



sprain of the lumbar region. The record indicates that appellant worked intermittently on light and full duty until he returned to work on October 16, 2012 on full duty.

On April 9, 2013 appellant filed a notice of recurrence of total disability (Form CA-2a). He stated that he was not certain how his recurrence happened, but that the pain in his back progressively became worse and that his condition recurred on March 17, 2013. Appellant filed claims for compensation (Form CA-7) for leave without pay for the period March 26 to April 8, 2013.

Appellant submitted physical therapy notes dating from August 26, 2012 to September 19, 2013.

On March 25, 2013 Dr. Pollak noted that appellant had described recent exacerbation of symptoms of pain of the back and pelvis. On examination of the lumbar spine, he observed spasm and tenderness beginning at the thoracolumbar junction and extending down to the pelvis. Dr. Pollak also observed a decreased range of motion in all directions. Dr. Pollak treated appellant by injection.

By letter dated May 3, 2013, Dr. Pollak stated that appellant had been treated in his office since he was injured on July 26, 2012. He noted that appellant's condition was such that he would experience occasional to frequent exacerbations of symptoms and that he advised appellant not to work during these flare-up periods.

In a report dated May 6, 2013, Dr. Pollak noted that appellant continued to have pain of the lumbar spine, but that there had been 90 percent improvement. He stated that appellant had reached maximum medical improvement. On examination, Dr. Pollak noted a decrease in the amount of spasm and tenderness on palpation, as well as improvement in range of motion.

On May 14, 2013 Dr. Pollak stated that appellant had a magnetic resonance imaging scan test performed on August 14, 2012. Appellant was diagnosed with a disc herniation at L5-S1, disc bulging with a posterior annular tear at L4-5 and disc dessication at L3-4 with a disc bulge and left foraminal annular tear. Dr. Pollak noted that he had been treating appellant for back pain since an injury on July 26, 2012.

By decision dated May 21, 2013, OWCP denied appellant's claim for recurrence. It found that he had not submitted medical documentation including a physician's opinion, supported by medical explanation, as to the relationship between his current disability and the original work injury of July 26, 2012.

In a letter dated May 28, 2013, Dr. Pollak stated that appellant's original injury of July 26, 2012 had caused a condition that would experience occasional flare-ups of symptoms and that the change could happen spontaneously without new injury. He diagnosed appellant with disc herniation, disc bulging and disc dessication.

On May 29, 2013 appellant requested reconsideration of OWCP's May 21, 2013 decision.

In a report dated June 24, 2013, Dr. Pollak noted that appellant's injury had recently exacerbated. On examination, he observed tenderness and spasm on palpation of the lumbar spine, as well as reduced range of motion. Dr. Pollak treated appellant by injection.

By decision dated August 9, 2013, OWCP denied appellant's claim for recurrence after reviewing the merits of the case. It found that he had not submitted a rationalized medical opinion supporting that his diagnoses were related to the accepted July 26, 2012 work incident. OWCP also found that appellant had not submitted a rationalized medical opinion supporting that his accepted condition, lumbar sprain, had worsened as of March 25, 2013, causing him to be disabled and incapable of work.

### **LEGAL PRECEDENT**

Under FECA<sup>2</sup> the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>3</sup> Disability is not synonymous with a physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.<sup>4</sup>

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 resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.<sup>5</sup>

OWCP's procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>6</sup>

An employee 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 a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to

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<sup>2</sup> *Id.* at §§ 8101-8193.

<sup>3</sup> *See Prince E. Wallace*, 52 ECAB 357, 358 (2001).

<sup>4</sup> *Cheryl L. Decavitch*, 50 ECAB 397, 401 n.5 (1999); *Maxine J. Sanders*, 46 ECAB 835, 840 (1995).

<sup>5</sup> 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525, 531 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(c)(5) (October 2009).

the employment injury and supports that conclusion with medical reasoning.<sup>7</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>8</sup>

### ANALYSIS

OWCP accepted appellant's claim for lumbar sprain on August 14, 2012. Appellant returned to full duty on October 16, 2012. He filed a notice of recurrence of disability on April 9, 2013, alleging disability for the period March 26 to April 8, 2013. The Board finds that appellant did not submit sufficient rationalized medical evidence to establish that his present condition was causally related to his accepted injury.<sup>9</sup>

In support of his claim for recurrence, appellant submitted several reports from Dr. Pollak. By letter dated May 3, 2013, Dr. Pollak stated that appellant had been treated in his office since he was injured on July 26, 2012. He noted that appellant's condition was such that he would experience occasional to frequent exacerbations of symptoms. In a May 14, 2013 report, Dr. Pollak diagnosed disc herniation at L5-S1, disc bulging with a posterior annular tear at L4-5 and disc dessication at L3-4 with a disc bulge and left foraminal annular tear. A May 28, 2013 report contained the same diagnoses and observations concerning appellant's flare-ups.

To establish that a claimed recurrence was caused by an accepted injury, medical evidence of bridging symptoms between the present condition and the accepted injury must support the physician's conclusion of causal relationship.<sup>10</sup> While Dr. Pollak noted appellant's treatment for back pain since the initial injury, he did not specifically address appellant's accepted condition of back sprain as the cause of his continued complaints. More importantly, while Dr. Pollak eventually diagnosed disc herniation, disc bulging and disc dessication he did not explain, with medical rationale, how these diagnoses resulted either from appellant's diagnosed condition of back sprain or from the July 26, 2012 work incident. He merely stated that appellant's accepted condition would experience occasional exacerbations, without explaining how his ultimate diagnoses related to these exacerbations.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>11</sup> Therefore, these reports were not sufficient to establish appellant's claim.

Likewise, in reports dated from March 25 to June 24, 2013, Dr. Pollak advised that appellant had experienced an exacerbation of symptoms, but did not refer to appellant's accepted

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<sup>7</sup> *Ronald A. Eldridge*, 53 ECAB 218, 221 (2001).

<sup>8</sup> *Mary A. Ceglia*, Docket No. 04-113 (issued July 22, 2004).

<sup>9</sup> *See T.M.*, Docket No. 06-440 (issued August 7, 2006).

<sup>10</sup> *See Ricky S. Storms*, 52 ECAB 349, 352 (2001).

<sup>11</sup> *Walter D. Morehead*, 31 ECAB 188, 195 (1986).

condition of back sprain or offer any explanation of how other diagnosed conditions related to the accepted condition. He stated that appellant's condition could spontaneously exacerbate, but did not explain how back sprain had exacerbated or progressed into disc herniation at L5-S1, disc bulging with a posterior annular tear at L4-5 and disc desiccation at L3-4 with a disc bulge and left foraminal annular tear. The Board finds that these reports are lacking as there is no medical rationale to support a recurrence of disability on March 26, 2013.

OWCP also received several physical therapy reports. However, the reports of physical therapists have no probative value on medical questions, because a therapist is not a physician as defined by 5 U.S.C. § 8101(2) and, therefore, is not competent to render a medical opinion.<sup>12</sup>

Consequently, appellant has not met his burden of proof to establish his claim for recurrence of disability from March 26 to April 8, 2013 causally related to the accepted work injury of July 26, 2013.

Appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.<sup>13</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 a recurrence of disability on March 17, 2013 causally related to the accepted work injury of July 26, 2013.

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<sup>12</sup> See *Barbara J. Williams*, 40 ECAB 649, 657 (1988) (regarding physical therapists); 5 U.S.C. § 8101(2) (the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law).

<sup>13</sup> 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 9 and May 21, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 7, 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