



in his back. He did not stop work but he began working in a limited-duty position for the employing establishment.

Appellant filed claims for various periods of total disability, including from November 22, 2006 to February 27, 2007, November 14, 2008 and from January 2 to 28, 2009. In an October 28, 2009 decision, OWCP denied the claims, finding that he did not submit sufficient medical evidence.

Appellant stopped work on March 13, 2012. On June 29, 2012 he filed a notice of recurrence (Form CA-2a) claiming total disability on March 13, 2012 due to his August 5, 2006 work injury. Appellant later filed additional claims for wage loss through late 2012.<sup>2</sup>

Appellant submitted medical records in support of his recurrence of disability claim, including the March 14, April 18, May 3, 24 and 30, June 21 and 27, September 18 and November 13, 2012 reports of Dr. Michael Franchetti, an attending Board-certified orthopedic surgeon. He also submitted a July 17, 2012 report of Dr. Susan Liu, an attending Board-certified orthopedic surgeon, and an August 3, 2012 report of Dr. Joseph Jamaris, an attending Board-certified neurosurgeon.

Dr. Franchetti stated that appellant reported that he recently tried to perform his regular duties but awoke on the morning of May 14, 2012 with severe back pain and worsening of the radicular pain that ran down his left leg. He noted on examination that appellant had back spasms and limited range of back motion. Left straight leg raising produced severe radiating left leg pain, but right straight leg raising was negative. Dr. Franchetti placed appellant off work and diagnosed, "Severe exacerbation of lumbosacral strain with left-sided disc herniation L3-4 and severe left lumbar radiculopathy as a result of the August 5, 2006 work injury." On April 18, 2012 he described similar examination findings and provided the same diagnosis relating appellant's condition to his August 5, 2006 work injury. On May 3, 2012 Dr. Franchetti indicated that appellant was "status post a work-related injury on August 5, 2006 with resultant low back pain with left leg radiculopathy associated with some constant neurological symptoms...." On May 24, 2012 he described appellant as "status post his second epidural steroid injection for the treatment of his low back pain with left leg radiculopathy associated with some neurological symptoms, all stemming from a work-related injury of August 5, 2006." In his subsequent reports, Dr. Franchetti indicated that appellant's continuing back problems stemmed from his August 5, 2006 work injury.

Dr. Liu stated that appellant reported that he suffered a fall due to back spasms two weeks prior. She diagnosed left elbow sprain, left facial/eye contusion, left thigh contusion and left knee contusion "secondary to the fall from severe back spasm with history of left-sided disc herniation at L3-4 as a result of the August 5, 2006 work-related injury." On August 3, 2012 Dr. Jamaris stated in the diagnosis section, "[Appellant] continues to suffer with left axial lumbar

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<sup>2</sup> Appellant stated that on March 12, 2012 he experienced increased back and left leg symptoms after lifting many trays of mail. He later filed a claim, under a separate claim file, alleging that he sustained a work-related injury on March 12, 2012. OWCP denied the claim and this matter is not currently the subject of the present appeal before the Board.

musculoligamentous pain and radiculopathy from the herniation sustained at work on [August 5, 2006].”

In a January 9, 2013 decision, OWCP denied appellant’s claim finding that he did not submit sufficient medical evidence to establish a recurrence of total disability on or after March 13, 2012 due to his August 5, 2006 work injury. The reports of appellant’s attending physicians did not contain a rationalized opinion on causal relationship.

Appellant requested a hearing before an OWCP hearing representative. In a March 15, 2013 statement, he asserted that on March 12, 2012 he was required to perform automation operation duties at work.

In a January 2, 2013 report, Dr. Franchetti stated that on March 14, 2012 appellant was seen with increased back and left leg symptoms after attempting to perform his regular work duties. He discussed treatment of appellant, noting that he last saw him on November 13, 2012 at which time the medical findings “as a result of the recurrence included tenderness and severe spasm in his lumbar spine.” On March 14, 2012 appellant stood with a flexion list and was obviously in severe pain. On November 13, 2012 he still had tenderness and lumbar spasms with a painful and restricted range of motion, worse with extension. Dr. Franchetti noted that, despite his continued nonoperative management and epidurals, appellant still experienced back pain and radiating pain down his left leg in a classic radicular distribution. He stated:

“His present diagnosis is that [appellant] is suffering from severe exacerbation of his lumbosacral strain with left-sided disc herniation at L3-4 and severe clinical left lumbar radiculopathy directly and causally related to his August 5, 2006 work injury. It is noted that both Dr. Jamaris, his neurosurgeon and myself have informed him that he is a surgical candidate due to his lumbar spinal injury of August 5, 2006. His present period of disability places [appellant] on an off work duty status from his office visit of March 14, 2012 and ongoing.”

In January 15 and March 13, 2013 reports, Dr. Franchetti related appellant’s L3-4 disc herniations and left lumbar radiculopathy to his August 5, 2006 work injury.

At the hearing held on April 30, 2013, appellant testified that on March 12, 2012 he was directed to report to a mail casing operation, which required him to sit and case mail coming off the machines. He had not performed this type of work for several years prior to March 12, 2012 and alleged that it exceeded his usual work restrictions. After the hearing, appellant submitted a May 14, 2013 report in which Dr. Franchetti again related his present back and leg conditions to the August 5, 2006 work injury.

In a July 22, 2013 decision, the hearing representative affirmed the January 9, 2013 decision finding that appellant had not established a recurrence of total disability on or after March 13, 2012 due to his accepted work injuries. She found that the reports of Dr. Franchetti did not provide a rationalized medical opinion on causal relation.

## LEGAL PRECEDENT

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>3</sup>

## ANALYSIS

OWCP accepted that on August 5, 2006 appellant sustained thoracic and lumbar sprains when the top shelf of a mail container fell and struck his back. Appellant began working in a limited-duty position at the employing establishment. He stopped work on March 13, 2012. On June 29, 2012 appellant filed a CA-2a form claiming a recurrence of total disability on March 13, 2012 due to his August 5, 2006 work injury.<sup>4</sup>

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability commencing March 13, 2012 due to his August 5, 2006 work injury.

In a May 14, 2012 report, Dr. Franchetti, an attending Board-certified orthopedic surgeon, stated that appellant reported that he recently tried to perform his regular duties. Appellant awoke on the morning of May 14, 2012 with severe back pain and severe worsening of the radicular pain that ran down his left leg. Dr. Franchetti placed appellant off work and diagnosed, "Severe exacerbation of lumbosacral strain with left-sided disc herniation L3-4 and severe left lumbar radiculopathy as a result of the August 5, 2006 work injury." This report does not establish that appellant sustained a recurrence of total disability on or after March 13, 2012 due to his August 5, 2006 work injury. Dr. Franchetti did not sufficiently explain how appellant's bad condition was related to the thoracic and lumbar sprains accepted as occurring on August 5, 2006. It should be noted that appellant's claim has not been accepted for L3-4 disc herniations or left lumbar radiculopathy. The record does not show that he sustained such injuries on August 5, 2006. Moreover, Dr. Franchetti suggested that appellant sustained a new

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<sup>3</sup> *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986). 20 C.F.R. § 10.5(x) provides, "*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. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."

<sup>4</sup> Appellant also filed a claim, under a separate claim file, alleging that he sustained an injury on March 12, 2012 due to performing his work duties, including lifting mail trays. OWCP denied the claim and this matter is not currently the subject of the present appeal before the Board.

injury in March 2012, but the question of whether he sustained such an injury is not currently before the Board.<sup>5</sup>

In reports dated April 2012 to May 2013, Dr. Franchetti addressed appellant's continuing back problems, stating that they stemmed from his August 5, 2006 work injury. On May 24, 2012 he described appellant as "status post his second epidural steroid injection for the treatment of his low back pain with left leg radiculopathy associated with some neurological symptoms, all stemming from a work-related injury of August 5, 2006." On January 3, 2013 report Dr. Franchetti stated, "His present diagnosis is that [appellant] is suffering from severe exacerbation of his lumbosacral strain with left-sided disc herniation at L3-4 and severe clinical left lumbar radiculopathy directly and causally related to his August 5, 2006 work injury." These reports are not sufficient to establish appellant's claim for a work-related recurrence of total disability. Dr. Franchetti did not provide medical rationale to support his conclusion on causal relationship. As noted, it has not been accepted that appellant sustained lumbar disc herniations or a left lumbar radiculopathy on August 5, 2006. Dr. Franchetti did not address how appellant's soft tissue injuries, thoracic and lumbar sprains, could cause or contribute to disability on or after March 13, 2012.

In a July 17, 2012 report, Dr. Liu, an attending Board-certified orthopedic surgeon, stated that appellant reported that he suffered a fall due to back spasms two weeks prior. She diagnosed left elbow sprain, left facial/eye contusion, left thigh contusion and left knee contusion "secondary to the fall from severe back spasm with history of left-sided disc herniation at L3-4 as a result of the August 5, 2006 work-related injury." This report is of limited probative value because Dr. Liu did not provide any explanation of how appellant's accepted August 5, 2006 work injury caused his fall in July 2012. In an August 3, 2012 report, Dr. Jamaris, an attending Board-certified neurosurgeon, stated in the diagnosis section, "[Appellant] continues to suffer with left axial lumbar musculoligamentous pain and radiculopathy from the herniation sustained at work on [August 5, 2006]." He did not provide any medical rationale for his opinion on causal relationship. Dr. Jamaris also discussed medical conditions that have not been accepted as related to the August 5, 2006 work incident.

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 total disability on or after March 13, 2012 due to his August 5, 2006 work injury.

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<sup>5</sup> Appellant asserted that, on March 12, 2012, he was required to work beyond his established work restrictions, but he did not submit sufficient evidence to establish this claim. Therefore, he has not established a recurrence of total disability by showing a change in the nature and extent of the light-duty job requirements. *See supra* note 3.

**ORDER**

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

Issued: April 25, 2014  
Washington, DC

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

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

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