



## **FACTUAL HISTORY**

OWCP accepted that on August 11, 2006 appellant, then a 42-year-old mail handler, sustained a lumbar sprain and thoracic or lumbosacral neuritis or radiculitis as a result of an employment injury. It also accepted that on January 14, 2007 she sustained spinal stenosis as a result of an employment injury.<sup>3</sup> Both claims were combined into the present claim. Appellant stopped work and received disability compensation. On September 11, 2007 she was placed on the periodic rolls.

On November 10, 2008 appellant returned to limited duty. She continued to receive medical treatment and undergo physical therapy.

In a March 19, 2013 report, Dr. A.R. Sayed Bakhaty, a pain medicine specialist, related appellant's complaints of persistent severe, recurrent lower back pain and left leg symptoms. He stated that appellant was previously treated for a January 14, 2007 work-related injury, which exacerbated an August 11, 2006 injury. Dr. Bakhaty noted that appellant was treated with several epidural and facet injections including denervation on the right side. He reported that appellant had sustained significant improvement with the right side of the back and the right leg. Dr. Bakhaty related that a September 2012 magnetic resonance imaging (MRI) scan revealed a broad-based posterior bulge at L2-3 compromising the left neural foramina with some stenosis and evidence of broad-based bulge at L5-S1. Upon examination, he observed tenderness extending along the paraspinal muscle of the lumbar spine L3 through S1. Percussion of the lumbar spinous process was tender, of moderate severity, and maximum at L3 and L5. Dr. Bakhaty reported that appellant lacked 20 to 30 degrees forward bending and 10 degrees of extension. He diagnosed status post work-related injury on January 14, 2007 with multiple injuries and persistent recurrent complaints, post-traumatic lumbar disc herniation with recurrence at L2-3 and L5-S1, post-traumatic lumbar facet joint pain syndrome and chronic refractory lower back pain interfering with daily living activities. Dr. Bakhaty opined that all diagnoses were causally and directly related to the January 14, 2007 work injury that exacerbated an August 11, 2006 injury. He reported that these injuries were permanent in nature and interfered with daily living activities, working activities and sleep pattern.

On March 27, 2013 appellant underwent an authorized medial branch block of the lumbar spine and lumbar facet injection performed by Dr. Bakhaty.

On April 3, 2013 appellant filed a recurrence claim alleging that on March 27, 2013 she sustained a recurrence of the August 11, 2006 and January 14, 2007 employment injuries and was unable to work. She claimed that after receiving an authorized spinal injection the pain in her back returned and prevented her from doing her normal activities. Appellant filed for disability compensation beginning March 27 until November 1, 2013.

In an April 1, 2013 report, Mark A.P. Filippone, Board-certified in physical medicine and rehabilitation, related that appellant's back was still painful without any interval or intercurrent history of trauma or injury. Upon examination, he observed that central and peripheral neurological examinations and manual muscle testing were unchanged. Dr. Filippone reported

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<sup>3</sup> File No. xxxxxx803.

pain, guarding and spasm in the lumbar paraspinals. Hormans' sign was negative. Dr. Filippone stated that appellant was in too much pain after the March 27, 2013 pain management procedure and was unable to work in any capacity. He reported that appellant continued to be totally disabled.

In a handwritten prescription note, Dr. Filippone stated that appellant was not able to return to work in any capacity since the March 27, 2013 pain management procedure.

In a letter dated April 10, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish her recurrence claim and requested additional evidence to establish that she was unable to work as a result of her accepted conditions.

In an April 15, 2013 handwritten statement, appellant explained that on March 27, 2013 she had a lumbar injection due to a preexisting work injury. After three hours at home she began to experience lower back pain and soreness on the right side. Appellant noted that she continued to receive medical treatment for her preexisting work injury after returning to work following the original injury. She stated that her MRI scan and electromyography (EMG) reports from returning to work would show that her back injury was more intense than previous years.

Appellant submitted a September 13, 2012 MRI scan of the lumbar spine and various physical therapy treatment notes.

On April 17, 2013 appellant underwent another facet joint block spinal injection.

In an April 23, 2013 report, Dr. Bakhaty related appellant's complaints of persistent, recurrent lower back pain. He noted that her pain improved significantly for a few days after the March 27 and April 17, 2013 facet joint and nerve block injections but recurred and was severe.

In a May 15, 2013 report, Dr. Filippone stated that appellant had been under his care for injuries sustained while at work. He reviewed June 2, 2011 and September 13, 2012 MRI scans of the lumbar spine and reported that a November 15, 2012 EMG demonstrated evidence of a bilateral S1 radiculopathy, right more than left. Dr. Filippone noted that he most recently examined appellant on May 1, 2013 and reported that her medical history and review of systems were unchanged. He opined that appellant continued to be totally disabled despite not working and modifying activities of daily living. Upon examination, Dr. Filippone observed increasing low back pain, guarding and spasm. He noted that peripheral neurologic examinations and manual muscle testing were unchanged. Appellant was able to flex 15 degrees at the low back and her peripheral pulses were preserved. Dr. Filippone stated that all of appellant's above abnormalities were directly and solely the result of injuries sustained while at work.

In a May 22, 2013 report, Dr. Filippone stated that appellant's medical history and review of systems were unchanged. He reported that appellant continued to be totally disabled and symptomatic referable to the low back pain radiating into the lower extremities despite not working or modifying activities of daily living.

In a decision dated June 26, 2013, OWCP denied appellant's recurrence of disability claim finding that the medical evidence was insufficient to establish that her current disability

was causally related to a change or worsening of the August 11, 2006 or January 14, 2007 employment injuries.

By letter dated July 9, 2013 and received on July 10, 2013, appellant, through her attorney, requested a hearing, which was held on October 23, 2013. She was represented by counsel. Appellant stated that she began working for the employing establishment on October 7, 2000 as a mail handler and that she did not have any limitations or trouble with her back before she started to work for the employing establishment. She described her duties as a mail handler and the August 11, 2006 and January 14, 2007 employment injuries. Appellant noted that she was out of work for 22 months following the January 14, 2007 injury and returned to work in November 2008 with limitations of lifting no more than 45 pounds. She continued to receive medical and physical therapy treatment. Appellant noted that the spinal injections helped initially but the pain returned so she underwent a discectomy. She stated that on March 27, 2013 she received authorized spinal injections. Appellant explained that later that evening she experienced a lot of discomfort, pressure, pain and stiffness in her lower back again. She noted that she was unable to work after the March 27, 2013 injection and related that she did not sustain any other injuries or accidents to her back around that time. Counsel pointed out that Dr. Filippone submitted various medical reports which noted the March 27, 2013 spinal injection and stated that appellant remained disabled from work. He contended that there was sufficient evidence to establish a recurrence of disability.

In a June 25, 2013 report, Dr. Filippone noted appellant's continued complaints of radicular pain from the low back bilaterally, right more than left, radiating into both legs. He stated that the medical history and review of systems were unchanged. Dr. Filippone reported pain, guarding and spasm in the lumbar paraspinals. He stated that appellant remained grossly symptomatic and noted that appellant remained totally disabled.

In attending physician's reports dated July 31, September 27, October 24 and November 20, 2013, Dr. Filippone diagnosed lumbosacral radiculopathy and noted that appellant was totally disabled beginning March 27, 2013. He also submitted various duty status reports which indicated that she remained totally disabled.

In various reports dated August 20, September 27 and October 24, 2013, Dr. Filippone related appellant's complaints of persistent low back pain despite not working, modifying activities of daily living and attending physical therapy. He noted that her medical history and review of systems were unchanged. Dr. Filippone provided examination findings similar to his previous reports and reported pain, guarding, and spasm persisting in the lumbar paraspinals and sciatic notches bilaterally. He stated that appellant had not been able to work since March 27, 2013 and remained totally disabled.

In an October 21, 2013 report, Dr. Filippone stated that a June 2, 2011 MRI scan of the lumbar spine demonstrated bilateral posterior lateral bulging of the annulus fibrosis at L4-5 with annular tear, posterior bulging of the annular fibrosis at L5-S1, posterior bulging of the annulus fibrosis at L2-3 and bilateral posterior lateral bulging of the annulus fibrosis at L3-4. A September 13, 2012 MRI scan revealed similar findings along with mild broad-based posterior bulge of the L1-2 intervertebral disc. Dr. Filippone noted that a November 15, 2013 EMG and nerve conduction study demonstrated evidence of bilateral S1 radiculopathy, right more than left.

He stated that he examined appellant on May 1, 2013 and related that her medical history and review of systems were unchanged. Dr. Filippone reported that he took her out of work on April 1, 2013 because she was in too much pain status post pain management procedure on March 27, 2013. He stated that appellant was still disabled and unable to return to work due to no improvement in the low back pain following these injections. Upon examination, Dr. Filippone observed that she was able to flex 15 degrees at the low back at which juncture, there was increasing low back pain, guarding and spasm. He opined that all of appellant's above abnormalities were directly and solely the result of the injuries sustained while at work for the employing establishment.

By decision dated December 6, 2013, an OWCP hearing representative affirmed the June 26, 2013 denial decision.

### **LEGAL PRECEDENT**

OWCP's implementing regulations define a recurrence of disability as 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>4</sup> This term also means an inability to work 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>5</sup>

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-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 to show that he or she cannot perform the limited-duty position. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty requirements.<sup>6</sup> This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the disabling condition is causally related to the employment injury.<sup>7</sup> The medical evidence must demonstrate a change in the degree of the work-related injury or condition and explain how and why the accepted

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<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> *Id.*

<sup>6</sup> *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (January 2013).

injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.<sup>8</sup>

### ANALYSIS

OWCP accepted that on August 11, 2006 and January 14, 2007 appellant sustained lumbar sprain, lumbosacral neuritis or radiculitis and spinal stenosis in the performance of duty. Both claims were combined into the present claim. Appellant stopped work and returned to full-time limited duty on November 10, 2008. She continued to receive medical treatment and physical therapy. Appellant stopped work on March 27, 2013 and filed a claim for a recurrence of disability. She alleged that after receiving an authorized spinal injection the pain in her back returned and prevented her from doing her normal activities. By decisions dated June 26 and December 6, 2013, OWCP denied appellant's recurrence claim finding insufficient medical evidence to establish that her current disability was causally related to a change in or worsening of her accepted employment injuries. The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability beginning March 27, 2013.

In *Ruey J. Yu*,<sup>9</sup> appellant's claim was accepted for muscle spasm and herniated L4-5 disc. She subsequently sustained hemiparesis when she received an epidural steroid injection for the treatment of her employment-related back condition. The Board found that the condition appellant sustained from her medical treatment was a consequence of her primary employment-related injury. The Board explained that, if treatment is performed as a result of an employment injury, an injury caused by this treatment would constitute a consequential injury.<sup>10</sup>

Appellant submitted various reports by Dr. Filippone dated April 1 to October 24, 2013. Dr. Filippone reported that her back was still painful without any interval or intercurrent history of trauma or injury. Upon examination, he observed pain, guarding and spasm in the lumbar paraspinals. Hormans' sign was negative. Dr. Filippone noted that peripheral neurologic examinations and manual muscle testing were unchanged. Appellant was able to flex 15 degrees at the low back and her peripheral pulses were preserved. Dr. Filippone reviewed June 2, 2011 and September 13, 2012 MRI scans of the lumbar spine and reported that a November 15, 2012 EMG demonstrated evidence of a bilateral S1 radiculopathy, right more than left. He stated that all of appellant's above abnormalities were directly and solely the result of injuries sustained while at work. Dr. Filippone opined that she was in too much pain after the March 27, 2013 pain management procedure and was unable to work in any capacity.

The Board notes that Dr. Filippone provides findings on examination and an opinion that appellant was unable to work after the March 27, 2013 spinal injection. Dr. Filippone does not, however, provide any medical rationale or explanation for how appellant's condition changed or worsened to the extent that she was no longer able to work in her limited-duty capacity, to support a finding of a consequential injury. He merely states that she was in "too much" pain.

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<sup>8</sup> *James H. Botts*, 50 ECAB 265 (1999).

<sup>9</sup> 49 ECAB 256 (1997).

<sup>10</sup> See also *Kathryn Haggerty*, 45 ECAB 383 (1994); *L.S.*, Docket No. 10-134 (issued September 27, 2010).

The Board has found that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>11</sup> Because Dr. Filippone failed to provide medical rationale explaining how appellant's accepted injuries changed or worsened to the extent that she sustained a consequential injury from the March 27, 2013 injection and was no longer able to work, his reports are insufficient to establish her recurrence claim.

Appellant also submitted reports by Dr. Bakhaty. In a March 19, 2013 report, Dr. Bakhaty noted that appellant was previously treated for a January 14, 2007 work-related injury, which exacerbated an August 11, 2006 injury. He reviewed her medical treatment and reported that she had sustained significant improvement with the right side of the back and the right leg. Dr. Bakhaty provided findings on examination and diagnosed status post work-related injury on January 14, 2007 with multiple injuries and persistent recurrent complaints, post-traumatic lumbar disc herniation with recurrence at L2-3 and L5-S1, post-traumatic lumbar facet joint pain syndrome and chronic refractory lower back pain interfering with daily living activities. He opined that all diagnoses were causally and directly related to the January 14, 2007 work injury that exacerbated an August 11, 2006 injury. Dr. Bakhaty reported that these injuries were permanent in nature and still interfered with daily living activities, working activities and sleep pattern. In an April 23, 2013 report, he noted that appellant's pain improved significantly for a few days after the March 27 and April 17, 2013 facet joint and nerve block injections but recurred and was severe. The Board notes that Dr. Bakhaty did not provide an accurate history as appellant has alleged that her pain increased within hours of the March 27, 2013 injection, causing disability. Dr. Bakhaty also did not explain why appellant underwent the April 17, 2013 injection if the March 27, 2013 injection caused a consequential injury. He did not provide a diagnosis of appellant's condition following the March 27, 2013 injection to explain the alleged worsening of her physical condition. Dr. Bakhaty did not support his conclusion regarding disability with findings upon examination, did not discuss the physiological cause of any period of disability beginning March 27, 2013 nor explain whether she was unable to work in her limited-duty capacity. His reports, therefore, are likewise insufficient to establish appellant's claim.

On appeal, appellant's attorney contends that the reports of Drs. Filippone and Bakhaty are sufficient to establish that appellant was disabled beginning March 27, 2013 as a result of her accepted conditions. As explained above, however, Drs. Filippone and Bakhaty's reports failed to contain rationalized medical opinion explaining how her current disability resulted from a change or worsening of her accepted employment conditions. Because appellant has not submitted sufficiently reasoned medical opinion explaining why her recurrence of disability beginning March 27, 2013 resulted from her accepted employment injuries, she did not meet her burden of proof to establish her claim.

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<sup>11</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-975 (issued February 6, 2009).

**CONCLUSION**

The Board finds that appellant has not established that she sustained a recurrence of disability beginning March 27, 2013 causally related to her August 11, 2006 and January 14, 2007 employment injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 6, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 27, 2014  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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