

ISSUE

The issue is whether appellant has established a recurrence of total disability beginning April 28, 2013.

On appeal appellant generally asserts that the medical evidence establishes that she sustained a recurrence of disability.

FACTUAL HISTORY

On January 10, 2011 appellant, then a 44-year-old transportation security screener, filed a traumatic injury claim alleging that she injured her back while lifting baggage that day. A February 25, 2011 magnetic resonance imaging (MRI) scan study of the lumbar spine demonstrated minimal disc desiccation at L3-4 and L4-5 with bulging discs and no disc herniation or central canal stenosis. In a duty status report dated March 14, 2011, Dr. James D. Nelson, Board-certified in internal medicine and neurology, advised that appellant could return to work that day for six hours of modified duties with restrictions of no kneeling, bending or stooping, and six hours of sitting, four hours of standing, walking, twisting, pulling, pushing, grasping and reaching above the shoulder. Appellant was to alternate sitting and standing and had a 10-pound weight restriction.

Appellant returned to limited duty for six hours a day on March 14, 2011. The job description indicated that she would check boarding passes and passenger identification for a maximum of 30 minutes in rotation with maximum lifting of one pound eight ounces, and that she would work at the online learning center for 2-hour intervals. The physical restrictions were within those outlined by Dr. Nelson. On April 4, 2011 OWCP accepted that appellant sustained a lumbar sprain and she thereafter received wage-loss compensation for two hours a day.

On April 8, 2011 appellant filed a recurrence claim, alleging that on April 6, 2011 she felt a sudden sharp pain while using the bathroom. She stopped work that day. By decision dated June 9, 2011, OWCP denied that appellant sustained a recurrence of total disability on the grounds that the medical evidence did not establish that the claimed recurrence was caused by the January 10, 2011 employment injury. In a merit decision dated September 12, 2011, it denied modification of the June 9, 2011 decision. Appellant continued to receive wage-loss compensation for two hours daily. She returned to work, four hours daily, on November 6, 2011 and for six hours daily on February 12, 2012. Appellant continued to receive compensation for two hours a day through March 24, 2012.³

Appellant worked sporadically from April 28 to May 28, 2013 when she stopped work. During this period, she relocated from the U.S. Virgin Islands to Atlanta, Georgia. Appellant did not return to work thereafter. On CA-7 claim forms dated May 8 and June 3, 2013, received by OWCP on August 1 and 29, 2013, she filed claims for compensation for the period April 28 to May 30, 2013. In letters dated August 9, September 6 and 9, 2013, OWCP informed appellant of the evidence needed to support her claims for compensation.

³ In the spring of 2012, appellant began working eight hours daily. Dr. Nelson indicated on May 17, 2012 that she continued to work eight hours a day.

In reports dated February 7 and April 18, 2013, Dr. Nelson noted that appellant continued to complain of persistent intermittent lower back pain associated with leg pain while walking. He indicated that she was working eight hours daily and had a lifting restriction of 10 pounds. On April 30, 2013 Dr. Nelson reported that appellant was unable to work on April 28, 2013 due to severe low back pain that radiated into her left lower extremity. On examination he found tenderness and muscle spasm in the cervical, trapezius, paraspinal and lumbar muscles. Dr. Nelson advised that appellant could return to work for four hours daily on May 13, 2013 and continued the 10-pound lifting restriction. On May 8 and 28, 2013 he indicated that she could have a trial of work for four hours a day, five days a week, with the continued lifting restriction.

In a June 24, 2013 report, Dr. Christopher R. Edwards, a Board-certified orthopedic surgeon, advised that appellant had some positive neuromechanical findings on examination.⁴ A July 8, 2013 electrodiagnostic study of the lower extremities was suggestive of an abnormality in the left S1 nerve root distribution. There were no findings to suggest a lumbar radiculopathy, a dysfunction involving the deep peroneal or tibial nerves, or a polyneuropathy or myopathy. An August 3, 2013 MRI scan study of the lumbar spine demonstrated disc bulges at L3-4 and L4-5 with canal narrowing, worse at L4-5 with a disc protrusion; milder degenerative changes, particularly at L5-S1 and bilateral sacroiliac degenerative changes. On August 12, 2013 Dr. Edwards noted that appellant's symptoms had increased, opining that this was a result of severe stenosis. A lumbar myelogram on August 23, 2013 demonstrated diffuse disc bulges at L3-4 and L4-5 with a right-sided protrusion at L4-5 and small bulges also seen at L2-3 and L5-S1. Appellant had epidural injections and Dr. Edwards continued to submit reports describing her condition. On September 13, 2013 Dr. Edwards indicated that the stenosis at L4-5 was multifactorial and related to her original and subsequent work injuries.

By decision dated October 10, 2013, OWCP denied appellant's claim for compensation for the period April 28 to June 29, 2013 as the medical evidence did not establish how her work stoppage was related to the accepted January 10, 2011 lumbar sprain. It advised her to form a recurrence claim and submit explanatory medical evidence. OWCP resent the decision on October 25, 2013.⁵

Appellant continued to submit CA-7, claims for compensation. She submitted a recurrence claim, dated September 20, 2013, on October 30, 2013. Appellant stated that she sustained a recurrence of disability on May 28, 2013 when she felt a sharp pain when she was returning from "the bank." By letter dated November 22, 2013, OWCP informed appellant of the medical evidence needed to support her claim, to include a comprehensive narrative medical report that described the original mechanism of injury, a description of her current symptoms, current objective findings upon examination, results of all diagnostic studies and a medical report explaining how the claimed disability was due to the original injury.

In a December 4, 2013 statement, appellant indicated that the recurrence occurred on May 28, 2013 when she was leaving work to go to Dr. Nelson's office. She stated that her light-duty work consisted of checking boarding passes and traveler's identification with sitting and

⁴ Dr. Nelson practices in the U.S. Virgin Islands; Dr. Edwards in Atlanta, Georgia.

⁵ On September 27, 2013 appellant submitted a written change of address to OWCP from the Virgin Islands to Georgia. The October 10, 2013 decision was mailed to the Virgin Islands address, and on October 25, 2013, it was properly mailed to her Georgia address.

standing four hours daily, and that her symptoms worsened when she had to sit and stand for long lengths of time. Appellant submitted a disability statement from Dr. Nelson dated May 28, 2013 indicating that she should remain off work until July 28, 2013. In an August 27, 2013 report, Dr. Asutosh Vyas, a pain management specialist, noted seeing appellant for follow up regarding low back pain that began when she lifted a heavy piece of luggage at work on January 10, 2011. He described physical examination findings, noting tenderness to palpation of the lumbar spine, restricted lumbar spine range of motion and palpable trigger points of low back muscles. Straight leg raising was normal, and motor strength and sensation were within normal limits. Dr. Vyas diagnosed low back pain, discogenic in origin; lumbar radiculopathy and lumbar stenosis.

On work status reports dated August 12 and 30, September 13 and 27, 2013, Dr. Edwards indicated that appellant was unable to work August 12 to October 18, 2013 due to a herniated disc at L4-5 and multifactorial stenosis.⁶ In a November 21, 2013 report, Dr. Michael V. Yancey, a Board-certified neurosurgeon, noted a history that appellant injured her back at work on January 10, 2011 when she assisted a coworker to lift a heavy piece of luggage. He reported her medical and work history and her complaint of lower lumbar pain with some radiation upwards into the mid-back and neck and leg weakness. Dr. Yancey noted the diagnostic study findings. He indicated that examination demonstrated apparent weakness in motor strength in the left iliopsoas, left quadriceps, and left hamstring and mild weakness in the left peroneus longus muscle and decreased pinprick sensation in the right L4 and S1 dermatomes. Dr. Yancey diagnosed lumbago, degeneration of lumbar or lumbosacral intervertebral disc, lumbosacral spondylosis without myelopathy and displacement of lumbar intervertebral disc without myelopathy. He recommended lumbar decompression and fusion surgery at L3-4 and L4-5. On December 6, 2013 Dr. Edwards described appellant's symptoms and recommended surgery. He requested authorization for surgery that day.

By decision dated January 10, 2014, OWCP denied appellant's recurrence claim on the grounds that the medical evidence was insufficient to establish entitlement.

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁷ 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.⁸

⁶ Appellant also submitted several unsigned and unidentified medical reports.

⁷ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

⁸ *Id.*

When an employee, who is disabled from the job he or 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 reliable, probative and substantial evidence a recurrence of total disability. 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.⁹

ANALYSIS

The Board finds that appellant has not established a recurrence of total disability on or after April 28, 2013 causally related to the accepted January 10, 2011 lumbar sprain because she did not establish that the nature and extent of her injury-related condition changed so as to prevent her from continuing to perform her limited-duty assignment.

A partially disabled claimant who returns to a light-duty job has the burden of proving that he or she cannot perform the light duty, if a recurrence of total disability is claimed.¹⁰ The issue of whether an employee has disability from performing a modified position is primarily a medical question and must be resolved by probative medical evidence.¹¹ A claimant's burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale. Where no such rationale is present, the medical evidence is of diminished probative value.¹²

Based on a March 14, 2011 report from Dr. Nelson, an attending neurologist, appellant returned to six hours of modified duty that day. The job duties were within the restrictions provided by Dr. Nelson and consisted of checking boarding passes and passenger identification for a maximum of 30 minutes in rotation with maximum lifting of one pound eight ounces and that she would work at the online learning center for two-hour intervals. Appellant stopped work on April 6, 2011. In merit decisions dated June 9 and September 12, 2011, OWCP denied that she sustained a recurrence of total disability on April 6, 2011. On November 6, 2011 appellant returned to four hours of modified duty daily and to six hours on February 12, 2012. She continued to receive wage-loss compensation for two hours daily until she began eight hours of modified duty daily in the spring of 2012.

Appellant worked sporadically from April 28 to May 28, 2013, then stopped work and did not return. She moved from the Virgin Islands to Georgia in May 2013 and thereafter filed CA-7 claims for compensation and a recurrence claim for partial disability beginning April 28, 2013 and total disability beginning May 28, 2013.

On April 30, 2013 Dr. Nelson reported that appellant was unable to work on April 28, 2013 due to severe low back pain that radiated into her left lower extremity. He advised that she could return to work for four hours daily on May 13, 2013 and continued the 10-pound lifting

⁹ *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹⁰ *See William M. Bailey*, 51 ECAB 197 (1999).

¹¹ *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹² *Mary A. Ceglia*, 55 ECAB 626 (2004).

restriction. On May 8 and 28, 2013 Dr. Nelson indicated that appellant could have a trial of work for four hours a day, five days a week, with the continued lifting restriction. He also indicated in another May 28, 2013 report that she should remain off work until July 28, 2013. Dr. Nelson's May 28, 2013 reports are contradictory. 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.¹³ Moreover, Dr. Nelson did not provide an explanation with sufficient rationale as to why appellant could not perform the modified work duties of checking boarding passes and passenger identification. His reports are therefore insufficient to establish that she was disabled after April 28, 2013.

After appellant moved to Georgia, she began treatment with Dr. Edwards, an orthopedic surgeon. In reports dated June 24 to December 6, 2013, Dr. Edwards noted appellant's complaint of severe back pain, diagnosed disc bulge at L4-5 and severe stenosis and indicated that she was totally disabled. While he opined that appellant's back condition was multifactorial, he also stated that it was related to her original and subsequent work injuries. The Board finds the reports of Dr. Edwards also insufficient to establish appellant's recurrence claim as the physician did not provide a sufficient explanation as to how the mechanics of the January 10, 2011 employment injury, accepted for lumbar sprain, caused her complaints of severe back pain such that she could not perform the duties of the modified assignment. Dr. Edwards did not demonstrate specific knowledge of the assignment or provide an explanation with sufficient rationale as to why appellant could not perform the work duties of checking boarding passes and passenger information that she performed from March 14 to April 6, 2011 and November 6, 2011 to May 28, 2013.

In an August 27, 2013 report, Dr. Vyas described physical examination findings and diagnosed low back pain, discogenic in origin; lumbar radiculopathy and lumbar stenosis. Dr. Yancey provided a November 21, 2013 report in which he reported appellant's medical and work history, performed physical examination, and diagnosed lumbago, degeneration of lumbar or lumbosacral intervertebral disc, lumbosacral spondylosis without myelopathy and displacement of lumbar intervertebral disc without myelopathy. He recommended lumbar decompression and fusion surgery at L3-4 and L4-5. The merit issue in this case is whether appellant is entitled to total disability compensation beginning April 28, 2013. The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.¹⁴ Neither Dr. Vyas nor Dr. Yancey commented on appellant's ability to work. Their opinions are therefore of no probative value regarding appellant's entitlement to total disability compensation.

It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for a recurrence.¹⁵ The record does not contain a medical report providing a reasoned medical opinion that her claimed recurrence of disability was caused by the January 10, 2011

¹³ *Ricky S. Storms*, 52 ECAB 349 (2001).

¹⁴ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁵ *Beverly A. Spencer*, 55 ECAB 501 (2004).

employment injury.¹⁶ Furthermore, appellant has not shown a change in her light-duty requirements. She therefore did not meet her burden of proof to establish disability as a result of a recurrence.¹⁷

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 failed to meet her burden of proof to establish that she sustained a recurrence of disability on or after April 28, 2013 causally related to her accepted lumbar sprain.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 10, 2014 and October 25, 2013 are affirmed.

Issued: November 10, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹⁶ *Cecelia M. Corley*, *supra* note 11.

¹⁷ *S.F.*, 59 ECAB 525 (2008).