



performance of duty. OWCP accepted the claim, assigned file number xxxxxx191, for lumbar sprain. Appellant did not stop work.

On October 17, 2008 Dr. Scott D. Norris, an osteopath, diagnosed lumbar sprain/strain and resolving radiculitis. He found that appellant could resume his usual work duties.

On August 17, 2011 appellant filed a traumatic injury claim alleging that he sustained an injury to his lower back on August 4, 2011. OWCP assigned the claim file number xxxxxx626 and accepted the claim for lumbar strain. Appellant returned to modified employment on September 14, 2011 under file number xxxxxx626.

On January 23, 2013 the employing establishment removed appellant from employment due to medical disqualification. It noted that October 18, 2011 and October 29, 2012 reports from Dr. Craig Lichtblau, a Board-certified physiatrist, established that he was disabled from employment due to “flares of low back pain since August 2011.”<sup>2</sup>

On May 24, 2013 appellant filed a claim for compensation on account of disability (Form CA-7) from January 24 to May 23, 2013. The form noted that he had been released to his regular employment on January 5, 2010. In an accompanying letter dated May 24, 2013, appellant’s attorney argued that the employing establishment had withdrawn his limited-duty position. On October 22, 2013 appellant filed a claim for compensation from May 24 to July 10, 2013.

By letter dated November 1, 2013, OWCP advised appellant of the requirements to establish a recurrence of disability. It requested that he submit a detailed report from his attending physician addressing the causal relationship between his disability and the accepted employment injury.

In a report dated November 20, 2013, Dr. Ramon Berenguer, a Board-certified internist, noted that appellant received a diagnosis of lumbar strain and radiculitis due to a May 13, 2008 work injury. He worked limited duty and then returned to his usual employment. Dr. Berenguer related that appellant sustained “a second low back injury in 2011 and a recurrence in 2012.” He diagnosed lumbar sprain and radiculitis and indicated that he required an “assessment to determine if he can resume limited work duties.” In a duty status report dated November 20, 2013, Dr. Berenguer found that appellant was disabled from employment.

By decision dated December 10, 2013, OWCP found that appellant had not established a recurrence of disability from January 24 to July 10, 2013. It determined that the medical evidence was insufficient to show that he was disabled from employment.

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<sup>2</sup> The October 18, 2011 and October 29, 2012 reports from Dr. Lichtblau are not in the case record. In a progress report dated October 31, 2012, Dr. Lichtblau diagnosed lumbar myofascial pain syndrome due to an August 4, 2011 work injury. He found that appellant could resume work without restrictions but may have “acute intermittent exacerbations of chronic pain and discomfort....”

In a duty status report dated December 28, 2013, Dr. Berenguer diagnosed lumbar sprain, checked “yes” that the history corresponded to that provided on the form and opined that appellant was totally disabled.<sup>3</sup>

On January 23, 2014 appellant, through his attorney, requested reconsideration. Citing OWCP’s procedures, counsel contended that he had established a recurrence of disability as the employing establishment withdrew his limited-duty position.

In a report of telephone call dated March 7, 2014, the employing establishment related that, under the current file number, appellant resumed his usual employment on November 12, 2008.

By decision dated March 10, 2014, OWCP denied modification of its December 10, 2013 decision. It noted that appellant had filed a claim for a new traumatic injury occurring on August 4, 2011, which it assigned file number xxxxxx643 and accepted for lumbar strain. On September 4, 2011 appellant accepted a limited-duty job offer under that file number. OWCP found that there was no evidence that he was performing limited-duty employment under the current file number at the time the employing establishment removed him from work. It further determined that the medical evidence did not show that appellant was disabled as a result of his May 13, 2008 work injury.

On appeal appellant’s attorney, citing OWCP’s procedures, contends that the employing establishment withdrew his limited-duty position for reasons unrelated to a reduction-in-force or for cause. He relates that the medical evidence from September 2008 and January 2010 supports that appellant had continuing disability causally related to his injury.

### **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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>4</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.<sup>5</sup> This 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 disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>6</sup>

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<sup>3</sup> The duty status report did not contain a description of injury. The record also contains the first page of a progress report from Dr. Berenguer dated December 18, 2013.

<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> See *Carmen Gould*, 50 ECAB 504 (1999).

<sup>6</sup> See *Mary A. Ceglia*, 55 ECAB 626 (2004).

## ANALYSIS

OWCP accepted that appellant sustained lumbar sprain due to a May 13, 2008 employment injury. On October 17, 2008 Dr. Norris released him to resume his regular work duties. Appellant returned to his usual employment on November 12, 2008. OWCP further accepted that he sustained an injury to his low back on August 4, 2011 under file number xxxxxx626. Appellant resumed modified employment on September 14, 2011 under file number xxxxxx626.

On January 23, 2013 the employing establishment found that appellant was medically disqualified from employment. On May 24, 2013 he filed a claim for compensation from January 24 to May 23, 2013 due to disability resulting from his May 13, 2008 employment injury. Appellant's attorney argued that he had established a recurrence of disability based on the employing establishment's withdrawal of his limited-duty position. A recurrence of disability includes 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, (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.<sup>7</sup> Subsequent to his May 13, 2008 employment injury, however, appellant resumed his usual work duties. At the time the employing establishment removed him from employment on January 23, 2013, he was working limited duty as the result of another work injury. Consequently, appellant has not established a recurrence of disability based on the withdrawal of his limited-duty employment due to his May 13, 2008 employment injury.

Further, the medical evidence is insufficient to show that he was unable to work beginning January 24, 2013. On November 20, 2013 Dr. Berenguer noted that appellant sustained a work injury to his low back on May 13, 2008 and was diagnosed with a lumbar strain and radiculitis. He worked limited duty after his injury but was "reincorporated to work full duty." Dr. Berenguer indicated that appellant had another back injury in 2011 and a recurrence of disability in 2012 as let go from work because he could not perform his duties. He diagnosed lumbar sprain and radiculitis and found that he should be assessed to determine whether he could work limited-duty employment. Dr. Berenguer did not address the relevant issue of whether appellant sustained a recurrence of disability on January 24, 2013 due to his May 13, 2008 employment injury. Thus, his opinion is insufficient to meet appellant's burden of proof.

In a December 28, 2013 form report, Dr. Berenguer diagnosed lumbar strain and found that appellant was totally disabled. He checked "yes that the history provided by appellant corresponded to that of the form. The form, however, did not contain a history of injury. Further, the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form question on whether the claimant's condition was related to the history given is of little probative value. Without explanation or rationale for the conclusions reached, such report is insufficient to establish causal relationship.<sup>8</sup>

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<sup>7</sup> 20 C.F.R. § 10.5(x).

<sup>8</sup> *Cecelia M. Corley*, 56 ECAB 662 (2005); *Deborah L. Beatty*, 54 ECAB 334 (2003) (the checking of a box "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship).

On appeal appellant's attorney argues that the employing establishment withdrew his limited-duty position. As discussed, the record on appeal reflects that he was working limited-duty as a result of another employment injury at the time he stopped work in January 2013. Counsel further contends that medical reports from September 2008 and January 2010 show that appellant had continuing work restrictions. However, he was released to resume his regular employment in October 2008. There is no evidence that appellant was working with restrictions due to his May 13, 2008 work injury at the time the employing establishment terminated his employment.

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 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained a recurrence of disability beginning January 24, 2013 causally related to his May 13, 2008 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 10, 2014 and December 10, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 3, 2014  
Washington, DC

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

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

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