

back. Appellant's claim was administratively accepted without formal review for a limited time off work and for medical expenses. On October 9, 2001 she returned to limited-duty work for the employing establishment.

The case record reflects that there is a gap in the medical evidence between October 2001 and March 2006. The findings of March 20, 2006 x-rays of appellant's back showed "mild osteoarthritis" and "question of degenerative disc disease L5-S1 level." In October 2007, appellant returned to regular work for the employing establishment per the recommendation of Dr. Doris Hein, an attending Board-certified internist.

In a December 4, 2007 report, Dr. Thelma Evans, an attending Board-certified internist, noted that appellant complained of pain in her chest, feet, ankles, knees and back. She diagnosed costochondritis, varicose veins, history of gastric ulcer and bilateral foot and knee pain, but she did not reference a work injury.

On December 19, 2008 appellant applied for disability retirement, noting that her back, knees, legs, feet and depression affected her ability to work.

On March 16, 2009 appellant filed a recurrence of disability (Form CA-2a) indicating that she sustained a recurrence of disability on December 19, 2008 due to her October 3, 2001 injury.² She later filed a claim for compensation (Form CA-7) indicating that she was claiming wage-loss compensation beginning January 3, 2009 and continuing.

OWCP then began to formally develop appellant's claim. By letter dated April 6, 2009, appellant claimed that she had serious health problems that prevented her from working, including arthritis of the spine and bulging discs.

On April 28, 2009 OWCP accepted appellant's claim for a lumbar sprain. It did not accept that her osteoarthritis and degenerative disc disease were work related.

In a letter dated April 29, 2009, OWCP requested that appellant submit additional evidence in support of her recurrence of disability claim.

In a June 10, 2009 statement, appellant indicated that in late 2008 her pain medications were no longer working and that she was almost immobile due to back pain. In a May 28, 2009 report, Dr. Robia Byas, an attending Board-certified internist, stated that appellant complained of persistent stiffness and aching in her lower back which was exacerbated by bending, standing for prolonged periods and prolonged walking. She indicated that appellant was also being treated for her trapezius neck strain. Dr. Byas noted that December 2008 magnetic resonance imaging (MRI) scan testing of appellant's spine showed degenerative arthritis and bulging discs and stated, "[Appellant] is therefore at this time unable to perform her job duties."

In a June 18, 2009 letter, OWCP advised appellant that the evidence she submitted in support of her recurrence of disability claim did not meet the definition of a recurrence of

² Appellant indicated that her back and legs began to hurt again when she threw mail and delivered her mail route.

disability. It advised her that she could file a Form CA-1 or Form CA-2 if she felt that she sustained a new traumatic injury or occupational disease.

In a June 2, 2010 report, Dr. Florian Miranzadeh, an attending osteopath and Board-certified family practitioner, stated that appellant reported injuring herself at work on October 3, 2001 when she lifted a tub of mail weighing over 20 pounds and felt her back pop. He diagnosed a lumbar sprain “as a result of injury sustained on October 3, 2001” which required physical therapy, adhesive capsulitis of both shoulders secondary to “sprain of back and severe back pain,” and carpal tunnel syndrome of both wrists and hand “most probably secondary to repetitive injury sustained during work as a letter carrier.”

On July 12, 2010 Dr. Sue Harsoor, an attending Board-certified pain management physician, noted that she had been treating appellant since January 8, 2009 and that, after many years of working as a letter carrier, she developed back and leg pain. She stated that appellant had been under the care of a rheumatologist for shoulder pain and carpal tunnel syndrome since October 2009. Dr. Harsoor stated, “She is off work secondary to persistent pain.”

In a July 19, 2010 report, Dr. Cornelius Rogers, an attending Board-certified internist, noted that on October 3, 2001 appellant felt a large pop in her back when she lifted a large box weighing more than 20 pounds. He diagnosed lumbar radiculopathy, myalgia, myositis, depression and anxiety and indicated that appellant “should not and cannot work.”

In a December 22, 2010 report, Dr. Miranzadeh repeated the history he provided in his earlier report, noting that after her work injury appellant continued to take medication for back pain until 2008 when she was no longer able to work. He diagnosed L4-L5 and L5-S1 radiculopathy due to disc bulge, bilateral carpal tunnel syndrome, shoulder ligament tear, left shoulder bursitis and left shoulder osteoarthritis. Dr. Miranzadeh stated that these findings were “consistent with the patient’s mechanism of injury and symptoms, and I believe they are work-related injuries.”

On April 14, 2011 appellant filed an occupational disease claim (Form CA-2), claiming that she had bilateral carpal tunnel syndrome and shoulder conditions due to her work duties.³ By letter dated June 2, 2011, the Office of Personnel Management (OPM) advised her that her disability retirement application had been accepted.

By decision dated August 2, 2011, OWCP denied appellant’s claim on the grounds that she had not submitted sufficient medical evidence to establish a recurrence of disability on or after January 3, 2009 due to her October 3, 2001 work injury. It indicated that none of the medical evidence submitted by appellant contained a rationalized opinion on causal relationship.

Appellant requested a telephone hearing before an OWCP hearing representative. During the November 29, 2011 hearing, she testified that she filed a recurrence of disability claim because the same back pain she experienced in October 2001 had worsened in late 2008.

³ This claim was denied under a separate claim number in June 2011. OWCP found that appellant had not submitted adequate medical evidence showing a connection between these claimed conditions and her work activities. This matter is not currently before the Board on appeal.

After the hearing, appellant submitted a January 5, 2010 progress note in which Dr. Rogers indicated that appellant had chronic lower back pain, weakness and dysfunction secondary to lumbar radiculopathy and spinal stenosis. He noted that appellant's MRI scan testing in 2006 and 2010 revealed many degenerative findings and stated, "It is my opinion that the work activities described in the functional purpose of the letter carrier contributed to [appellant's] radiological and clinical findings and dysfunction."

In a January 24, 2012 decision, an OWCP hearing representative affirmed OWCP's August 2, 2011 decision noting that the record did not contain a rationalized medical opinion relating appellant's disability on or after January 3, 2009 to her October 3, 2001 work injury.

In a February 7, 2012 letter, appellant, through counsel, requested reconsideration of her recurrence of disability claim. She submitted the findings of MRI scan testing of her lumbar spine in April 2009 and July 2010. In an April 16, 2010 Family and Medical Leave Act (FMLA) form report, Dr. Harsoor diagnosed lumbar radiculopathy and indicated that appellant could not perform the pulling and pushing duties of her job. In an undated FMLA form report, Dr. Byas diagnosed lumbar radiculopathy, low back pain and facet arthritis and indicated that appellant was incapacitated.

In a September 19, 2012 decision, OWCP denied appellant's request for further review of her claim on the merits noting that the evidence submitted by appellant was repetitious or irrelevant.

In an April 27, 2013 order remanding case,⁴ the Board set aside OWCP's September 19, 2012 decision and remanded the case to OWCP for further development. The Board found that OWCP's seven-month delay in considering appellant's reconsideration request required that the case be remanded to OWCP to perform a review of her claim on the merits.

In an August 22, 2013 decision, OWCP conducted a merit review per the Board's order remanding case and determined that appellant had not met her burden of proof to establish a recurrence of disability on or after January 3, 2009 due to her October 3, 2001 work injury.⁵

LEGAL PRECEDENT

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted

⁴ Docket No. 13-95 (issued April 27, 2013).

⁵ OWCP's merit review included a review of the medical evidence that appellant had submitted in conjunction with her February 2012 reconsideration request. After its September 19, 2012 decision, appellant submitted a number of medical treatment authorization requests, but she did not submit any medical evidence concerning her recurrence of disability claim.

injury.⁶ 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 the employment injury and supports that conclusion with sound medical rationale.⁷ Where no such rationale is present, medical evidence is of diminished probative value.⁸

ANALYSIS

OWCP accepted that on October 3, 2001 appellant sustained a lumbar sprain due to kneeling and bending to pick up a tub of mail at work. Appellant filed a claim alleging that she sustained a recurrence of disability on January 3, 2009 due to her October 3, 2001 work injury.⁹

The Board finds that appellant did not meet her burden of proof to submit medical evidence establishing a recurrence of disability. None of the medical evidence submitted by appellant contained a rationalized opinion on causal relationship.

In the May 28, 2009 report, Dr. Byas stated that appellant had back symptoms which were exacerbated by bending, standing for prolonged periods, and prolonged walking and noted, “[Appellant] is therefore at this time unable to perform her job duties.” In an undated FMLA form report, she diagnosed lumbar radiculopathy, low back pain and facet arthritis and indicated that appellant was incapacitated. These reports are of limited probative value on the relevant issue of this case because Dr. Byas did not provide a clear opinion that appellant’s disability was related to her October 3, 2001 work injury. Dr. Byas seemed to suggest that appellant might have sustained a new work injury, but such an injury is not the subject of the present recurrence of disability claim.

In his June 2, 2010 report, Dr. Miranzadeh stated that appellant reported injuring herself at work on October 3, 2001 when she lifted a tub of mail weighing over 20 pounds and felt her back pop. He diagnosed a lumbar sprain “as a result of injury sustained on October 3, 2001” which required physical therapy, adhesive capsulitis of both shoulders secondary to “sprain of back and severe back pain,” and carpal tunnel syndrome of both wrists and hand “most probably secondary to repetitive injury sustained during work as a letter carrier.” In a December 22, 2010 report, Dr. Miranzadeh diagnosed L4-L5 and L5-S1 radiculopathy due to disc bulge, bilateral carpal tunnel syndrome, shoulder ligament tear, left shoulder bursitis and left shoulder osteoarthritis. He stated that these findings were “consistent with the patient’s mechanism of injury and symptoms, and I believe they are work-related injuries.” These reports do not

⁶ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986). Under 20 C.F.R. § 10.5(x), a recurrence of disability is defined, in part, as “an 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 that caused the illness.”

⁷ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁸ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁹ Appellant also filed an occupational disease claim that was denied under a separate claim file, but this matter is not currently before the Board.

establish appellant's claim as Dr. Miranzadeh describes a number of medical conditions which are not accepted as having resulted from the accepted October 3, 2001 injury. Appellant's claim has only been accepted for a lumbar sprain and no lumbar disc condition has been accepted. Dr. Miranzadeh has not provided a rationalized medical condition relating the accepted condition sustained on October 3, 2001 to appellant's disability on or after January 3, 2009.

Dr. Harsoor on July 12, 2010 noted that she had been treating appellant since January 8, 2009 and that, after many years of working as a letter carrier, she developed back and leg pain. She stated, "She is off work secondary to persistent pain." In an April 16, 2010 form report, Dr. Harsoor diagnosed lumbar radiculopathy and indicated that appellant could not perform the pulling and pushing duties of her job. However, she did not provide any indication that appellant was disabled due to her October 3, 2001 work injury.

In a July 19, 2010 report, Dr. Rogers noted the October 3, 2001 work incident and diagnosed lumbar radiculopathy, myalgia, myositis, depression and anxiety. He indicated that appellant "should not and cannot work." However, Dr. Rogers did not provide any opinion on causal relationship in this report. In a January 5, 2010 progress note, he indicated that appellant had chronic lower back pain, weakness and dysfunction secondary to lumbar radiculopathy and spinal stenosis and stated, "It is my opinion that the work activities described in the functional purpose of the letter carrier contributed to [appellant's] radiological and clinical findings and dysfunction." Dr. Rogers appears to relate appellant's problems to a new injury rather than the October 3, 2001 work injury and therefore this report does not support appellant's claim for a recurrence of disability.

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 did not meet her burden of proof to establish that she sustained a recurrence of disability on or after January 3, 2009 due to her October 3, 2001 work injury.

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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