

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

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| <b>P.G., Appellant</b>                          | ) |                                 |
|   | ) |                                 |
| <b>and</b>                                      | ) | <b>Docket No. 12-996</b>        |
|   | ) | <b>Issued: October 25, 2012</b> |
| <b>DEPARTMENT OF JUSTICE, FEDERAL</b>           | ) |                                 |
| <b>BUREAU OF PRISONS, Oakdale, LA, Employer</b> | ) |                                 |
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

**JURISDICTION**

On April 6, 2012 appellant filed a timely appeal of the March 5, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her recurrence of disability 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 has established that she sustained a recurrence of disability commencing June 16, 2011 causally related to her accepted December 18, 2007 employment-related injuries.

On appeal, appellant contends that OWCP did not consider a November 7, 2011 report which is sufficient to establish her recurrence claim as it states that she has right lower extremity pain. She further contends that sitting for long periods of time has aggravated her previous injury as it causes pain in the knee and swelling in the ankle.

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

## **FACTUAL HISTORY**

OWCP accepted that on December 18, 2007 appellant, then a 44-year-old correctional officer, sustained a right knee and leg sprain of unspecified sites when she slipped on water on the floor at work.

On July 20, 2011 appellant filed a recurrence of disability claim (Form CA-2a) beginning June 16, 2011. She felt a burning sensation from her buttocks down to her right leg. Appellant received an injection in her lower back. She was treated by a chiropractor for pain in her buttocks and right knee and ankle and subluxation of the spine.

A June 2, 2011 prescription which contained an illegible signature indicated that appellant had lower back pain. She was seven weeks status post two-level anterior cervical discectomy fusion (ACDF). An evaluation and treatment were ordered for appellant's lower back pain.

In a June 27, 2011 discharge summary report, a physical therapist whose signature is illegible advised that appellant had lower back pain and a fertility condition. All goals had been achieved and appellant could continue with self-directed home exercise program.

A July 19, 2011 report which contained the typed name of Dr. J. David Googe, a Board-certified orthopedic surgeon, advised that on August 2, 2011 appellant was scheduled to undergo subacromial decompression, distal clavical decompression and rotator cuff repair. Appellant would be off work for approximately eight weeks with an estimated return to work date of September 26, 2011.

A July 29, 2011 report which contained the typed name of Dr. Eubulus J. Kerr, III, a Board-certified orthopedic surgeon, stated that appellant's lumbar pain and radiculopathy which radiated down her right lower extremity were part of her injury. An updated magnetic resonance imaging (MRI) scan of the lumbar spine was necessary to determine why she continued to have low back and right lower extremity pain. Appellant was well motivated to return to work. A July 29, 2011 progress report also contained Dr. Kerr's typed name and stated that appellant had lumbar radiculopathy and shoulder pain.

By letter dated September 6, 2011, OWCP requested that appellant submit factual and medical evidence, including a rationalized medical opinion from an attending physician explaining the relationship between the need for continued medical treatment and the accepted employment injuries and why she was unable to work.

Medical reports and diagnostic test results dated December 18, 2007 through November 4, 2010 addressed appellant's lumbar, cervical and thoracic spine and right lower extremity conditions and medical treatment.

In an October 18, 2011 decision, OWCP denied appellant's recurrence of disability claim. The medical evidence of record did not establish that she had any residuals of her accepted employment-related injuries.

On February 15, 2012 appellant requested reconsideration.

Reports dated August 18 through December 16, 2009 addressed appellant's lumbar, cervical and thoracic spine and right knee and ankle conditions and work capacity.

A November 7, 2011 report which contained Dr. Kerr's typed name advised that appellant had cervical radiculopathy. Appellant was postoperative a C4-5 and C5-6 ACDF that was performed on April 11, 2011. A January 27, 2012 report also contained Dr. Kerr's typed name and stated that appellant had right carpal tunnel syndrome and herniated nucleus pulposus at C6-7.

In a January 13, 2012 operative report, Dr. Ross B. Nelson, a Board-certified anesthesiologist, advised that appellant underwent surgery to treat her cervical radiculopathy and herniated nucleus pulposus at C6-7. Appellant was status post ACDF at C4-5 and C5-6.

On August 18, 2009 Dr. Adam K. Olmsted, a Board-certified radiologist, reported that an MRI scan of the right knee showed small joint effusion and a partially ruptured small Baker's cyst which measured approximately 3.2 centimeters in length. There was no high-grade internal derangement specifically, a meniscus tear.

In a March 5, 2012 decision, OWCP denied modification of the October 18, 2011 decision, finding that the medical evidence submitted was insufficient to establish that the claimed recurrence of disability was caused by appellant's accepted December 18, 2007 employment injuries.<sup>2</sup>

### **LEGAL PRECEDENT**

A recurrence of disability is the 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, which caused the illness. The 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 physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>3</sup>

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which she claims compensation is causally related to the accepted employment injury.<sup>4</sup> Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal

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<sup>2</sup> The Board notes that, following the issuance of the March 5, 2012 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. See 20 C.F.R. § 501.2(c)(1).

<sup>3</sup> 20 C.F.R. § 10.5(x).

<sup>4</sup> *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

relationship between her recurrence of disability and her employment injury.<sup>5</sup> 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.<sup>6</sup> Moreover, the physician's conclusion must be supported by sound medical reasoning.<sup>7</sup>

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>8</sup> In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.<sup>9</sup> While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>10</sup>

### ANALYSIS

OWCP accepted that appellant sustained a right knee and leg sprain of unspecified sites while in the performance of duty. Appellant claimed a recurrence of total disability commencing June 16, 2011. The Board finds that appellant has failed to submit sufficient medical evidence to establish that her claimed recurrence was caused or aggravated by her accepted injuries.

Dr. Nelson's January 13, 2012 operative report stated that appellant underwent surgery to treat her cervical radiculopathy and herniated nucleus pulposus at C6-7. He advised that she was status post ACDF at C4-5 and C5-6. The Board has held that a physician's opinion, which does not address causal relationship is of diminished probative value.<sup>11</sup> Dr. Nelson did not provide an opinion addressing how appellant's cervical conditions in 2012 were due to the accepted right knee and leg conditions. He did not provide any opinion addressing her disability for work commencing June 16, 2011. The Board finds that Dr. Nelson's report is insufficient to meet appellant's burden of proof in establishing a recurrence of disability.

Although the unsigned reports which contained the typed names of Dr. Googe and Dr. Kerr pertain to the claimed period of disability, this evidence has no probative value as

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<sup>5</sup> *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

<sup>6</sup> *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

<sup>7</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

<sup>8</sup> *See Ricky S. Storms*, *supra* note 6; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

<sup>9</sup> For the importance of bridging information in establishing a claim for a recurrence of disability, *see Richard McBride*, 37 ECAB 748, 753 (1986).

<sup>10</sup> *See Ricky S. Storms*, *supra* note 6; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>11</sup> *See A.D.*, 58 ECAB 149 (2006) (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).

neither author can be identified as a physician.<sup>12</sup> As these reports lack proper identification, as there were no signatures, the Board finds that they do not constitute probative medical evidence sufficient to establish appellant's burden of proof.<sup>13</sup>

The June 27, 2011 discharge summary report from a physical therapist is of no probative value because a physical therapist is not a physician as defined under FECA.<sup>14</sup>

The other medical evidence dated December 18, 2007 through June 2, 2011 predates the alleged recurrence of disability commencing June 16, 2011 and, thus, does not render any opinion on causal relationship for the claimed period. The Board finds that these reports do not establish appellant's claim for a recurrence of disability.

Appellant failed to submit rationalized medical evidence establishing that her disability commencing June 16, 2011 resulted from the residuals of her accepted right leg and knee conditions.<sup>15</sup> She has not met her burden of proof.<sup>16</sup>

On appeal, appellant contended that OWCP failed to consider a November 7, 2011 report that was sufficient to establish her recurrence of disability claim as it found that she had right lower extremity pain. The Board notes, however, that OWCP specifically addressed the November 7, 2011 report and found this evidence was insufficient to establish her claim in its March 5, 2012 decision.

Appellant further contended on appeal that sitting for long periods of time aggravated her accepted injury which caused pain in the knee and swelling in the ankle. As discussed, she has the burden to submit rationalized medical evidence supporting her allegation. Appellant's lay opinion on the cause of her condition is insufficient to discharge her burden of proof as lay individuals are not competent to render a medical opinion.<sup>17</sup> The issue of causal relationship is a medical one and must be resolved by probative medical evidence.<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.

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<sup>12</sup> See *Ricky S. Storms*, *supra* note 6; *Morris Scanlon*, *supra* note 6.

<sup>13</sup> *R.M.*, 59 ECAB 690, 693 (2008); *Merton J. Sills*, 39 ECAB 572 (1988) (medical reports lacking proper identification do not constitute probative medical evidence).

<sup>14</sup> See 5 U.S.C. § 8101(2); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

<sup>15</sup> *Cecelia M. Corley*, 56 ECAB 662 (2005).

<sup>16</sup> *Tammy L. Medley*, 55 ECAB 182 (2003).

<sup>17</sup> *Gloria J. McPherson*, 51 ECAB 441 (2000).

<sup>18</sup> *Luis M. Villanueva*, 54 ECAB 666 (2003).

**CONCLUSION**

The Board finds that appellant failed to establish that she sustained a recurrence of disability commencing June 16, 2011 causally related to her accepted employment injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 5, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board