

FACTUAL HISTORY

On February 7, 2008 appellant, then a 51-year-old lease sales and service clerk, filed a traumatic injury claim alleging that on that day she injured her back and right leg due to picking up a box of copier paper. OWCP accepted the claim for left side L2-3 herniation and L3-4 internal disc derangement and paid wage-loss compensation. Appellant stopped work on February 7, 2008 and returned to full-duty work on December 31, 2008.

Appellant filed claims for wage-loss compensation for the period June 25 to August 28, 2009.

By letter dated August 26, 2009, OWCP informed appellant that it appeared she was claiming a new period of disability and informed her that the evidence was insufficient to support her claim. Appellant was advised as to the type of medical evidence to submit if she was claiming a recurrence of disability. OWCP also advised her to file a recurrence claim form if she was claiming a recurrence of disability due to her accepted February 7, 2008 employment injury.

On September 4, 2009 OWCP received an August 20, 2009 office note from Dr. James Berlin, a treating physician, which provided physical findings and diagnosed right L3 radiculopathy. Appellant reported that she had returned to light duty and was doing better.

OWCP also received a September 1, 2009 office note and clinical update form from Dr. Bruce E. Katz, a treating Board-certified orthopedic surgeon, who reviewed an August 23, 2009 magnetic resonance imaging (MRI) scan which revealed mild L3-4 disc desiccation. Dr. Katz noted that appellant complained of pain radiating down her right leg as well as pain in her back, right groin and right hip. In the September 1, 2009 clinical update form, he indicated that she was not to work that day.

On September 8, 2009 appellant filed various claims for recurrence of disability beginning June 25, 2009 causally related to her accepted February 7, 2008 employment injury.

On January 19, 2010 Dr. Katz reported that appellant reiterated that her back pain was from her February 7, 2008 employment injury.

By decision dated February 23, 2010, OWCP denied appellant's recurrence claims. It found she failed to submit any rationalized medical evidence explaining how her recurrence of disability was due to her accepted February 7, 2008 employment injury.

A functional capacity evaluation was conducted on February 17, 2010 to determine appellant's physical abilities. The report determined that she was capable of performing light-duty work of lifting up to 15 pounds occasionally for up to four hours.

In a March 4, 2010 office note, Dr. Ann Kim, a treating Board-certified physiatrist, diagnosed right-sided lumbar discogenic pain. A physical examination revealed tenderness on mild palpation in right mid and low lumbar region, pain with extension and forward flexion and good motor strength. Dr. Kim reviewed a July 23, 2009 MRI scan which showed L2-3 and L3-4 mild disc bulge and desiccation. Appellant stated that she had minimal pain while resting, but the pain could increase significantly with increased activity. A review of the February 17, 2010

functional capacity evaluation examination revealed that appellant was capable of performing light-duty work for four hours a day.

In office notes dated April 8, May 20, June 3 and July 20, 2010, Dr. Kim diagnosed lumbar discogenic pain and provided physical findings. On April 8, 2010 she updated appellant's work status to reflect that she was capable of working five hours a day. In her a May 20, 2010 office note, Dr. Kim diagnosed a flare-up of discogenic lumbar pain and noted that appellant was currently unable to work, but would return to work on Tuesday. On June 3, 2010 she stated that she was updating appellant's work restrictions to reflect that she was capable of working six hours a day.

In a letter dated July 29, 2010, counsel requested reconsideration. In support of her request, appellant submitted an April 16, 2010 report from Dr. Katz, who noted that he had treated her since June 2003 and that she sustained a back injury at work on February 7, 2008 due to picking up a heavy box of computer paper. She informed him during a November 20, 2008 office visit that she had returned to light-duty work. Dr. Katz stated that appellant was next seen on July 16, 2009 due to a flare up of her symptoms and pain radiating down the right leg. A review of an MRI scan revealed L3-4 mild disc desiccation with no evidence of any disc herniations. Appellant was next seen on January 19, 2010 for her back which was not getting better and he recommended that a functional capacity evaluation be performed. Dr. Katz noted that she attributed her back pain to her February 7, 2008 injury. In concluding, he opined that appellant's symptoms were due to her February 7, 2008 employment injury.

In a September 10, 2010 report, Dr. Kim diagnosed lumbar discogenic pain and noted that appellant had been working seven hours a day. She related that, as a result of a flare-up of appellant's back pain, that she missed three days of work approximately three weeks ago.

On October 26, 2010 Dr. Kim reported seeing appellant for low back pain. She diagnosed a flare-up of lumbar discogenic pain and provided physical findings. Dr. Kim recommended that appellant continue with working light-duty work for seven hours a day.

In a February 2, 2011 decision, OWCP denied modification.

On January 23, 2012 counsel requested reconsideration and submitted a January 23, 2012 report from Dr. Kim in support of her request. In her January 23, 2012 report, Dr. Kim noted the history of the employment injury and the medical treatment given. She noted that appellant has had persistent low back pain since the February 7, 2008 employment injury. Dr. Kim related that appellant will have episodic flare-ups and that she has not been pain-free since the February 7, 2008 employment injury. In concluding, she opined that appellant's low back pain treatment was causally related to the accepted February 7, 2008 employment injury.

By decision dated April 24, 2012, OWCP denied modification.

LEGAL PRECEDENT

OWCP's implementing regulations define a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or

new exposure to the work environment that caused the illness.² If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken and an appropriate new claim should be filed.³

ANALYSIS

OWCP accepted that appellant sustained left-sided L2-3 herniation and L3-4 internal disc derangement as a result of her accepted February 7, 2008 employment injury. Appellant received medical treatment and compensation and returned to full duty on December 31, 2008. She alleged recurrence of disability beginning June 25, 2009. The issue is whether the medical evidence of record established that appellant sustained a recurrence of disability causally related to her accepted February 7, 2008 employment injury.

In support of her claim, appellant submitted medical evidence from Drs. Katz and Kim indicating periods of partial and total disability. On September 1, 2009 Dr. Katz diagnosed a mild L3-4 disc desiccation based on review of an August 23, 2009 MRI scan and noted appellant's pain complaints. In a January 19, 2010 report, he noted that she attributed her back pain to her February 7, 2008 employment injury. Dr. Katz, in an April 16, 2010 report, noted the history of appellant's injury and his treatment and opined that her back pain and symptoms were due to her February 7, 2008 employment injury. In reports covering the period March 4, 2010 through January 23, 2012, Dr. Kim diagnosed discogenic right-sided lumbar discogenic pain which resulted in periods of disability. On March 4, 2010 she found that appellant was only capable of working light duty four hours a day, which was subsequently raised to seven hours a day. In her January 23, 2012 report, Dr. Kim attributed appellant's low back pain to her February 7, 2008 employment injury based on the fact that appellant has had persistent low back pain since the date of her injury.

The histories given by Drs. Kim and Katz do not adequately address how appellant's disability beginning June 25, 2009 was causally related to her back condition especially as she was returned to full-duty work on December 31, 2008. Both physicians attributed appellant's inability to work to either her low back pain or discogenic pain. The Board has consistently held that pain is a symptom, not a compensable medical diagnosis.⁴ Further, neither Dr. Kim nor Dr. Katz provided sufficient rationale explaining how appellant's diagnosed condition and disability commencing June 25, 2009 was causally related to the accepted condition.⁵ They provided no rationale or explanation as to how appellant's disability was due to the accepted February 7, 2008 employment injury and, thus their opinions are of little probative value for

² 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Phillip L. Barnes*, 55 ECAB 426 (2004).

³ *Id.* at Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB 631 (2003).

⁴ *C.F.*, Docket No. 08-1102 (issued October 10, 2008); *Robert Broome*, 55 ECAB 339 (2004).

⁵ See *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

these reasons.⁶ The Board finds that the reports from Drs. Katz and Kim are insufficient to establish appellant's claim.

Appellant also submitted an August 20, 2009 office note from Dr. Berlin diagnosing L3 radiculopathy and noted that appellant had returned to light-duty work. As Dr. Berlin did not offer any opinion regarding her recurrence of disability on June 25, 2009, this report too is of diminished probative value and insufficient to establish her recurrence claim.⁷

The record also contains a February 17, 2010 functional capacity evaluation. This evidence does not address the issue of whether appellant was disabled beginning June 25, 2009 due to her accepted employment injury.⁸ Thus, this report is insufficient to establish her claim for a recurrence of disability.

Appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of disability beginning June 25, 2009 causally related to her February 7, 2008 work injury. Therefore, she did not meet her burden of proof.

On appeal, counsel contended that OWCP's decision is contrary to fact and law. For reasons stated above, the Board finds that the weight of the medical evidence does not establish that appellant's recurrence claim.

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 established a recurrence of disability beginning June 25, 2009 causally related to her accepted February 7, 2008 employment injury.

⁶ *Albert C. Brown*, 52 ECAB 152 (2000).

⁷ *See Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁸ *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship). *See also Desiderio Martinez*, 55 ECAB 245 (2004) (lay persons are not competent to render a medical opinion).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 24, 2012 is affirmed.

Issued: April 24, 2013
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