

FACTUAL HISTORY

On December 18, 1988 appellant then a 27-year-old clerk, injured her back and left shoulder while lifting trays of mail and placing them on an optical character reader. OWCP accepted her claim for sprain of the back and lumbar region. Appellant returned to work light duty and continued to work until December 31, 2007 when she became disabled from work.

On May 20, 2013 appellant filed a Form CA-2a, notice of recurrence of disability, asserting that she had a recurrence of disability on September 15, 2011. She noted the date of her original injury was December 18, 1988 and she had not worked since December 31, 2007. Appellant indicated that since December 18, 1988 her condition has progressively worsened and a September 15, 2011 x-ray revealed degenerative arthritis in the lower back and hips which she believed was related to her December 18, 1988 work injury.

Appellant submitted an x-ray of the right hip and pelvis dated September 15, 2011 which revealed questionable inflammatory erosion in the right acetabulum and degenerative changes in the lower lumbar spine. She submitted an undated job summary from 1985 to 2000.

In an August 13, 2013 letter, OWCP advised appellant of the type evidence needed to establish her recurrence of disability claim. It particularly asked that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors. OWCP requested that appellant submit all of her medical records from her December 18, 1988 work injury and a copy of the Form CA-1, for the December 18, 1988 injury.

On September 26, 2013 appellant indicated that she worked on an optical character reader for nine hours a day standing, pulling, bending, twisting and unloading without breaks. She noted that she developed L3-4 bulging discs, sciatica of the hip and an L5 bulging disc and tear. Appellant noted that after the December 18, 1988 injury she was offered a rehabilitative job in the express mail office in June 1989, and on November 2, 1990 she was reassigned to a position outside her restrictions without her physician's approval. She indicated that her physician never returned her to full duty, and in 1994, upon the request of the employing establishment to return to work full time, she refused and was terminated. Appellant indicated that she had not sustained any other injuries and was limited in her daily activities. She indicated that she subsequently worked full time for MetLife for 12 months answering telephones and making changes to beneficiaries' policies.

Appellant provided September 25 and October 10, 2013 reports from Dr. Timothy Olson, a Board-certified internist, who noted a history of chronic low back pain with radiation into the buttock and posteriorly down the left leg to the foot that began many years ago. Her pain moderately limited her function. Dr. Olson noted a long-standing work injury for which appellant was on disability since 1988 and noted it was unclear whether it was a lumbar or a thoracic injury. He advised that she also had chronic right shoulder issues. A September 15, 2011 right hip x-ray showed possible right acetabulum inflammatory erosion. Dr. Olson noted findings of intact motor examination, intact leg strength and sensation, mildly antalgic gait, limited lumbar range of motion, tenderness over the left paralumbar region and positive straight leg raises. He diagnosed disorder of the muscle, ligament and fascia, right rotator cuff tear, sciatica, lumbosacral spondylosis, chronic low back pain with lower left extremity radicular

symptoms, lumbar degenerative disc disease and spondylosis, chronic right shoulder problems with acute right neck pain, myofascial pain and vocational/disability issues. Dr. Olson noted that appellant had multiple chronic pain complaints that she reported stemmed from a significant work injury in 1988. He opined that it was certainly possible that a history of severe trauma would predispose her to more prominent degenerative changes as she aged. However, Dr. Olson noted that these types of degenerative changes can to some degree also occur in the normal course of aging. In an October 10, 2013 report, he noted findings of a magnetic resonance imaging (MRI) scan of the lumbar spine revealed a disc bulge at L4-5 with an annular tear to the left of midline with posterior element prominence and mild overall central stenosis with no frank herniation. Dr. Olson diagnosed lumbar spine disc degeneration, disorder of the muscle, ligament or fascia, sciatica, chronic low back pain with lower left extremity radicular symptoms, spondylosis, chronic right shoulder problems with acute neck pain, myofascial pain and vocational and disability issues. He noted that appellant had multiple chronic pain complaints that she believed resulted from the 1988 work injury.

In a February 20, 2014 decision, OWCP found that the evidence submitted did not establish a recurrence of disability causally related to her December 18, 1988 work injury.

In an appeal request form dated March 1, 2014, appellant requested reconsideration. In an accompanying letter, she indicated that she wished to reopen her claim and noted that she had incorrectly submitted a Form CA-2a instead of a Form CA-2, notice of occupational disease. Appellant noted seeking treatment from Dr. Olson on September 25, 2013 and reported lumbar spine complaints associated with the original injury of December 18, 1988. She disagreed with the February 20, 2014 decision noting she established that the injury occurred on December 18, 1988 and continued to worsen without an intervening cause. Appellant indicated that the lumbar strain of December 18, 1988 deteriorated to lumbar degenerative disc disease, spondylosis, an L4-5 disc bulge and annular tear which resulted in her vocational and disability issues.

Appellant submitted a December 18, 1988 Form CA-1, a September 15, 2011 x-ray, an October 4, 2013 MRI scan, reports from Dr. Olson dated September 25 and October 10, 2014 and OWCP's February 20, 2014 decision, all previously of record. She submitted a Form CA-1 filed on November 14, 1990 for right shoulder injuries sustained while casing slips and making express mail kits. Appellant submitted a May 25, 1993 letter from OWCP setting forth compensation payments for the December 18, 1988 injury. She also submitted reports from Dr. Ross G. Stone, a Board-certified orthopedist. On September 16, 1992 Dr. Stone noted findings of pain in the shoulder and with range of motion of the neck and diagnosed cervical spine strain, shoulder impingement and chronic pain syndrome. He returned appellant to work with restrictions. In an October 14, 1992 report, Dr. Stone noted that on December 18, 1988 she had a cervical and lumbar spine injury with nerve damage to the leg and bulging discs. He noted diminished range of neck motion and diagnosed continued problems with appellant's shoulder, low back and neck. Dr. Stone returned her to work with restrictions. Also submitted was a May 25, 1993 letter from OWCP to Dr. Stone asking that he address appellant's disability status.

On March 2, 2014 appellant filed a Form CA-2, notice of occupational disease, asserting that her December 18, 1988 original injury caused her pain to worsen and development of repetitive strain injuries, musculoskeletal injuries, lumbar degenerative disc disease, spondylosis, L4-5 disc bulge and annular tear due to heavy lifting, repetitively, without breaks.

In a March 19, 2014 decision, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT -- ISSUE 1

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 resulting from a previous injury or illness without an intervening cause or a new exposure to the work environment that caused the illness. It can also mean an inability to work that takes place 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.²

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish, by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and an inability to perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.³ To establish a change in the nature and extent of the injury-related condition, there must be a probative medical opinion, based on a complete and accurate factual and medical history as well as supported by sound medical reasoning, that the disabling condition is causally related to employment factors.⁴ In the absence of rationale, the medical evidence is of diminished probative value.⁵ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, it must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁶

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained sprain of the back/lumbar region. Appellant returned to light duty and continued to work until December 31, 2007 when she stopped work completely. On May 20, 2013 she filed a claim for a recurrence of disability. The Board finds that the medical record lacks a well-reasoned narrative from appellant's physicians relating her claimed recurrent disability to her accepted employment injury. Furthermore, appellant has not

² *J.F.*, 58 ECAB 124 (2006). A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties, or other downsizing. 20 C.F.R. § 10.5(x). See also *Richard A. Neidert*, 57 ECAB 474 (2006).

³ *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

⁵ *Id.*; *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁶ *Ricky S. Storms*, 52 ECAB 349 (2001).

presented evidence that the employing establishment either withdrew her light-duty job or altered the assignment so as to require her to exceed her physical restrictions before she stopped work.

Appellant submitted reports dated September 25 and October 10, 2013 from Dr. Olson who noted her history of chronic low back pain with radiculopathy. Dr. Olson noted a long-standing work injury for which she was on disability since 1988. However, he stated that it was unclear whether it was a lumbar or a thoracic injury. Dr. Olson noted findings and offered diagnoses that included sciatica, chronic low back pain with left leg radicular symptoms, lumbar degenerative disc disease and spondylosis, chronic right shoulder problems with acute right neck pain and right rotator cuff tear. He noted that appellant had multiple chronic pain complaints that she related to her 1988 work injury. Dr. Olson opined that it was certainly possible that a history of severe trauma would predispose her to more prominent degenerative changes as she aged but he noted that these types of degenerative changes can occur in the normal course of aging. He did not specifically address whether appellant had a recurrence of disability on September 15, 2011 causally related to the accepted employment condition or otherwise provide medical reasoning explaining why any current condition or disability was due to the accepted December 18, 1988 work injury. Dr. Olson did not explain how or why any current diagnosed condition was related to the accepted injury. Rather, he opined that it was “certainly possible” that a history of severe trauma would predispose appellant to more prominent degenerative changes as she aged but also advised that these type of degenerative changes can also occur in the normal course of aging. At best Dr. Olson’s opinion provides only speculative support for causal relationship as he qualified his support by noting it was “certainly possible” that appellant’s trauma history would predispose her to degenerative changes.⁷ He provided no medical reasoning to support his opinion on causal relationship. Therefore, this report is insufficient to meet appellant’s burden of proof. The need for rationale is especially important in a situation where appellant claimed a recurrence of disability on September 15, 2011, where she stopped working at her job on December 31, 2007. Therefore, these reports are insufficient to meet appellant’s burden of proof.

Appellant did not otherwise submit medical evidence supporting that she sustained a recurrence of disability causally related to her December 18, 1988 work injury.

On appeal appellant asserts that her work-related lumbar sprain worsened over the years as a result of the December 18, 1988 injury. She contends that the lumbar spine MRI scan showed worsening of the original injury. Appellant noted that her claim was for an occupational disease claim and not a recurrence of disability.⁸ However, as noted above, the medical evidence submitted did not provide a rationalized medical opinion explaining why her claimed recurrent condition or disability on September 15, 2011 was due to the December 18, 1988 work injury. There is also no contemporaneous evidence of record establishing such assertions.

⁷ Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

⁸ The Board notes that OWCP did not issue a final decision on her new claim for an occupational disease and therefore the Board does not have jurisdiction over the matter. *See* 20 C.F.R. § 501.2(c).

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.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁹ OWCP regulations provide that the evidence or argument submitted by a claimant must either: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁰ Where the request for reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹¹

ANALYSIS -- ISSUE 2

OWCP's February 20, 2014 merit decision denied appellant's claim for a recurrence of disability as she failed to provide sufficient evidence to establish a recurrence of disability on September 15, 2011 causally related to her December 18, 1988 work injury. It denied appellant's reconsideration request, without a merit review, and appellant appealed this decision to the Board.

The issue is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her request for reconsideration, appellant did not identify a specific point of law or show that it was erroneously applied or interpreted. She did not advance a new and relevant legal argument. In a March 1, 2014 letter, appellant asserted that she incorrectly submitted a Form CA-2a instead of a Form CA-2, notice of occupational disease. She disagreed with the February 20, 2014 decision noting that she had established that the injury occurred on December 18, 1988 and continued to worsen without an intervening cause. Appellant indicated that the lumbar strain of December 18, 1988 deteriorated into her current back diagnoses and caused disability. She noted that after her December 18, 1988 injury she was moved from a sedentary rehabilitation job to a limited-duty assignment performing standing, repetitive reaching and stretching which caused further injury. These general assertions about appellant's light-duty assignment do not show a legal error by OWCP or a new and relevant legal argument. They also are not germane to the underlying medical issue of whether she had a recurrence of disability on September 15, 2011 causally related to the December 18, 1988 work injury. That is a medical issue which must be addressed by relevant new medical evidence.¹²

⁹ 5 U.S.C. § 8128(a).

¹⁰ *E.K.*, Docket No. 09-1827 (issued April 21, 2010). *See* 20 C.F.R. § 10.606(b)(2).

¹¹ *L.D.*, 59 ECAB 648 (2008). *See* 20 C.F.R. § 10.608(b).

¹² *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

However, appellant did not submit new and relevant medical evidence. She submitted certain evidence that was previously of record. Such evidence is not a basis for reopening a claim as the Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹³

Appellant also submitted reports from Dr. Stone dated September 16 and October 14, 1992. Dr. Stone had treated her for a work-related back injury and diagnosed cervical spine strain, shoulder impingement and chronic pain syndrome. He returned appellant to work with restrictions. Although these reports are new to the record, they are not relevant because they significantly predate the time in which appellant claimed a recurrence of disability on September 15, 2011. Thus, this evidence was not relevant and insufficient to warrant merit review. Other factual evidence submitted by appellant included a Form CA-1 filed on November 14, 1990, a May 25, 1993 letter from OWCP, a May 25, 1993 letter from OWCP to Dr. Stone and a March 2, 2014 Form CA-2. However, this evidence is irrelevant. The underlying issue in this case is whether appellant had a recurrence of disability on September 15, 2011 causally related to the December 18, 1988 work injury. None of this evidence is relevant to that issue. Therefore, this evidence is insufficient to warrant reopening the case for a merit review.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or constitute relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability causally related to her accepted condition. The Board further finds that OWCP properly denied her request for reconsideration dated March 1, 2014.

¹³ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

ORDER

IT IS HEREBY ORDERED THAT the March 19 and February 20, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 13, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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