evidence from a qualified physician, the claimed recurrence was not established.

Dr. Saeed A. Bajwa, a Board-certified neurosurgeon, noted that appellant was relatively stable in 2008 with some mild persistent symptoms and a mild disability rate of 25 percent. In

January 2010, however, appellant was found to be moderately 50 percent disabled due to worsening symptoms. She underwent additional treatments and spinal decompression and currently she had back pain with left greater than right L5-S1 radiculopathy. It was Dr. Bajwa's opinion that appellant had a recurrence of her back symptoms, that these symptoms were a continuation of symptoms that had been going on for several years and were directly related to the original employment injury.

Dr. Bajwa obtained a current MRI scan, which showed evidence of a new herniated disc at right L5-S1 but no herniated disc at left L4-5, the site of the previous surgery.

On April 23, 2010 OWCP reviewed the merits of appellant's claim and denied modification of its prior decision. It found that the medical evidence did not discuss the worsening of her condition, bridging medical evidence or rationale to support the claimed recurrence or to relate the findings on examination to the claimed recurrence.

Appellant requested reconsideration.² She submitted, among other things, a report from Dr. Bajwa addressing causal relationship. Dr. Bajwa stated that it was quite clear that the original employment injury was responsible for appellant's present condition. He noted that appellant had a herniated disc at left L4-5, which required surgery. Later, appellant developed what Dr. Bajwa described as a recurrent herniated disc at left L4-5 and a bulging disc that herniated at right L5-S1, which also required surgery. Both surgeries, Dr. Bajwa found, were directly related to the original condition, which was caused by repetitive bending, lifting and twisting at work.

In a decision dated February 1, 2011, OWCP reviewed the merits of appellant's claim and denied modification of its prior decision. It noted that Dr. Bajwa had earlier noted no recurrence of the initial herniated disc and did not explain his change of opinion.

Appellant's representative argues that OWCP should have adjudicated appellant's claim not as a recurrence but as a claim for a new traumatic injury, when she slipped and fell on an icy driveway. Citing *R.O.*, Docket No. 07-2070 (issued January 12, 2009), he argues that OWCP mishandled the case and denied due process. Counsel argues that OWCP never asked appellant to submit well-rationalized medical evidence based on objective findings and a proper factual background demonstrating that disability for work and appellant's 2010 emergency back surgery were necessitated by her fall on the ice while delivering mail on February 5, 2009, as opposed to factors of employment described in the occupational disease claim.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ "Disability" means the incapacity, because

² Appellant submitted a narrative Notice of Occupational Disease and Claim for Compensation dated November 1, 2010 and a copy of a February 6, 2009 Notice of Traumatic Injury for the February 5, 2009 slip and fall, which she stated caused a right knee and right hip injury.

³ 5 U.S.C. § 8102(a).

of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.⁴

“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.⁵

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.⁶ An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.⁷

Section 8101(2) of FECA provides that the term “physician,” as used therein, “includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist, and subject to regulation by the Secretary.”⁸ Without diagnosing a subluxation from x-ray, a chiropractor is not a “physician” under FECA and his opinion on causal relationship does not constitute competent medical evidence.⁹

ANALYSIS

Appellant filed a recurrence claim alleging a recurrence of medical condition on June 18, 2009 and a recurrence of disability on August 11, 2009 causally related to her employment injury. To meet her burden of proof, she must submit a well-reasoned medical opinion showing that the claimed recurrences were causally related to the accepted employment injury.

Appellant did not meet her burden. Dr. Rouhana, the chiropractor, did not diagnose a subluxation from x-ray. He is not a qualified physician under FECA and is not competent to address causal relationship.

⁴ 20 C.F.R. § 10.5(f).

⁵ *Id.* at § 10.5(y).

⁶ *Id.* at § 10.5(x).

⁷ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

⁸ 5 U.S.C. § 8101(2).

⁹ *See generally Theresa K. McKenna*, 30 ECAB 702 (1979).

Dr. Bajwa, the neurosurgeon, found that appellant had a recurrence of back symptoms directly related to the original employment injury. He noted only that, after being relatively stable in 2008 with some mild persistent symptoms, she became moderately disabled in January 2010 due to worsening symptoms. Dr. Bajwa did not attempt to explain why her relatively stable condition worsened. He reviewed an imaging study showing evidence of a new herniated disc at right L5-S1. Although the finding appeared to support that appellant's worsening low back symptoms were objectively the result of a new herniation at L5-S1, and not a worsening of the surgically-repaired herniation at L4-5, Dr. Bajwa stated that it was quite clear that the original employment injury was responsible for appellant's present condition. He did not explain. Further, Dr. Bajwa described a "recurrent" herniated disc at left L4-5 without reconciling his review of a current MRI scan, which showed no herniated disc at that level.

Medical conclusions unsupported by rationale are of little probative value.¹⁰ The Board finds that Dr. Bajwa's opinion that appellant suffered a recurrence of back symptoms directly related to the accepted employment injury is not well rationalized and has little probative value. As appellant has not submitted a sound medical opinion establishing that her claimed recurrence of medical condition and recurrence of disability were causally related to the 1996 employment injury, the Board finds she has not met her burden of proof. The Board will affirm OWCP's February 1, 2011 decision denying her recurrence claim.

Appellant's representative argues that OWCP should have adjudicated appellant's claim not as a recurrence but as a claim for a new traumatic injury, when she slipped and fell on an icy driveway on February 5, 2009. Appellant not only filed a recurrence claim, she submitted medical opinion evidence from Dr. Bajwa supporting that she sustained a recurrence directly related to the original employment injury. It was appropriate, therefore, for OWCP to adjudicate that claim.

When appellant filed her recurrence claim, she mentioned the February 5, 2009 slip and fall only because the claim form asked her to describe all injuries and illnesses suffered between the date she returned to work following the 2006 injury and the date of the claimed recurrence. It was an appropriate response and not one that suggested she had filed the incorrect form. Appellant explained that she filed an accident report with her supervisor on February 5, 2009, and the record shows that she filed a separate traumatic injury claim the following day. That issue is not before the Board.

The Board notes, however, that in describing the claimed recurrence appellant appeared to implicate new occupational exposure. Appellant stated that her job as a city carrier was very physical and labor intensive, that she had been carrying mail full time with no limitations since returning from her initial surgery and that her work only aggravated her pain. She stated that, as a result, she underwent spinal decompression treatment on June 18, 2009 and was later taken off work. Moreover, appellant submitted a narrative Notice of Occupational Disease and Claim for Compensation dated November 1, 2010.

¹⁰ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

In *R.O.*, the case cited by appellant's representative, the Board found, as it does here, that OWCP properly denied the claimant's recurrence claim. The claimant did not experience a spontaneous change in his medical condition but instead implicated a new exposure at work. As the claimant consistently described the onset of pain arising from this exposure, the Board remanded the case for OWCP to provide him with the appropriate claim form and an opportunity to develop the claim in accordance with his factual statements.

The Board will remand this case as well. Appellant has consistently implicated the physical demands of her city carrier position after returning to work from her initial surgery. She has also submitted an occupational injury claim. OWCP shall develop this claim accordingly.

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 to establish that she sustained a recurrence of medical condition on June 18, 2009 and a recurrence of disability on August 11, 2009 causally related to her accepted employment injury. Further development is warranted on whether she sustained a new occupational injury.

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2011 decision of the Office of Workers' Compensation Programs is affirmed and the case remanded for further action.

Issued: March 21, 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