



## **FACTUAL HISTORY**

On November 15, 2007 appellant, then a 44-year-old human resources specialist, fell down three stairs at work. OWCP accepted the claim for sprain of hip, iliofemoral, right and displacement of lumbar herniated discs at L4-5 and L5-S1. On December 12, 2007 appellant underwent lumbar discectomy at L5-S1. He returned to regular duty on September 8, 2008 with the accommodation of an ergonomic chair.

On November 13, 2012 appellant filed a Form CA-7 claim for compensation, indicating that he stopped work on October 29, 2012. OWCP accepted the recurrence of disability and paid wage-loss compensation.

In a work capacity evaluation dated April 4, 2013, Dr. John B. Adams, Board-certified in family and pain medicine, indicated that appellant could return to four hours of modified duty daily with no twisting and a 10-pound lifting restriction. Sitting limited to 30-minute intervals and standing to 15-minute intervals and appellant was to be allowed breaks. Appellant returned to four hours of modified duty on May 1, 2013. The position description indicated that he would work four hours a day, five days a week and would be able to perform his regular job duties as a human resources specialist, with a modification that he could sit and stand as needed and was not required to lift anything over 10 pounds or to walk for more than 15 minutes intermittently.<sup>2</sup> Appellant continued to receive appropriate compensation for four hours daily.

On June 12, 2013 appellant filed a Form CA-7 claim for compensation, noting that he stopped work on June 4, 2013. A May 6, 2013 report of contact advised that he called Patricia Till, a human resources specialist, to report that his ergonomic chair had been used by an extremely obese person in his absence. It was disfigured and did not support appellant's back, such that he had to get up every 30 minutes due to pain. Appellant received compensation for four hours a day.

In a treatment note dated June 4, 2013, Dr. Adams advised that appellant was seen for continued radiating low back pain. Appellant reported that he tried to return to work but, in his absence, his chair was given to someone who was morbidly obese, which disfigured his chair, making it no longer useful. Dr. Adams provided physical examination findings and diagnosed lumbar spondylosis and lumbar post-laminectomy syndrome. He stated that, due to the lack of a recommended ergonomic chair and apparent difficulty with accommodation, appellant should not work until after a functional capacity evaluation.

By report dated June 19, 2013, Dr. Carmela G. Osborne, a Board-certified physiatrist, noted the history of injury and appellant's complaint of low back pain with radiation to the left lower extremity. She reported that when he returned to work in 2008, he used an ergonomic chair until he stopped work in 2012 due to an increase in pain. After his return to work in May 2013, appellant had a significant amount of desk work and noted increasing pain. Dr. Osborne indicated that he had an antalgic gait and walked with a cane. Straight leg raise was

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<sup>2</sup> On May 20, 2013 OWCP finalized an overpayment of compensation of \$193.20 that occurred because appellant received wage-loss compensation after his return to work.

negative bilaterally. Dr. Osborne diagnosed radiating low back pain, status post lumbar fusion and recommended a functional capacity evaluation.

By letter dated July 8, 2013, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. The medical evidence established that he could not perform the duties of his part-time work. Appellant was asked to provide a comprehensive narrative report from his physician that included specific work duties he could not perform and the relationship between the claimed disability and his employment injury.

A functional capacity evaluation was completed on July 22 and 23, 2013. It determined that appellant was functioning at a sedentary/light level of work and that, due to his complaint of pain. It was recommended that he be allowed to switch positions after sitting for 20 minutes or so and, if possible, that he be accommodated with a table that would elevate to his standing height so that he could continue to work while standing.

In a July 25, 2013 report, Dr. Adams advised that appellant continued to have lumbosacral pain in the moderate to severe range with limited lumbar flexion and extension. On his last evaluation, appellant had exquisite tenderness over the left sacroiliac joint. Dr. Adams diagnosed lumbar postlaminectomy syndrome, lumbosacral spondylosis without myelopathy, chronic pain syndrome and therapeutic drug monitoring, due to the 2007 employment injury and noted that appellant also had concomitant depression. He had not reviewed the functional capacity evaluation and would defer a description of duties appellant could perform to Dr. Osborne. On August 5, 2013 Dr. Adams recommended a radiofrequency thermocoagulation neurotomy for therapeutic benefit.

The Office of Personnel Management approved appellant's disability retirement application on August 7, 2013. Appellant stated that his retirement was effective August 8, 2013. His partial disability compensation continued through July 26, 2013.

By decision dated August 13, 2013, OWCP denied appellant's total disability claim. It found that the medical evidence did not establish that he was unable to perform the duties of his modified position. OWCP noted that appellant remained entitled to partial disability compensation and medical benefits.

A conference call was held between an OWCP claims examiner, appellant's supervisor, and Valerie Palmer of the employing establishment on August 13, 2013. Ms. Palmer noted that when appellant reported that his chair was no longer useful, she advised him to present medical documentation and another chair would be purchased. She also stated that the occupational health specialist found no problems with his chair.

In reports dated August 15, 2013, received by OWCP on September 9, 2013, Dr. Osborne reviewed the functional capacity evaluation. Appellant had permanent restrictions of no lifting greater than 10 pounds occasionally; no repetitive bending, twisting or stooping; and that he be allowed to change position sitting to standing every 20 minutes, with rest breaks.

On August 16, 2013 OWCP referred appellant to Dr. Byron Thomas Jeffcoat, a Board-certified orthopedic surgeon, for a second opinion. Dr. Jeffcoat was provided a statement of accepted facts, a list of questions and the medical record. In a September 12, 2013 report, he

noted the history of injury and appellant's complaint of increasing back pain. Examination of the back demonstrated that appellant was able to stand on his heels and his toes; could flex his toes back and forth; could fully squat and recover; had two plus reflexes in his knees and ankles; and that straight leg raise caused some back pain but no radicular pain on either side. When lying prone and flexing his knees, he complained of back pain and he was tender over his right sacroiliac joint. Motor and sensory functions were normal and he had no calf atrophy. In answer to specific OWCP questions, Dr. Jeffcoat found that appellant could return to full duty as a human resource specialist, based on the medical history and physical examination that day, which was fairly normal. He advised that no work restrictions or accommodations were necessary. Dr. Jeffcoat noted that appellant had a history of back problems prior to the November 7, 2007 employment injury, as characterized by magnetic resonance imaging (MRI) scan and computerized tomography studies dated April 28 to August 10, 2007. In an attached work capacity evaluation, he listed that appellant could push, pull and lift 25 to 30 pounds for four hours daily.

Appellant, through his attorney, timely requested a hearing. In a January 16, 2014 report, Dr. Adams noted that appellant reported that his light-duty job had changed and had become more demanding such that more exertion was required, which he could not tolerate. He recommended that appellant return to work at a sedentary level with frequent opportunities to stand and stretch, to begin four hours a day. It was Dr. Adams' understanding that appellant's light-duty position was no longer available and further recommended that, because appellant's ergonomic chair was no longer usable, a new chair be obtained.

At the February 13, 2014 hearing, appellant testified that his back pain became so severe in June 2013 that he could no longer work and that he was now retired on disability.

By decision dated May 2, 2014, an OWCP hearing representative affirmed the August 13, 2013 decision. She determined that the medical evidence did not establish that appellant was unable to perform his light-duty job.

### **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.<sup>3</sup> 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.<sup>4</sup>

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<sup>3</sup> 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

<sup>4</sup> *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.<sup>5</sup>

### ANALYSIS

The Board finds that appellant did not establish a recurrence of total disability on June 4, 2013 causally related to the accepted, iliofemoral right hip sprain and displacement of lumbar herniated discs at L4-5 and L5-S1 caused by the November 15, 2007 employment injury. Appellant did not establish that the nature and extent of his injury-related condition changed so as to prevent him from continuing to perform his modified part-time 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

Based on an April 4, 2013 work capacity evaluation, appellant returned to four hours of modified duty on May 1, 2013. The job duties of the part-time position were within the restrictions provided by Dr. Adams who advised that appellant would work four hours a day, five days a week and was able to perform his regular job duties as a human resources specialist, with a modification that he could sit and stand as needed. Appellant was limited from lifting anything over 10 pounds or walk for more than 15 minutes intermittently. He continued to receive wage-loss compensation for four hours a day.

On August 15, 2013 Dr. Osborne advised that appellant had permanent restrictions of no lifting greater than 10 pounds occasionally; no repetitive bending, twisting or stooping; and that he be allowed to change positions from sitting to standing every 20 minutes, with rest breaks. While the modified position appellant was performing when he stopped work on June 4, 2013 did not specifically limit twisting, bending and stooping; his position as a human resources specialist was sedentary. The position description noted that normal body mechanics should be used for these functions. The other restrictions provided by Dr. Osborne are in accordance with appellant's modified job duties. Dr. Osborne did not state whether she was familiar with

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<sup>5</sup> *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>6</sup> *See William M. Bailey*, 51 ECAB 197 (1999).

<sup>7</sup> *Cecelia M. Corley*, 56 ECAB 662 (2005).

<sup>8</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

appellant's job duties other than to note he had a significant amount of desk work. Her reports are insufficient to establish a recurrence of disability on June 4, 2013.

Dr. Adams submitted reports from June 4, 2013 to January 16, 2014, but his opinion is also insufficient to establish appellant's claim. He diagnosed lumbar spondylosis and lumbar postlaminectomy syndrome, neither of which are accepted conditions. On June 4 and July 2, 2013 Dr. Adams indicated that, due to the lack of a recommended ergonomic chair and apparent difficulty with accommodation, appellant should not work until a functional capacity evaluation was completed. The testing was completed on July 22 and 23, 2013 and determined that appellant was functioning at a sedentary/light level of work. Due to his complaint of pain, it was recommended that he be allowed to switch positions after sitting for 20 minutes or so and, if possible, that he be accommodated with a table that would elevate to his standing height so that he could work while standing. As of July 25, 2013 Dr. Adams had not reviewed the functional capacity evaluation and deferred a description of duties appellant could perform to Dr. Osborne. On January 16, 2014 he noted that appellant reported that his light-duty job had changed and had become more demanding such that more exertion was required, which he could not tolerate. Dr. Adams recommended that appellant return to work at a sedentary level with frequent opportunities to stand and stretch, to begin four hours a day. Further, because appellant's ergonomic chair was no longer usable, a new chair was obtained.

Although Dr. Adams recommended the functional capacity evaluation, in none of his reports did he acknowledge the results of the examination. Moreover, the restrictions provided in his January 16, 2014 report are within the modified duties of the part-time position appellant accepted on May 6, 2013. While Dr. Adams indicated that a new ergonomic chair was obtained, when appellant informed the employing establishment that his chair was no longer usable, he was told to present medical documentation and another chair would be purchased. The employing establishment further noted that an occupational health specialist found no problem with appellant's chair despite his allegation that it had been broken. There is no evidence in the record that appellant ever complied with this recommendation and no indication, as maintained by Dr. Adams, that appellant's modified part-time job duties required more exertion. Dr. Adams did not relate appellant's total incapacity to any of the accepted conditions and failed to explain how appellant's complaints of low back pain were a result of change in the nature and extent of his November 15, 2007 employment injury. He did not provide sufficient medical rationale to support any objective worsening of appellant's accepted lumbar condition which caused his inability to work. Accordingly, appellant's reports are insufficient to establish that his claimed disability beginning June 4, 2013 was due to the November 15, 2007 employment injury.

In a September 12, 2013 report, Dr. Jeffcoat, an OWCP referral physician, advised that appellant could return to full duty as a human resource specialist, based on appellant's medical history and his physical examination that day, which was fairly normal. He indicated that no work restrictions or accommodations were necessary.

As appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability on June 4, 2013 causally related to the November 5, 2007 employment injury, he did not meet his burden of proof.<sup>9</sup>

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability on or after June 4, 2013 caused by the November 15, 2007 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 2, 2014 is affirmed.

Issued: October 27, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>9</sup> *Id.*