



## **FACTUAL HISTORY**

On February 1, 2013 appellant, then a 53-year-old mail handler, filed a traumatic injury claim alleging that on February 1, 2013 he injured his left side when he fell from a platform at work. He stopped work that day but returned to light duty on May 25, 2013. Appellant's claim was accepted for left contusion of face and hip.

In a May 21, 2013 narrative report and prescription note, Dr. Mark A. Filippone, Board-certified in physical medicine and rehabilitation, stated that appellant had been under his care and appellant had been totally disabled since February 18, 2013. He related appellant's complaints of neck pain and of pain, numbness, and tingling in his fingers and hands. Upon examination, Dr. Filippone observed pain, guarding, and spasm in the cervical and lumbar paraspinals bilaterally. Tinel's and Phalen's signs were positive bilaterally. Dr. Filippone provided electromyography test findings and noted evidence of right C5-6 cervical radiculopathy and right L4-5 and S1 lumbosacral radiculopathy. He opined that the electrical abnormalities were directly and solely the result of the injuries appellant sustained while at work for the employing establishment. In an attending physician's report, Dr. Filippone noted a date of injury of February 1, 2013. He diagnosed cervical and lumbar radiculopathy and carpal tunnel syndrome. Dr. Filippone indicated that appellant could return to limited duty on May 22, 2013.

On June 14, 2013 appellant filed a claim for recurrence of disability on May 30, 2013 due to the February 1, 2013 employment injury. He noted that he returned to work with restrictions on May 25, 2013 and worked until May 30, 2013 when he was sent home due to his work injury. The employing establishment controverted appellant's claim as the disability was not related to the February 1, 2013 injury. It noted the medical restrictions were for cervical and lumbar radiculopathy and carpal tunnel syndrome. The employing establishment further stated that appellant was sent home on May 30, 2013 and instructed to apply for light duty, but he did not apply.

In a June 14, 2013 statement, counsel related that Dr. Filippone's May 21, 2013 report clearly demonstrated that appellant had cervical and lumbar radiculopathies and bilateral carpal tunnel syndrome as a result of his work injury. He requested that OWCP expand appellant's claim to include these conditions. Counsel also reported that appellant was released to limited duty on May 21, 2013 but the employing establishment was unable to accommodate his restrictions beginning May 31, 2013. He requested that OWCP pay temporary total disability beginning May 31, 2013.

In June 5 and 20, 2013 reports, Dr. Filippone noted that appellant's medical history and review of systems remained unchanged. He related that appellant's neck and low back pain had somewhat improved with physical therapy but appellant still complained of numbness and tingling in his neck and upper extremities. Upon examination, Dr. Filippone observed guarding and spasm in the cervical and lumbar paraspinals and preserved peripheral pulses. Horner's sign was negative.

In a July 2, 2013 controversion letter, the employing establishment again noted that Dr. Filippone treated appellant for cervical radiculopathy, carpal tunnel syndrome, and lumbar

radiculopathy, which were not accepted conditions by OWCP. It contended that appellant's disability was not related to his accepted February 1, 2013 employment injury.

In a July 10, 2013 prescription note and duty status report, Dr. Filippone authorized appellant to resume full-time regular duty as of July 22, 2013.

In a letter dated July 23, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish his recurrence claim and requested additional evidence to establish that he was unable to work as a result of his accepted employment conditions or that the employing establishment was unable to accommodate his light-duty restrictions.

OWCP referred appellant's claim, along with a statement of accepted facts and the record, to Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon, for a second opinion examination, to determine whether appellant continued to suffer residuals of his accepted February 1, 2013 employment injury and whether he was able to return to work.<sup>3</sup> In a July 26, 2013 report, Dr. Lakin provided an accurate history of the February 1, 2013 employment injury and reviewed the medical record. He related appellant's current complaints of occasional discomfort in the lower back region in the area of the hip but no radiating pain, numbness or paresthesias. Dr. Lakin noted that appellant had returned to full duty as a mail handler. Upon examination of appellant's cervical spine, he observed full and active range of motion with no tenderness. Examination of the thoracic and lumbosacral spine revealed no tenderness, spasms or step-off. Straight leg raise testing was negative in the sitting and supine position. Examination of the upper extremities also demonstrated intact sensation to light touch and 5/5 motor examination. Spurling and Hoffman's signs were negative. Upon examination of appellant's left hip, Dr. Lakin reported symmetric range of motion with no tenderness or instability. He stated that motor examination was 5/5 in flexion, extension, abduction, and adduction.

Dr. Lakin opined that appellant's accepted conditions of contusion of the face and hip had resolved. He stated that there were no orthopedic findings of disabling residuals, subjectively or objectively, to appellant's face and hip. Dr. Lakin reported that appellant had no concurrent medical condition preventing him from returning to work and that appellant was capable of returning to his date-of-injury job as a mail handler with no restrictions. He noted that appellant had an unremarkable orthopedic examination and concluded that appellant had fully recovered from his accepted conditions.

In an August 5, 2013 letter, appellant stated that on May 25, 2013 he reported to work with limited duty as instructed by his physician. He worked four days prepping mail and experienced discomfort and pain on his back and left side. On May 31, 2013 appellant was informed not to report to his workstation and instructed by his acting supervisor to provide more detailed and specific job limitations from his doctor. He stated that he did not have any injury or medical condition prior to the date of injury.

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<sup>3</sup> A second opinion examination was scheduled for June 24, 2013 but appellant did not attend. On June 25, 2013 OWCP issued a notice of suspension to appellant for his refusal to attend the second opinion examination. The examination was rescheduled for July 26, 2013.

In a decision dated September 30, 2013, OWCP denied appellant's recurrence of disability claim finding that the medical evidence was insufficient to establish that his disability from May 31 to July 22, 2013 was causally related to a change or worsening of his accepted conditions or that his light-duty assignment was withdrawn. It noted that the physical limitations prescribed by his physician were based on diagnoses that were not related to his accepted February 1, 2013 employment injury.

In letters dated October 18 and 22, 2013, counsel requested a hearing. He stated that a September 30, 2013 narrative report by Dr. Filippone supported that appellant still suffered residuals of his work injury. Counsel also requested that appellant's accepted conditions be expanded to include C4-5 disc herniation, low back condition, internal derangement and radiculopathies as a result of his work injury.

In a September 30, 2013 report, Dr. Filippone accurately described appellant's February 1, 2013 employment injury and noted that he did not work for the next couple of weeks. On February 15, 2013 appellant returned to full duty but stopped work again on February 17, 2013 because of pain. Dr. Filippone related that he examined appellant on February 28, 2013 for complaints of pain in the left side of the face, neck, shoulders, and back radiating into his upper and lower extremities. He reviewed appellant's history, including several diagnostic reports. Dr. Filippone reported that despite his June 20, 2013 Form CA-17 the employing establishment did not allow appellant to return to work. He provided findings on examination and diagnosed herniated disc at C4-5, mild facet joint narrowing on the right knee at the L4-5 level and L3-4 level, internal derangement of both knees, contusion of the left hip and pelvis, C5-6 cervical radiculopathy, L4-5 and S1 lumbosacral radiculopathy, and bilateral carpal tunnel syndrome. Dr. Filippone stated that all of the above abnormalities were directly and solely the result of the February 1, 2013 work injury. He stated that appellant was authorized to return to full time, regular duty as of July 22, 2013.

In reports dated October 2 and December 12, 2013, Dr. Filippone stated that appellant's medical history remained unchanged and that appellant continued to work full time, regular duty as a mail handler. He noted that appellant remained symptomatic with low back pain radiating into the right buttock and into the back of thighs. Dr. Filippone provided findings on examination and reported that central and neurologic examinations were unchanged. He concluded that appellant could continue to work full-time duty without restrictions even though he remained symptomatic. Dr. Filippone recommended that appellant continue with physical therapy.

On February 19, 2014 a hearing was held. Appellant described the work that he performed as a mail handler and the February 1, 2013 employment injury when he fell off a platform onto his left side. He reviewed the medical treatment he received. Appellant stated that he returned to work for three days even though he continued to experience pain in his back and left side. On February 28, 2013 he sought treatment from Dr. Filippone and was authorized to work limited duty with restrictions of no lifting over 20 pounds and no pushing or pulling over 100 pounds. On May 25, 2013 appellant returned to limited duty and worked for about four days before he was told by the employing establishment that he could no longer work limited duty. He stated that he remained off work until he returned to full duty on July 22, 2013. Appellant reported that he did not sustain any other injuries to his back or neck other than the

February 1, 2013 employment injury. He stated that he was seeking wage-loss compensation for May 31 to July 22, 2013.

In a March 11, 2014 report, Dr. Filippone noted that appellant continued to work full-time regular duty. He reported that appellant's medical history and examination findings were unchanged. Dr. Filippone advised appellant to continue physical therapy.

By decision dated May 9, 2014, an OWCP hearing representative affirmed the September 30, 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. The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> The opinion of the

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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).

<sup>8</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>9</sup>

OWCP's procedures require that in cases where recurrent disability for work is claimed within 90 days or less from the first return to day, the attending physician should describe the duties which the employee cannot perform and the demonstrated objective medical findings that form the basis for the renewed disability for work.<sup>10</sup>

### ANALYSIS

OWCP accepted that appellant sustained a left hip and face contusion as a result of a February 1, 2013 employment injury. Appellant stopped work and returned to light duty on May 25, 2013. On June 14, 2013 he submitted a recurrence of disability claim alleging that he was unable to work beginning May 31, 2013 because the employing establishment could not accommodate his work restrictions. Appellant returned to full-duty on July 22, 2013. OWCP denied his recurrence of disability claim finding that he did not meet his burden of proof to establish that he was unable to work, or was capable only of light-duty, as a result of his accepted conditions of left hip and face contusion. The Board finds that appellant did not meet his burden of proof to establish his claim.

The Board notes that counsel asserts that Dr. Filippone's medical reports support that appellant's claim should be expanded to include cervical and lumbar radiculopathies and bilateral carpal tunnel syndrome as a result of his employment injury. However, the Board has reviewed OWCP's decision on appeal which affirmed a prior OWCP decision dated September 30, 2013. While these decisions certainly refer to Dr. Filippone's reports, the Board finds that OWCP has not directly ruled on whether appellant's claim should be expanded to include additional medical conditions. For this reason, the Board declined to rule on the question of expanding the claim.

On appeal, counsel contends that Dr. Filippone's reports were sufficient to establish that he sustained cervical and lumbar radiculopathy and a recurrence of disability from May 31 to July 22, 2013 as a result of the February 1, 2013 employment. As previously noted, however, OWCP has not directly ruled on that issue. Accordingly, the Board finds that it properly found that appellant did not meet his burden of proof to establish his recurrence claim.

### CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability from May 31 to July 22, 2013 causally related to his February 1, 2013 employment injury.

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<sup>9</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>10</sup> *See supra* note 7 at Chapter 2.1500.5 (June 2013).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 9, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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