



## **FACTUAL HISTORY**

On November 13, 2003 appellant, then a 53-year-old complaints examiner investigator, sustained an employment-related lumbar sprain when his office chair collapsed. A November 17, 2003 x-ray of the lumbar spine demonstrated mild degenerative changes. Medical history indicated that appellant had previous lumbar spine surgery in 1991. On March 23, 2004 Dr. Richard B. Reff, an attending Board-certified orthopedic surgeon, indicated that he reviewed a March 10, 2004 magnetic resonance imaging (MRI) scan study that demonstrated no significant spondylolisthesis and lumbar spondylosis and a disc bulge at L3-4 and bulges at L4-5 and L5-S1 with no absolute herniation. Appellant continued to receive medical care including pain management through July 21, 2004 when Dr. Reff reported that appellant had continued low back pain and additionally had radiating neck pain and limitation of right shoulder motion. Dr. Reff recommended physical therapy. The record does not indicate that appellant received wage-loss compensation during this period.

On May 11, 2012 appellant filed a recurrence claim, stating that he was dressing for work and his back went out on approximately October 24, 2010. He stated that he first received medical treatment for the claimed recurrence on November 20, 2011.

By letter dated July 18, 2012, OWCP informed appellant of the type of evidence needed to support the claimed recurrence. It noted that the last medical evidence of record was dated July 21, 2004 and advised appellant to provide all medical records for the employment injury from that date to the present with a narrative opinion from his physician that addressed the relationship between his current medical condition and the November 13, 2003 employment injury.

In a questionnaire dated August 21, 2012, appellant described the November 2003 injury. He indicated that he left federal employment on May 31, 2005 and returned on September 13, 2010 as a reemployed annuitant, and that while away from federal employment he continued to experience back pain and visited the doctor but mostly self-medicated with over-the-counter medication until November 20, 2011. Appellant stated that, upon returning to work, he had to ride the Metro train system, which placed enormous strain and continuous impact on his back and lumbar region. He maintained that the constant motion going to and from work aggravated the November 13, 2003 employment injury, causing constant pain and back spasms. Appellant stated that his back went out approximately 10 times, culminating in the October 2010 incident when his back went out while he was preparing for work.<sup>3</sup> He also indicated that sitting in his work chair caused pain and that he had requested an ergonomic chair, which had not been provided. Appellant indicated that he had received medical care for the recurrent back pain beginning on June 17, 2011.

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<sup>3</sup> In the August 21, 2012 questionnaire, appellant indicated that before leaving federal service in 2005 he was treated by a Dr. Slappey in Rockville, Maryland. The record before the Board contains no medical reports from Dr. Slappey. The medical reports dated from November 17, 2003 to July 21, 2004 are from Dr. William E. Smith, Jr. in Pensacola, Florida, Dr. Reff whose office is in Bethesda, Maryland, and Dr. Lester Zuckerman, who has an office in Rockville, Maryland. Appellant also submitted a handwritten questionnaire that is essentially illegible.

A July 1, 2011 MRI scan study of the lumbar spine demonstrated previous surgery at the L4-5 level and degenerative disc disease at multiple levels. In a March 2, 2012 report, Dr. Corey A. Wallach, a Board-certified orthopedic surgeon, noted a history of chronic radiating low back pain for three months, aggravated by standing and walking for long periods and that this made appellant miss work. He advised that appellant walked with an antalgic gait. No weakness or sensory deficits were noted on physical examination. Dr. Wallach diagnosed lumbago and degenerative disc disease. On March 21, 2012 he reviewed an MRI scan study, indicating that it showed significant stenosis at L3-4 and L4-5. On May 10, 2012 appellant had an epidural steroid injection. In a May 21, 2012 report, Dr. Wallach noted appellant's report that the injection did not provide relief and that he was frustrated with his chronic throbbing pain. He indicated that appellant had limited lumbar flexion and extension and a positive straight leg raising test bilaterally. Dr. Wallach diagnosed lumbar spinal stenosis and requested that appellant be allowed to work from home five days a week. Appellant also submitted a sick leave audit from pay period 19 in 2010 through pay period 16 in 2012.

By decision dated October 23, 2013, OWCP denied the recurrence claim on the grounds that the evidence of record was insufficient to establish that he sustained a worsening of the accepted condition.

### **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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."<sup>4</sup> An individual person 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 he or she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish 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 reasoning.<sup>5</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>6</sup>

### **ANALYSIS**

OWCP accepted that on November 13, 2003 appellant sustained an employment-related lumbar sprain. On May 11, 2012 appellant filed a recurrence claim, indicating that he sustained a recurrence of disability on approximately October 24, 2010 when his back went out. The Board finds that he has not submitted sufficient evidence to support the recurrence claim.

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<sup>4</sup> 20 C.F.R. § 10.5(x); R.S., 58 ECAB 362 (2007).

<sup>5</sup> S.S., 59 ECAB 315 (2008).

<sup>6</sup> See *Ronald C. Hand*, 49 ECAB 113 (1997).

Medical evidence of bridging symptoms must demonstrate that the claimed recurrence is causally related to the accepted injury.<sup>7</sup> While appellant maintained that he continued to have back symptoms between 2004, the date of the last medical report, and 2010, when he claimed a recurrence of disability, he submitted no medical evidence to support this assertion. In support of his recurrence claim, he submitted a July 1, 2011 MRI scan study of the lumbar spine that demonstrated degenerative disc disease at multiple levels. The report, however, contains no opinion as to the cause of the diagnosed condition and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>8</sup> In reports dated March 2 to May 21, 2012, Dr. Wallach provided physical examination findings and diagnosed lumbago and degenerative disc disease. However, he did not explain how appellant's current condition was related to the accepted November 13, 2003 employment injury. In fact, he did not mention the prior employment injury at all. Thus, his reports are of little probative value.<sup>9</sup>

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 he or she claims compensation is causally related to the accepted injury.<sup>10</sup> Appellant did not submit sufficient evidence to show that the claimed recurrence and disability were causally related to the November 2003 employment injury.<sup>11</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.

### CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability causally related to the accepted November 13, 2003 employment injury.

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<sup>7</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>8</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>9</sup> *P.H.*, Docket No. 13-955 (issued November 25, 2013).

<sup>10</sup> *Ronald C. Hand*, *supra* note 5.

<sup>11</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 23, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 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