



an icy sidewalk at work. She performed limited-duty work. Appellant stopped work after suffering injuries from a nonwork-related motor vehicle accident on May 26, 2008, but later returned to limited-duty work at the employing establishment.<sup>2</sup>

Appellant stopped work from March 21 to 27, 2011. She returned to work on March 28, 2011 and filed a notice of recurrence of disability and CA-7 forms claiming wage-loss compensation due to her December 22, 2004 work injury.

In a decision dated July 1, 2011, OWCP denied appellant's recurrence of disability claim starting March 21, 2011, finding that she failed to submit medical evidence establishing that her claimed disability was due to the accepted work injury. In a January 19, 2012 decision, it affirmed its July 1, 2011 decision.

Appellant filed a Form CA-7 claiming wage-loss compensation for time missed from work after June 28, 2011. She later filed additional forms claiming wage loss through February 21, 2012.

In a June 28, 2011 report, Dr. Carl Otten, an attending Board-certified occupational medicine physician, listed the date of injury as December 23, 2004 (rather than December 22, 2004) and noted that appellant continued to report having chronic back pain which went down into her right leg. The pain was constant and sometimes measured as high as 8 out of 10. Dr. Otten stated that she was mobile with her cane and had a limping, asymmetric gait. Appellant had a positive straight leg raise when seated. Dr. Otten diagnosed lumbar strain with aggravation of lumbar degenerative disc disease and substantial aggravation of L4-5 degenerative joint disease (facet arthritis). He stated, "Continue off work (pending disability retirement). In reports dated August 30, October 4 and November 1, 2011, Dr. Otten provided similar findings on examination and indicated that appellant should "continue permanent total disability."

In a December 13, 2011 report, Dr. Otten reported examination findings and stated that appellant should "continue permanent total disability." He noted that her permanent total disability "does arise from the condition on this claim which arose from the December 23, 2004 injury."

In a March 16, 2012 decision, OWCP denied appellant's claim finding that she did not submit sufficient medical evidence to establish that she was disabled from June 28, 2011 to February 21, 2012 due to the December 22, 2004 work injury.

Appellant requested a telephone hearing with an OWCP hearing representative. During the July 17, 2013 hearing, she testified that, in addition to the work injury of December 22, 2004, she also experienced a more recent injury at work on January 24, 2011 when she tripped over a rubber mat and caught herself on a table. Appellant alleged this caused an injury to her back and

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<sup>2</sup> Appellant filed a traumatic injury claim on January 31, 2011 alleging that she sustained an injury at work on January 24, 2011 when she slipped on a rug and twisted her left knee. It does not appear that the claim has been formally adjudicated and the question of whether she sustained a medical condition or period of disability due to a January 24, 2011 work incident is not currently before the Board.

left knee and that Dr. Otten treated her for both injuries. She asked that the record remain open for 30 days for the submission of additional evidence.

Appellant submitted office notes from Dr. Otten, dated July 31 and August 28, 2012, together with a magnetic resonance imaging (MRI) scan dated September 2, 2011.<sup>3</sup> Dr. Otten reported brief examination findings and noted that she still reported having low back and right leg pain. He stated that he had received a letter from counsel asking for his opinion on the impact of the 2011 tripping injury at work on appellant's condition. A review of the medical charts revealed appellant's pain increased in the months prior to the January 24, 2011 injury and in the months after the January 24, 2011 injury. Although the 2011 incident was listed only for a left knee strain, prior medical records indicated that her significant back problems caused lost time from work. Dr. Otten posited that appellant's condition may have deteriorated even in the absence of the 2011 injury, but it was probable that the worsening of pain levels noted after the injury reflected an aggravation of the back condition by the incident of January 24, 2011. Regarding the chronic back condition stemming from the December 23, 2004 injury, it was his understanding that she denied any back problems prior to that day. Appellant's ability to work deteriorated following the 2011 injury, and this eventually resulted in her being no longer able to work effective May 4, 2011. Dr. Otten stated, "At any rate, the patient's ability to work did deteriorate following the 2011 injury and this eventually resulted in her no longer being able to work effective May 4, 2011." On August 28, 2012 he stated, "[appellant] remains on permanent total disability (disability retirement)."

In an October 12, 2012 decision, OWCP's hearing representative affirmed the March 16, 2012 decision finding that appellant had not established work-related disability from June 28, 2011 to February 21, 2012. He found that the opinion of Dr. Otten was of limited probative value.

Appellant submitted follow-up treatment notes from Dr. Otten dated from October 2012 to July 2013, but they did not address whether she was totally disabled. The reports listed the date of injury as December 23, 2004, contained diagnoses such as lumbar strain and back contusion and contained the notation "continue permanent total disability."

In a decision dated August 1, 2013, OWCP affirmed the October 12, 2013 decision, finding that the additional medical evidence did not establish appellant's claim for disability from June 28, 2011 to February 21, 2012.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing the essential elements of appellant claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally

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<sup>3</sup> The September 2, 2011 testing showed degenerative changes in appellant's back, but it did not identify the cause of the changes.

related to the employment injury.<sup>4</sup> The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.<sup>5</sup>

Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues, which must be proved by a preponderance of reliable, probative and substantial medical evidence.<sup>6</sup>

### ANALYSIS

OWCP accepted that on December 22, 2004 appellant sustained a lumbar strain, left shoulder strain and low back contusion when she fell on an icy sidewalk at work. Thereafter, she performed limited-duty work for the employing establishment.<sup>7</sup> Appellant filed CA-7 forms claiming entitlement to wage-loss compensation for time missed from work from June 28, 2011 to February 21, 2012 due to her December 22, 2004 work injury. OWCP denied her claim finding that she did not submit sufficient medical evidence.

The Board finds that appellant did not submit sufficient medical evidence to establish that she was disabled from June 28, 2011 to February 21, 2012 due to her December 22, 2004 injury. Appellant submitted numerous reports from Dr. Otten, an attending Board-certified occupational medicine physician, who noted generally that she was disabled commencing June 28, 2011, but the physician did not provide a rationalized opinion on causal relationship.

In a June 28, 2011 report, Dr. Otten listed the date of injury as December 23, 2004 rather than December 22, 2004. He advised that appellant reported having chronic back pain which went down into her right leg. Dr. Otten diagnosed lumbar strain with aggravation of lumbar degenerative disc disease and substantial aggravation of L4-5 degenerative joint disease (facet arthritis). He stated, "Continue off work (pending disability retirement)." Dr. Otten did not provide a narrative opinion that the December 2004 work injury caused appellant's disability for work. He did not explain how her accepted condition had changed such that she was no longer able to perform modified duty. Appellant's claim accepted for soft-tissue injuries and not for aggravation of lumbar degenerative disc disease. In a December 13, 2011 report, Dr. Otten stated that she should continue permanent total disability and noted that her permanent total disability "does arise from the condition on this claim which arose from the December 23, 2004 injury." However, he did not provide any further explanation for his opinion. Dr. Otten did not

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<sup>4</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>5</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>6</sup> *W.D.*, Docket No. 09-658 (issued October 22, 2009).

<sup>7</sup> Appellant filed a traumatic injury claim on January 31, 2011 for a January 24, 2011 injury when she slipped on a rug and twisted her left knee. The question of whether she sustained a medical condition or period of disability due to a January 24, 2011 work incident is not currently before the Board.

describe the December 2004 work incident in any detail or explain how it caused disability more than six years after its occurrence.

In a July 31, 2012 report, Dr. Otten stated that, regarding the chronic back condition stemming from the December 22, 2004 injury, it was his understanding that appellant denied any back problems prior to that day. He did not, however, provide a full medical history of her low back condition or adequately address how the December 22, 2004 work injury caused disability for any period on or after June 28, 2011.<sup>8</sup> The Board has held that the fact that a condition manifests itself or worsens during a period of employment<sup>9</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>10</sup> does not raise an inference of causal relationship between a claimed condition and employment factors. Appellant submitted follow-up treatment notes from Dr. Otten but they did not further explain why she was totally disabled commencing June 28, 2011.

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 her burden of proof to establish that she had disability from June 28, 2011 to February 21, 2012 due to her December 22, 2004 work injury.

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<sup>8</sup> Dr. Otten also suggested that a January 24, 2011 work incident caused disability in mid-2011, but the matter of disability related to this incident is not currently before the Board.

<sup>9</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>10</sup> *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 1, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2014  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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