

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

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A.C., Appellant )

and )

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Bay Pines, FL, Employer** )

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**Docket No. 13-1210  
Issued: November 18, 2013**

*Appearances:*  
*Capp Taylor, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 22, 2013 appellant filed a timely appeal from an Office of Workers' Compensation Programs (OWCP) merit decision dated March 5, 2013. 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 sustained a recurrence of disability for the period June 22 to August 21, 2012.

**FACTUAL HISTORY**

On January 20, 2009 appellant, then a 52-year-old supervisory police officer, filed a claim under case file number xxxxxx476, for a low back injury which occurred while he was

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<sup>1</sup>5 U.S.C. § 8101 *et seq.*

lifting weights. OWCP denied the claim on the grounds that he failed to submit sufficient medical evidence to establish a causal relationship between his claimed injury and the weight lifting incident. On March 9, 2010 appellant filed a claim under case file number xxxxxx374, alleging a lowback injury on January 19, 2010 when he stumbled while descending a flight of stairs. OWCP accepted this claim for a lumbar strain. Appellant returned to full duty on March 21, 2010.

Appellant filed a claim for benefits under case file number xxxxxx315. He alleged that he injured his lower back while lifting a wheelchair into a car trunk. The claim was handled administratively and appellant was paid for limited medical expenses. Appellant returned to work on May 25, 2011.<sup>2</sup>

On July 8, 2012 appellant filed a Form CA-7 claim for wage-loss compensation from June 22 to August 21, 2012.

On July 8, 2012 appellant filed a Form CA-2 claim for a recurrence of disability, alleging that his inability to work as of June 21, 2012 was caused or aggravated by his accepted January 19, 2010 employment injury. He stated that he experienced immediate low back pain when he bent over to pick up a pair of shoes. The employing establishment controverted the claim, stating that appellant was notified on June 19, 2012 that he would be undergoing a psychological fitness-for-duty examination and would have his police credentials removed. It advised that he did not return to work after this date. The employing establishment submitted a June 19, 2012 memorandum relieving appellant from his police duties and suspending his law enforcement authority due to stress-related issues. A fitness-for-duty examination was directed.

By letter dated July 17, 2012, OWCP advised appellant that it required additional factual and medical evidence to support that his disability as of June 22, 2012 was causally related to his accepted lowback condition. It asked him to submit medical evidence supporting his contention that commencing June 22, 2012 he had been unable to work in any capacity as a result of his accepted back condition.

By letter dated July 23, 2012, OWCP advised appellant that the circumstances he was describing more closely represented a new traumatic injury. It recommended that he consider filing a new claim for a traumatic injury.

On August 14, 2012 appellant filed a Form CA-1 claim for traumatic injury, alleging that on June 13, 2012 he sustained a stress-related condition, anxiety and depression causally related to a hostile work environment created by management. He stated that he stopped work due to this condition on June 20, 2012.<sup>3</sup>

In an April 13, 2012 report, received by OWCP on August 20, 2012, Dr. Adam Berko, an osteopath, stated that appellant had the following diagnoses: natal hernia, cervical spine pain, neuritis, lumbar spine pain, diabetic neuropathy, foot pains, sensory hearing loss, sleep apnea,

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<sup>2</sup> The claim form for this injury is not part of the current record.

<sup>3</sup> Counsel advised OWCP's hearing representative that he intended to pursue the recurrence claim.

reflux, dyslipidemia, hypertension, type 2 diabetes, hemorrhoids and allergic rhinitis. Due to these multiple illnesses appellant was experiencing pain on a daily basis that prevented him from performing his work duties. Dr. Berko stated that appellant was unable to stand or sit for more than 15 minutes at a time, which affected his work performance. He asserted that while appellant's conditions were not likely to resolve, they might be manageable to the point where he could perform duties in an appropriate and effective manner.

On June 29, 2012 Dr. Berko stated that he examined appellant that date. He advised that appellant was unsure when he would be able to return to work due to his medical issues.

In a hand-written July 3, 2012 report, Dr. Arunchalam Jothivliyarani, a Board-certified family practitioner, stated on examination that appellant had complaints of right-sided lower back pain and tenderness. Appellant had a lumbar sprain, diabetes, controlled hypertension, obesity and a transient ischemic attack. Dr. Jothivliyarani related that appellant experienced a syncopal event in mid-June.

Appellant submitted an employing establishment light-duty form report dated July 21, 2012. As a result of an examination in connection with an on-the-job injury, he was found to have a disability rendering him unable to fully perform the duties of his position. The report outlined work restrictions for appellant.

By decision dated August 21, 2012, OWCP denied appellant's claim for a recurrence of disability.

On August 24, 2012 appellant requested an oral hearing, which was held on December 12, 2012. He did not submit any additional medical evidence.

By decision dated March 5, 2013, OWCP's hearing representative affirmed the August 21, 2012 decision.

### **LEGAL PRECEDENT**

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.<sup>4</sup> A recurrence of disability is defined as the inability to work caused by a spontaneous change in a medical condition which results from a previous injury or illness without an intervening injury or new exposure in the work environment that caused the illness.<sup>5</sup>

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<sup>4</sup>*Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. §10.121(a).

<sup>5</sup>*See* 20 C.F.R. § 10.5(x); *Donald T. Pippin*, 54 ECAB 631 (2003).

## ANALYSIS

The Board finds that appellant failed to submit sufficient medical evidence to establish a recurrence of disability for work as of June 22, 2012 due to his January 19, 2010 work injury. For this reason, appellant has not discharged his burden of proof. He has failed to submit evidence to show that he sustained a worsening of his accepted low back strain as of June 22, 2012. As appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of his January 19, 2010 work injury, OWCP properly denied his claim for a recurrence of disability.

In an April 13, 2012 report, Dr. Berko stated that appellant had multiple conditions which were causing him pain and affected his ability to perform his job. He stated generally that appellant's conditions might improve and could be managed. Dr. Berko did not specifically address whether appellant became disabled on/or about June 22, 2012 due to a change in his accepted low back condition. He stated in a June 29, 2012 report that appellant was uncertain as to when he would be able to return to work in light of his medical issues.

Dr. Jothivliyaransubmitted a July 3, 2012 report. He noted complaint of low back pain and tenderness on examination and diagnosed lumbar sprain, diabetes, controlled hypertension, obesity and a transient ischemic attack. Dr. Jothivliyarani advised that appellant experienced a syncopal event in mid-June. He did not address the issue of disability or how it related to the accepted low back condition.

The opinions of Dr. Berko and Dr. Jothivliyarani on causal relationship are of limited probative value. They did not provide adequate medical rationale addressing appellant's disability for work.<sup>6</sup> They did not describe how appellant's accepted lower back condition was competent to cause a recurrence of disability as of June 22, 2012. Their opinions are also of limited probative value as the reports are generalized in nature and equivocal. As noted, appellant has the burden of proof to submit rationalized medical evidence establishing the relationship of the claimed recurrence to the original injury. The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>7</sup> Appellant has not submitted sufficient reasoned opinion from a physician that explains how his disability commencing June 22, 2012 was causally related to the January 19, 2010 work injury. For these reasons, the medical evidence is insufficient to establish a recurrence of a medical condition causally related to the accepted lumbar strain injury. The Board will affirm OWCP's March 5, 2013 decision.

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<sup>6</sup>*William C. Thomas*, 45 ECAB 591 (1994).

<sup>7</sup>*See Ann C. Leanza*, 48 ECAB 115 (1996).

**CONCLUSION**

The Board finds that appellant has not met his burden to establish that he sustained a recurrence of disability as of June 22, 2012 causally related to his accepted lumbar strain condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 5, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board