

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

D.C., Appellant)

and)

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Salisbury, NC, Employer**)

**Docket No. 14-193
Issued: May 5, 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 October 30, 2013 appellant filed a timely appeal of a September 26, 2013 decision of the Office of Workers' Compensation Programs (OWCP) denying her recurrence claim. 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 established that she sustained a recurrence of disability on and after October 13, 2008 causally related to her October 4, 2006 employment injury.

FACTUAL HISTORY

On October 4, 2006 appellant, then a 40-year-old nursing assistant, sustained a lower back/coccyx strain due to lifting a patient. OWCP accepted the claim for a lumbar strain/sprain.

¹ 5 U.S.C. § 8101 *et seq.*

Appellant did not stop working. On December 7, 2006 appellant accepted a limited-duty job in the nursing service.

On August 2, 2013 appellant filed a claim for a recurrence of disability effective October 13, 2008. She noted that she continued to work following the recurrence and sought medical treatment. The employing establishment noted that appellant sustained another injury on December 5, 2006.² No evidence was submitted with her claim.

By correspondence dated August 5, 2013, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised to submit medical and factual evidence to establish her recurrence claim and given 30 days to provide this information. OWCP informed her that her claim had been administratively approved for a limited amount of medical expenses as the injury appeared minor, there was no lost work time and no controversion by the employing establishment.

By decision dated September 26, 2013, OWCP denied appellant's recurrence claim.³ It found that she failed to submit any medical evidence to support her claim. OWCP also found that there was no evidence of any material change or worsening in appellant's accepted condition.

LEGAL PRECEDENT

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴ If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken and an appropriate new claim should be filed.⁵

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of

² The employing establishment noted an OWCP file number xxxxxx318.

³ The Board notes that, following the September 26, 2013 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

⁴ 20 C.F.R. § 10.5(x). *See also* *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997); *K.C.*, Docket No. 08-2222 (issued July 23, 2009); *Cecelia M. Corley*, 56 ECAB 662 (2005); *Donald T. Pippin*, 54 ECAB 631 (2003).

reliable, probative and substantial evidence a recurrence of total disability.⁶ As part of this burden of proof, 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.⁷ In order to establish that her claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between her present condition and the accepted injury must support the physician's conclusion of a causal relationship.⁸ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁹

ANALYSIS

OWCP accepted appellant's 2006 claim for a lumbar sprain with no wage-loss compensation as she did not stop working at the time of the injury. Appellant accepted a limited-duty job offer from the employing establishment on December 7, 2006. On August 2, 2013 she filed a claim for a recurrence of disability beginning October 13, 2008. By decision dated September 26, 2013, OWCP denied appellant's claim for a recurrence of disability on and after October 13, 2008. The issue is whether she established that she sustained a recurrence of disability on and after October 13, 2008 causally related to her October 4, 2006 accepted lumbar sprain.

The Board finds that appellant failed to submit any medical evidence to support her claim or recurrence. OWCP advised her in a letter dated August 5, 2013 of the evidence required to support a recurrence of disability claim. In order to establish a recurrence of disability, appellant must submit medical evidence from a physician addressing how the nature and extent of her accepted lumbar condition had worsened or evidence to support a change in the nature and extent of her light-duty requirements. Without any current medical evidence, appellant did not establish a recurrence of disability and is not entitled to wage-loss compensation.

As appellant failed to submit any medical evidence establishing a recurrence of disability, she has failed to meet her burden of proof.

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.

⁶ Recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment. 20 C.F.R. § 10.5(y).

⁷ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁸ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁹ *Id.*

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability on and after October 13, 2008 causally related to her accepted October 6, 2006 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 26, 2013 is affirmed.

Issued: May 5, 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