



fell on ice. OWCP accepted the claim for a sprain of the left lateral collateral knee ligament, a lumbosacral joint sprain and a head contusion.

On May 11, 2009 appellant filed a recurrence of disability claim beginning December 8, 2008 causally related to her January 5, 2008 employment injury. The employing establishment noted that she worked limited duty following her injury until June 4, 2008, when she resumed her usual work duties.

In a report dated December 4, 2008, Dr. Myron Sewell, a Board-certified internist, diagnosed back and knee strain. He found that appellant had continued left knee soreness but was able to perform her usual employment without restrictions. In a duty status report dated December 4, 2008, Dr. Sewell listed restrictions consistent with her regular work duties.

Effective December 7, 2008, the employing establishment terminated appellant's employment due to the expiration of her appointment.

In a report dated January 23, 2009, Dr. Jess H. Lonner, a Board-certified orthopedic surgeon, evaluated appellant for left knee pain since falling on ice on January 5, 2008. He diagnosed chondromalacia and a medial meniscal tear. On February 3, 2009 Dr. Lonner recommended surgery to repair the meniscal tear. On November 15, 2009 he evaluated appellant following physical therapy.

In a report dated October 28, 2010, Dr. Sewell discussed appellant's history of a fall on ice at work on January 5, 2008. He initially diagnosed a left knee sprain but subsequently determined that a repeat magnetic resonance imaging (MRI) scan study showed a medial meniscus tear and chondromalacia. Dr. Sewell attributed the left medial meniscus tear and chondromalacia to the January 5, 2008 fall at work.

On January 9, 2012 OWCP accepted that appellant sustained a recurrence of her medical condition beginning December 8, 2008.<sup>2</sup> It accepted the claim for a left knee medial meniscal tear.

On March 2, 2012 appellant filed a claim for compensation from December 8, 2008 to January 31, 2012.

By letter dated March 15, 2012, OWCP informed appellant that, while it had accepted a recurrence of medical condition, the medical evidence was insufficient to show that she was disabled beginning December 4, 2008.<sup>3</sup> It requested that she submit a rationalized medical report explaining whether she was disabled from work due to her January 5, 2008 employment injury.

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<sup>2</sup> In decisions dated August 5 and December 19, 2009, OWCP found that appellant had not submitted sufficient medical evidence to establish that she sustained an employment-related recurrence of disability on December 8, 2008.

<sup>3</sup> OWCP indicated that appellant was working with restrictions prior to her alleged recurrence of disability; however, the employing establishment indicated that she had resumed her usual employment. On March 21, 2012 appellant's attorney contended that the employing establishment withdrew limited-duty work.

In a letter dated March 22, 2012, OWCP advised appellant's attorney that she should submit a comprehensive report from her attending physician addressing whether she was disabled for work from December 8, 2008 to January 31, 2012.

By decision dated April 20, 2012, OWCP denied appellant's claim for compensation from December 8, 2008 through January 27, 2012. It noted that it had accepted a recurrence of a medical condition in its January 9, 2012 decision. OWCP found that there was insufficient medical evidence to establish that appellant was unable to work beginning December 8, 2008 due to her accepted employment injury. It considered the argument of her attorney that the employing establishment withdrew a limited-duty position but found that the evidence established that she had returned to her usual employment on June 4, 2008 and was terminated at the end of a temporary appointment.<sup>4</sup>

On May 7, 2012 appellant, through her attorney, requested a telephone hearing by an OWCP hearing representative, held on August 13, 2012. She related that she was working full duty beginning June 2008 because she asked her physician to release her to resume her usual work due to pressure from the employing establishment. Counsel contended that the employing establishment accommodated her restrictions while indicating that she was performing regular duty. He referenced a November 20, 2008 letter from the employing establishment to Dr. Sewell asking about appellant's current limitations and asserted that Dr. Sewell's December 4, 2008 response indicated that she had continued restrictions.<sup>5</sup> Counsel reiterated that the employing establishment's withdrawal of her limited-duty position established that she sustained a recurrence of disability.

In a decision dated October 16, 2012, OWCP's hearing representative affirmed the April 20, 2012 decision. He found that the evidence supported that appellant was performing her usual employment when her appointment ended on December 7, 2008. The medical evidence did not show that appellant was disabled from work beginning December 8, 2008.

### **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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>6</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment

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<sup>4</sup> In an April 20, 2012 telephone call, the employing establishment confirmed that appellant was working full duty at the time of her alleged recurrence of disability and that she was terminated due to the expiration of a casual appointment.

<sup>5</sup> In a November 20, 2008 letter, the employing establishment identified appellant as a limited-duty employee and requested that her attending physician provide her work restrictions.

<sup>6</sup> 20 C.F.R. § 10.5(x).

injury.<sup>7</sup> This burden includes the necessity of 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 employment factors and supports that conclusion with sound medical reasoning.<sup>8</sup>

### ANALYSIS

OWCP accepted that on January 5, 2008 appellant sustained a sprain of the left lateral collateral knee ligament, a lumbosacral joint sprain and a head contusion when she slipped and fell on ice. Appellant worked limited duty following her injury until June 4, 2008, when she returned to her regular employment. While she contended that the employing establishment continued to provide her with modified employment, she has not submitted any evidence in support of her assertion. The employing establishment confirmed that appellant was working regular duty at the time it terminated her appointment on December 7, 2008. The medical evidence also established that she had no work restrictions. On December 4, 2008 Dr. Sewell found that appellant could perform her usual work duties. Consequently, the weight of the evidence establishes that she was performing her regular employment at the time of the alleged recurrence of disability.

On May 11, 2009 appellant filed a notice of recurrence of disability on December 8, 2008 due to her January 5, 2008 employment injury. OWCP accepted that she sustained a recurrence of a medical condition and expanded acceptance of the claim to include a tear of the medial meniscus of the left knee. On March 2, 2012 appellant submitted a claim for compensation for total disability from December 8, 2008 to January 31, 2012. OWCP requested that she submit evidence supporting disability. In a report dated January 23, 2009, Dr. Lonner discussed appellant's January 5, 2008 fall on ice and diagnosed a medial meniscal tear and chondromalacia. On February 3, 2009 he recommended knee surgery. On October 28, 2010 Dr. Sewell diagnosed left chondromalacia and a medial meniscal tear due to the January 5, 2008 work injury. Neither Dr. Lonner nor Dr. Sewell, however, addressed whether appellant was disabled from employment and thus their reports are of little probative value.<sup>9</sup>

OWCP advised appellant of the type of evidence required to establish a recurrence of disability; however, she did not submit any medical evidence substantiating that she was disabled beginning December 8, 2008. As she has not submitted any rationalized medical evidence supporting that she was disabled from employment during the period in question, appellant has not met her burden of proof to show that she sustained a recurrence of disability.<sup>10</sup>

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<sup>7</sup> *Carmen Gould*, 50 ECAB 504 (1999).

<sup>8</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>9</sup> *Carol A. Lyles*, 57 ECAB 265 (2005) (whether a particular injury caused an employee disability from employment is a medical issue which must be resolved by competent medical evidence).

<sup>10</sup> See *Mary A. Ceglia*, *supra* note 8.

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 and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has not established that she sustained a recurrence of disability from December 8, 2008 through January 27, 2012 causally related to her January 5, 2008 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 16, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2013  
Washington, DC

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board