

**United States Department of Labor
Employees' Compensation Appeals Board**

L.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Columbia, SC, Employer**

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**Docket No. 14-514
Issued: July 9, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 6, 2014 appellant filed a timely appeal from an October 30, 2013 merit decision of the Office of Workers' Compensation Programs' (OWCP) hearing representative. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish a recurrence of disability from November 27, 2012 to January 10, 2013 causally related to his accepted February 7, 2009 employment injury.

FACTUAL HISTORY

On February 7, 2009 appellant, then a 45-year-old tractor trailer operator, filed a traumatic injury claim alleging that he sustained injuries to his left leg, right hand, waist and

¹ 5 U.S.C. § 8101 *et seq.*

center back as a result of a motor vehicle accident. He stopped work. OWCP accepted appellant's claim for lumbar strain, chest contusion and right forearm contusion.

On March 26, 2009 Dr. J. Robert Alexander, Jr., Board-certified in physical medicine and rehabilitation, authorized appellant to return to limited duty with restrictions of lifting not to exceed 15 pounds. On April 1, 2009 appellant returned to limited duty at the employing establishment.

On August 14, 2009 OWCP expanded appellant's claim to include left labral rotator cuff tears.

On August 31, 2009 appellant underwent authorized arthroscopic surgery to his left shoulder and left rotator cuff. He stopped work and received disability compensation. On December 8, 2009 appellant returned to modified duty. He received medical treatment and physical therapy.

In a February 25, 2010 work capacity evaluation, Dr. William Estes, a Board-certified orthopedic surgeon, noted that appellant was capable of performing his usual job. On March 1, 2010 appellant returned to full duty.

On April 27, 2010 appellant requested a schedule award. On September 16, 2011 OWCP granted him a schedule award for seven percent impairment of the left arm.

On September 27, 2011 appellant began to work for Southern Tank Transport, a private company.

In a December 3, 2012 diagnostic report of the lumbar spine, Dr. George Michael Niggel, a radiologist, observed loss of disc height and small osteophytes at L3-4 and L4-5. He noted satisfactory alignment.

In a December 3, 2012 progress note, Justin S. Fulkerson, a nurse practitioner, advised appellant not to return to work until December 10, 2012.

In a January 7, 2013 work restriction note, Dr. Charles F. Way, a Board-certified family practitioner, stated that appellant had been out of work since November 27, 2012 for back and sciatic nerve dysfunction. He authorized appellant to return to work on January 8, 2013 without restrictions.

In a January 22, 2013 statement, appellant noted that his claim was still open for medical treatment. He requested a Form CA-7 to fill out for time out of work. Appellant reported that he was treated by his physician, Dr. Way, and also sought treatment from the Veterans' Affairs Hospital and from Dr. Alexander.

In a February 1, 2013 report, Dr. Alexander stated that he had not seen appellant since December 9, 2010. He related that appellant was doing well except for a recent exacerbation of lumbar pain, specifically in the intermittent right lower extremity radiating to the level of the foot along a suspect L5, S1 distribution. Dr. Alexander noted that appellant missed one month of work due to the severity of his symptoms. Upon examination, he observed tenderness of the

lumbar paraspinals. Lower extremity motor was 5/5 and straight leg raise testing was mildly positive on the right. Dr. Alexander diagnosed chronic lumbar pain with new complaint of intermittent right lower extremity pain and disc bulges with annular tears L3-4, L4-5. He listed a February 7, 2009 work injury.

In a February 18, 2013 magnetic resonance imaging (MRI) scan of the lumbar spine, Dr. Monty Smith, a radiologist, related appellant's complaints of chronic back pain and radiation down the right leg with weakness. He observed evidence of degenerative disc disease with disc flattening and modic endplate change at L3-4 and trace disc bulge, endplate osteophyte and facet degenerative joint disease. Dr. Smith also noted broad-based disc bulge with degenerative narrowing, modic endplate changes and osteophytic ridging at L4-5, small annular tear disc and facet degenerative joint disease. He reported no evidence of direct nerve root impingement.

On February 24, 2013 OWCP noted that appellant had been working as a truck driver for a private company since he left federal employment in 2010. It advised him that if he was claiming a recurrence of his work-related injury he needed to complete a Form CA-2a and provide medical evidence in support of his claim.

On March 6, 2013 appellant filed a recurrence of disability claim alleging that from November 27, 2012 to January 10, 2013 he was unable to work as a result of the February 7, 2009 employment injury. He had worked for a private trucking company since September 2011 as a tractor trailer operator. Appellant's duties involved climbing in and out of a tractor to prepare for cement bulk loads, climbing stairs to open and close the hatch for loads, driving to a location to hook up production hose and unloading cement. He worked 60 to 70 hours a week by load percentage. Appellant noted that he was also a licensed residential and commercial pest exterminator. He stated that, after returning to work following the original injury, he was on light duty for approximately 60 days with restrictions of no driving a tractor trailer, no climbing, no standing for long periods of time and no lifting more than 15 pounds. Appellant explained that, after the February 7, 2009 injury, he continued to experience moderate pain in his shoulder and lower back. He continued to undergo medical treatment, which included a shoulder operation of his rotator cuff, block shots in his back and taking pain medication. On November 27, 2012 when appellant tried to get out of bed to go to work, he felt lower back pain and could not stand up. He described the pain as a level 10. Appellant reported that he went to the emergency room and was given the same diagnosis as before.

By letter dated March 21, 2013, OWCP advised appellant that the medical evidence was insufficient to establish that he sustained a recurrence of his original work injury. It requested additional information to establish his claim.

In a March 25, 2013 report, Dr. Alexander related that appellant's leg pain was currently more isolated to the anterior thigh. Examination revealed tenderness of the lumbar paraspinals. Appellant's lower extremities were intact. Dr. Alexander diagnosed chronic lumbar and recent onset of right lower extremity pain and paresthesias, disc protrusions with annular tears at L3-4 and L4-5 and modic endplate changes and bilateral foramina stenosis. He noted a February 7, 2009 work injury.

In an April 8, 2013 report, Dr. Alexander examined appellant status post a second transforaminal epidural. Examination revealed decreased lumbar tenderness and intact lower extremities. Dr. Alexander diagnosed chronic lumbar radiculopathy, disc protrusions with annular tears at L3-4, L4-5 and radiation right lower extremity with foramina stenosis. He also noted a work injury of February 7, 2009. Dr. Alexander opined that appellant had improved but was still symptomatic. He scheduled appellant for a third epidural injection.

In an April 8, 2013 narrative report, Dr. Alexander stated that appellant had a history of chronic lumbar radiculopathy and degenerative disc disease following a February 7, 2009 work injury. He reported that a February 18, 2013 MRI scan demonstrated disc protrusions with annular tears at L3-4, L4-5 and bilateral foraminal stenosis. Dr. Alexander noted that recent exacerbation of symptoms resulted in treatment regimen including oral medications, topical pain patches and three transforaminal epidural injections performed under fluoroscopy. He opined that as a direct result of symptomatic exacerbation appellant missed work from November 27, 2012 to January 7, 2013. Dr. Alexander stated that appellant continued to receive medical treatment as needed and was cleared to return to full duty on January 8, 2013.

By decision dated May 13, 2013, OWCP denied appellant's recurrence claim. It found insufficient medical evidence to establish that he was unable to work beginning November 27, 2012 as a result of his accepted February 7, 2009 employment injury.

In an appeal request form dated June 6, 2013, appellant requested a review of the written record. He resubmitted medical reports from 2009 and 2010 and Dr. Alexander's April 8, 2013 report.

In a decision dated October 30, 2013, an OWCP hearing representative affirmed the May 13, 2013 decision. She found that the medical evidence was insufficient to establish that appellant sustained a recurrence of disability causally related to the February 7, 2009 employment injury.

LEGAL PRECEDENT

The term disability as used in FECA means the 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.² 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 established physical limitations.³

² 20 C.F.R. § 10.5(x).

³ *Id.*

An individual who claims a recurrence of disability resulting from an accepted employment injury 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 either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁴ 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.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁶ The opinion of the 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.⁷

ANALYSIS

OWCP accepted that on February 7, 2009 appellant sustained a lumbar strain, chest and right forearm contusion and left shoulder rotator cuff tear. Appellant stopped work and returned to limited duty. On August 31, 2009 he underwent authorized arthroscopic surgery to his left shoulder and left rotator cuff repair and stopped work again. On December 8, 2009 appellant returned to limited duty and to full duty on March 1, 2010.

On September 27, 2011 appellant began to work at a private trucking company. On November 27, 2012 he stopped work and returned on January 10, 2013. Appellant filed a claim for a recurrence of disability. OWCP denied his claim finding insufficient medical evidence to establish that he was unable to work beginning November 27, 2012 as a result of the accepted February 7, 2009 employment injury. The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability for the period November 27, 2012 to January 10, 2013.

Appellant provided several reports over the years from Dr. Alexander. In a February 1, 2013 report, Dr. Alexander stated that he had not examined appellant since December 9, 2010. He reported that appellant was doing well except for recent lumbar pain and had missed one month of work due to the severity of the symptoms. Dr. Alexander conducted a physical examination and diagnosed chronic lumbar pain with new complaint of intermittent right lower

⁴ *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (January 2013).

⁶ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

extremity pain and disc bulges with annular tears at L3-4, L4-5. He listed a February 7, 2009 work injury. Dr. Alexander provided medical treatment and administered epidural injections. In an April 8, 2013 narrative report, he diagnosed chronic lumbar radiculopathy, disc protrusions with annular tears at L3-4, L4-5 and radiation right lower extremity with foraminal stenosis. Dr. Alexander related that appellant had a history of chronic lumbar radiculopathy and degenerative disc disease following a February 7, 2009 work injury. He opined that as a direct result of symptomatic exacerbation appellant missed work from November 27, 2012 to January 7, 2013.

Dr. Alexander reported that appellant was unable to work from November 27, 2012 to January 7, 2013 as a result of the severity of his symptoms. He conducted an examination and diagnosed chronic lumbar pain with new complaint of intermittent right lower extremity pain, disc bulges with annular tears at L3-4, L4-5 and chronic lumbar radiculopathy. Although Dr. Alexander addressed the period of disability commencing November 27, 2012, he attributed appellant's inability to work due to lumbar pain, as well as new complaints of right lower extremity pain and disc bulges with annular tears. The Board notes that Dr. Alexander did not relate appellant's incapacity for work to any of the accepted conditions of lumbar strain, chest and right forearm contusion and left shoulder rotator cuff tear. Dr. Alexander failed to explain how appellant's complaints of right lower extremity pain and disc bulges were a result of change in the nature and extent of his February 7, 2009 employment injury. The Board has held that a recurrence of disability does not occur where the claimant's work stoppage is caused by a new or intervening injury, even if the new injury involves the same part of the body previously injured.⁸ Dr. Alexander did not provide sufficient medical rationale to support any objective worsening of appellant's accepted lumbar condition which caused his inability to work. Accordingly, his reports are insufficient to establish that appellant's claimed disability from November 27, 2012 to January 10, 2013 is causally related to his original February 7, 2009 work injury.

Similarly, the Board finds that Dr. Way's January 7, 2013 work restriction note also fails to establish appellant's recurrence claim as he does not attribute his inability to work to the February 7, 2009 employment injury. Dr. Way reported that appellant was out of work beginning November 27, 2012 for back and sciatic nerve dysfunction. He does not provide any medical explanation for how appellant's back and sciatic nerve dysfunction developed from his accepted lumbar strain condition and caused any recurrence of disability.

The additional diagnostic reports by Drs. Niggel and Smith are also insufficient to establish appellant's claim. While they provide findings related to appellant's back condition, none of the physicians provided any opinion on whether appellant's current lumbar condition was causally related to the original February 7, 2009 employment injury and resulted in his inability to work from November 27, 2012 to January 10, 2013. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹

⁸ *L.R.*, Docket No. 10-744 (issued October 25, 2010).

⁹ *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

Appellant also submitted a December 3, 2012 progress note by Mr. Fulkerson, a nurse practitioner that advised him not to work until December 10, 2012. Because nurse practitioners are not “physicians” as defined under FECA, his opinion is of no probative value.¹⁰

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 from November 27, 2012 to January 10, 2013 causally related to his accepted February 7, 2009 employment conditions.

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2013 merit decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: July 9, 2014
Washington, DC

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

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

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

¹⁰ Section 8102(2) of FECA provides that 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. 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).