

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

_____)
S.K., Appellant)

and)

**DEPARTMENT OF DEFENSE, DEFENSE)
LOGISTICS AGENCY, ROBINS AIR FORCE)
BASE, GA, Employer**)

_____)

**Docket No. 14-1279
Issued: September 25, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 12, 2014 appellant filed a timely appeal from the March 18, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied 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 sustained a recurrence of disability on or about April 12, 2011 that was causally related to her March 17, 2009 employment injury.

FACTUAL HISTORY

On March 17, 2009 appellant, a then 48-year-old distribution process worker, sustained a traumatic injury in the performance of duty while "lifting of big box one/two one online and one

¹ 5 U.S.C. § 8101 *et seq.*

chair.” She felt a sharp pain in the lower portion of her back. OWCP accepted appellant’s claim for lumbago and lumbar sprain. Appellant advised that she was out of work for a couple of days. She returned with no restrictions on March 27, 2009 but was again out of work because of her back until April 28, 2009, after which she again had no restrictions. Appellant received compensation for intermittent wage loss from May 11 to June 11, 2009.

Appellant advised that she was placed in the bulk work area in March 2011. Her responsibility was to lift various material and equipment of various sizes out of large boxes all day. On most days appellant had to lift as many as 100 items from these large and deep boxes. On April 12, 2011, at the end of her shift, she began to feel very sharp, stabbing pains across her lower back and moving through her lower extremities. The pain lasted for hours, but appellant thought it would stop. By the next day, however, the pain had become worse. Appellant sought medical attention. A magnetic resonance imaging (MRI) scan, ordered on August 6, 2011, showed lumbar spine damage. Appellant continued to seek treatment from April 2011 to October 2013.

Appellant filed an occupational disease claim alleging that work factors had caused or aggravated her back condition. She stated that she first became aware of this occupational disease on April 12, 2011 and first realized that it was caused or aggravated by her employment on April 12, 2011. OWCP accepted this claim for lumbar spinal stenosis and displacement of L3, L4 and L5 intervertebral discs.²

In October 2013 appellant filed a claim alleging that she had sustained a recurrence of disability in 2011 that was causally related to her traumatic work injury on March 17, 2009. She described how the recurrence happened: “April 12, 2011 I was moved back to the bulk area and was now lifting heavier items out of cartons and the pain in my back returned. It felt like it was the same pain and expanded into my legs. Then the pain became worse over the next few days.” Appellant indicated that she first sought medical treatment on August 6, 2011, which was the same day her MRI scan was ordered.

Dr. Rafael J. Aguila, a family physician, found that appellant’s condition in October 2013 stemmed from a work-related injury while lifting boxes in 2009, which never fully resolved. Dr. Daxes M. Banit, a Board-certified orthopedic surgeon, found that appellant’s condition in October 2013 was related to an injury from lifting in 2011. He observed that her symptoms had been present for two years.

In a decision dated December 18, 2013, OWCP denied appellant’s recurrence claim. It explained that she had described a new injury occurring on April 12, 2011, not a return or increase of disability due to a change or worsening of her accepted condition from March 17, 2009. Further, the medical evidence failed to support a spontaneous change or worsening of her injury-related condition without an intervening injury or new exposure to factors causing the original injury.

In a decision dated March 18, 2014, OWCP reviewed the merits of appellant’s claim and denied modification of its prior decision. It noted that she had described a new injury occurring

² OWCP File No. xxxxxx282.

on April 12, 2011, an intervening injury, and that there was no medical opinion addressing her need for medical care following that injury and her original injury on March 17, 2009.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ “Disability” means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.⁴

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.⁵ An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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 the employment injury and who supports that conclusion with sound medical reasoning.⁶

ANALYSIS

When appellant filed her recurrence claim, she explained that in 2011 she was moved back to the bulk area and was lifting heavier items out of the cartons. On April 12, 2011 the pain in her back returned and became worse over the next few days.

This is the same history that appellant provided when she filed her occupational disease claim, which OWCP accepted, under OWCP File No. xxxxxx282, for lumbar spinal stenosis and displacement of L3, L4 and L5 intervertebral discs. Thus, it is a matter of record that the recurrence for which she now seeks compensation was, in fact, a new work injury, an intervening injury, and not a spontaneous change in the initial injury she sustained on March 17, 2009.

The Board has reviewed the medical record and has found no reasoned opinion to support the claim that appellant sustained a spontaneous change in her medical condition in 2011 that was causally related to her March 17, 2009 work injury. Dr. Aguila, the family physician, found that appellant’s condition in October 2013 stemmed from a work-related injury while lifting boxes in 2009, but he seemed to be unaware of the accepted work injury that intervened in 2011

³ 5 U.S.C. § 8102(a).

⁴ 20 C.F.R. § 10.5(f).

⁵ *Id.* at § 10.5(x).

⁶ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

as he did not address it.⁷ Dr. Banit, the orthopedic surgeon, found that appellant's condition in 2013 was related to an injury from lifting in 2011, as OWCP accepted.

Appellant's recurrence claim is not in the nature of a recurrence, as that word is defined by regulation, and she has submitted no probative medical opinion evidence to support the claim. Accordingly, the Board finds that she has not met her burden of proof. The Board will therefore affirm OWCP's March 18, 2014 decision. Any compensation appellant might wish to claim from her accepted occupational disease claim in 2011 should be pursued under that OWCP file number.

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 has not met her burden to establish that she sustained a recurrence of disability on or about April 12, 2011 that was causally related to her March 17, 2009 employment injury.

⁷ *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

ORDER

IT IS HEREBY ORDERED THAT the March 18, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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