

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

T.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Powell, OH, Employer**

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**Docket No. 14-1708
Issued: January 12, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 31, 2014, appellant filed a timely appeal from a February 19, 2014 merit decision and a June 23, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). 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 the case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish a recurrence of disability on or about September 30, 2013 causally related to the accepted employment injury of August 29, 2009; and (2) whether OWCP properly denied appellant's request for reconsideration.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On August 29, 2009 appellant, then a 58-year-old rural carrier associate, injured her back when lifting a flat short tray while in the performance of duty.² On April 12, 2010 OWCP accepted displacement of intervertebral lumbar disc at L4-5 and lumbar sprain and authorized a L4-5 discectomy on April 9, 2010. Appellant stopped work on September 14, 2009 and returned to work on October 14, 2009 and resigned from employment on August 2, 2010.

Appellant was treated by Dr. Mathew A. Bridger, a Board-certified family practitioner, from September 24, 2009 to January 26, 2010, for worsening low back pain after a lifting incident at work. Dr. Bridger diagnosed herniated disc of the lumbar spine, sciatica, and sprain of the lumbar region. He recommended surgery. An October 17, 2009 magnetic resonance imaging (MRI) scan of the lumbar spine revealed a paracentral disc protrusion at L4-5 with compression on the left L5 nerve root. Appellant was treated by Dr. Michael J. Meagher, a Board-certified neurosurgeon, on October 26, 2009, who diagnosed herniated disc at L4-5 compressing the nerve root and recommended surgery. An April 6, 2010 MRI scan of the lumbar spine revealed L4-5 left disc extrusion displacing the L5 nerve root and an L3-4 disc protrusion. Appellant came under the treatment of Dr. Janet Bay, a Board-certified neurosurgeon, who on April 9, 2010 performed a left L4 discectomy and diagnosed herniated disc at L4 on the left. In a July 29, 2010 report, Dr. Bay estimated that appellant could return to regular duty on September 13, 2010.

In an SF-50 notification of personnel action dated August 5, 2010, the employing establishment indicated that appellant voluntarily resigned on August 2, 2010. Appellant began working full time for a private employer on August 9, 2013.

On November 29, 2010 appellant filed a claim for a recurrence of disability beginning November 10, 2010. Appellant indicated that she had back pain when she got up on the morning of November 10, 2010. In a January 21, 2011 decision, OWCP denied the recurrence of disability claim, finding that she had been released to full duty, that she voluntarily left the employing establishment, and that there was no current medical evidence that established a recurrence of her work injury. Appellant did not appeal from this decision.

On October 18, 2013 appellant filed a claim for a recurrence of disability, asserting that on or about September 30, 2013 she had a recurrence for which she stopped work on October 4, 2013. She reported getting out of bed and experiencing sharp pain in her back and left leg. Appellant indicated that she worked in a desk job which did not require lifting or walking as a customer service representative in the private sector from September 2013 to the present. On October 18, 2013 she filed a Form CA-7, claim for compensation, requesting leave without pay for total disability for the period October 4 to 8, 2013. The employing establishment provided an October 16, 2013 letter which indicated that appellant was released to full duty without restrictions and that she voluntarily resigned on August 2, 2010.

² Appellant filed her claim as an occupational disease; however, OWCP noted that appellant alleged that she was injured on August 29, 2009 while lifting a tray and therefore developed the claim as a traumatic injury.

Appellant submitted emergency room records dated October 4, 2013 where she sought treatment for chronic low back pain beginning four days prior. She was treated by a nurse practitioner who diagnosed sprain and lumbar strain. Appellant reported difficulty getting out of bed and excruciating pain radiating down her leg to her knee. She was treated by Dr. Meagher on October 8, 2013 for recurrent leg pain. Dr. Meagher noted a history of appellant's work-related back injury and surgery in April 2010 for an L4-5 disc herniation. He noted that postoperatively appellant improved and was doing well until September 2013 when she was getting out of bed and developed severe back and leg pain. Dr. Meagher noted findings of mild weakness in appellant's quadriceps and absent left knee reflexes bilaterally. He diagnosed recurrent L4 radiculopathy and opined that her condition was part of her original work claim for disc herniation at L4-5. Dr. Meagher noted that, since there was a prior disc herniation, any new herniation would be related to the original claim and the original disc herniation since it was presumably at the same level.

Appellant was treated by Dr. Bridger on October 11, 2013 for low back and left leg pain. Dr. Bridger noted that appellant was injured on August 28, 2009 when lifting a tray and loading it onto a truck. He stated that appellant worked at the employing establishment full-time, regular duty. Appellant reported having pain and weakness down the left leg on October 11, 2013 upon turning over and getting out of bed. Dr. Bridger noted mild pain on range of motion, negative straight leg test bilaterally, no tenderness to palpation, and intact sensory and motor examination in the legs. He diagnosed herniated disc of the lumbar spine, left sciatica, sprain of the lumbar region, and herniated disc of the lumbar spine at L4-5. Dr. Bridger opined that appellant's work activities aggravated her underlying preexisting condition and further testing was required before this could be determined with any certainty. He returned her to regular duty. In a form report of work ability dated October 11 and November 7, 2013, Dr. Bridger diagnosed lumbar sprain and strain, sciatica, and recurrent herniated disc at L4-5 and released appellant to her former position without restrictions. In an October 11, 2013 Ohio Workers' Compensation form report, he noted that on August 28, 2009 she was taking a tray from a shelf and loading it onto a truck and injured her low back. Dr. Bridger diagnosed herniated lumbar disc, left sciatica, and lumbar sprain. He checked a box "yes" that appellant's condition was causally related to the work injury. In employer discharge summaries dated October 11 and November 7, 2013, Dr. Bridger noted a history of injury and diagnosed herniated disc of the lumbar spine, left sciatica, and sprain of the lumbar region and returned appellant to work regular duty.

By letter dated November 19, 2013, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim for recurrence of disability. It particularly requested that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors. In a November 19, 2013 letter, OWCP asked the employing establishment to address whether appellant was currently employed. In a letter dated November 27, 2013, the employing establishment confirmed that it no longer employed appellant.

Appellant submitted a questionnaire dated November 25, 2013 and indicated that on September 30, 2013 she was getting out of bed and experienced back and left leg pain. She reported working as a customer service representative which did not require heavy lifting or walking. Appellant believed her condition was related to her original work injury and the recurrence was due to the surgical removal of a disc which weakened her low back. She noted

that she did not have any other injuries since August 29, 2013 and left the employing establishment because she could not perform the lifting requirement and did not want to get reinjured.

Appellant was again treated by Dr. Bridger from November 7 to December 9, 2013 for persistent back and leg pain. He noted appellant was injured on August 28, 2009 when lifting a tray and loading it onto a truck. Dr. Bridger noted that appellant worked full-time, regular duty. Appellant reported getting out of bed and experiencing pain and weakness down the left leg. Dr. Bridger noted lumbar findings of mild pain on range of motion, and intact sensory and motor examination in the lower extremities. He diagnosed lumbar herniated disc, left sciatica, lumbar sprain, and herniated disc at L4-5. Dr. Bridger opined that appellant's work activities aggravated her underlying preexisting condition and further testing was required. He returned appellant to regular duty and noted she had not missed work due to this injury. In form reports dated November 18 and December 9, 2013, Dr. Bridger diagnosed sprain and strain of the lumbar spine, pain, sciatica, and recurrent herniated disc at L4-5 and released appellant to her former position without restrictions.

In an employer discharge summary dated December 9, 2013, Dr. Bridger noted a history of injury and diagnosed herniated disc of the lumbar spine, left sciatica and sprain of the lumbar region and returned appellant to work regular duty. A November 8, 2013 lumbar spine MRI scan revealed interval development of a left paracentral disc extrusion at L5-S1 displacing the S1 nerve root, decrease in size of the left paracentral disc protrusion at L4-5 with improved spinal stenosis, and stable spinal canal stenosis at L3-4. A November 18, 2013 lumbar spine x-ray revealed no acute abnormality and degenerative changes most pronounced at L4-5 and L5-S1 levels.

Appellant was treated by Dr. Meagher, on December 4, 2013, who noted that she did not have a recurrent herniation at L4-5 and the large disc herniation present prior to her surgery in April 2010 had resolved. Dr. Meagher noted a new disc herniation at L5-S1 on the left. He indicated that in 2010 there were degenerative changes and a disc bulge at L5-S1 and he opined that this in all likelihood related to the previous injury and was a delayed disc herniation.

On February 6, 2014 OWCP referred appellant's record to its medical adviser for an opinion as to whether the diagnosed L5-S1 disc herniation was causally related to the August 29, 2009 work injury by acceleration, precipitation, or aggravation. In a February 8, 2014 report, the medical adviser opined that, based on his review of the medical record, the additional diagnosis of L5-S1 disc herniation was not causally related to the August 29, 2009 work injury. He noted that appellant had an L4-5 disc herniation that was treated surgically and there was no evidence of L5-S1 involvement diagnostically or clinically at the time. The medical adviser opined that even though there was degenerative disc disease at L5-S1 in 2010 it was implausible that it developed into L5-S1 disc herniation and took three years to manifest.

In a decision dated February 19, 2014, OWCP found that the evidence did not establish that appellant sustained a recurrence of disability on or about September 30, 2013 causally related to her August 29, 2009 work injury.

In an undated appeal request form, appellant requested reconsideration. In an undated statement, she referenced an MRI scan from 2009 and reports from Dr. Bridger which supported that she sustained a disc herniation at L5-S1 from the original injury. Appellant asserted that the disc herniation at L5-S1 was from the 2009 work injury and that this condition was work related. She submitted an MRI scan of the lumbar spine dated October 17, 2009, reports from Dr. Meagher dated October 8 and December 4, 2013 and an OWCP decision dated February 19, 2014, all previously of record. Appellant submitted a written note from Dr. Bridger dated March 24, 2014 which noted that neurosurgery supported the delayed development from a previous injury and traction forces related to a previous surgery as a neurosurgical complication and flow through injury of a juxtaposed disc.

In a June 23, 2014 decision, OWCP denied appellant's request for reconsideration as 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 which resulted from a previous injury or illness without an intervening injury or a new exposure to the work environment.³

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative, and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury.⁴ 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 the employment injury and supports that conclusion with sound medical reasoning.⁵ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on an appellant's unsupported belief of causal relation.⁶

ANALYSIS -- ISSUE 1

OWCP accepted appellant's displacement of lumbar disc intervertebral at L4-5 and lumbar sprain and authorized a L4-5 discectomy on April 9, 2010. Appellant resigned from the employing establishment on August 2, 2010 to take a job in private industry. At the time she resigned, her physician indicated that she would be released to regular duty on September 13, 2010. On October 18, 2013 appellant filed a claim for a recurrence of disability noting that she sustained a recurrence on or about September 30, 2013 causally related to the August 29, 2009 injury. The Board finds that the medical record lacks a well-reasoned narrative

³ 20 C.F.R. § 10.5(x).

⁴ *Alfredo Rodriguez*, 47 ECAB 437 (1996); see *Dominic M. DeScala*, 37 ECAB 369 (1986).

⁵ See *Nicolea Brusco*, 33 ECAB 1138 (1982).

⁶ *Ausberto Guzman*, 25 ECAB 362 (1974).

from appellant's physicians relating her claimed recurrent disability to her accepted employment injury.

Appellant was treated by Dr. Meagher on October 8, 2013 who diagnosed recurrent L4 radiculopathy and opined that this condition was part of her original industrial claim for disc herniation at L4-5 on the left. Dr. Meagher noted that since there was a prior disc herniation any new herniation would be related to the original claim and the original disc herniation. The Board finds that, although Dr. Meagher supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding why any current condition or disability was due to the employment injury of August 29, 2009. Dr. Meagher did not explain how or why the recurrent radiculopathy, low back and leg pain was related to the accepted employment injury and why it was not due to nonwork-related factors such as age-related degenerative changes.⁷ Similarly, in a December 4, 2013 report, he noted that appellant did not have a recurrent herniation at L4-5 but rather she developed a new herniation at L5-S1 on the left and opined that this in all likelihood related to the previous injury and was a delayed disc herniation. However, the record does not indicate that OWCP accepted a disc herniation at L5-S1 resulted from the accepted August 29, 2009 injury or that the L5-S1 disc herniation was employment related. Additionally, Dr. Meagher failed to otherwise provide medical reasoning explaining why any current condition or disability was due to the employment injury of August 29, 2009. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁸ The need for fortified rationale is especially important in a situation where appellant claimed a recurrence on or about September 30, 2013, where she resigned from her job on August 2, 2010. Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant submitted reports from Dr. Bridger dated October 11 to December 9, 2013. Dr. Bridger diagnosed herniated disc of the lumbar spine, sciatica, sprain of the lumbar region, and herniated disc of the lumbar spine at L4-5. He noted a history of injury on August 28, 2009 and noted that appellant reported that in 2013 she was getting out of bed and experienced pain and weakness down the left leg. Dr. Bridger opined that appellant's work activities aggravated her underlying preexisting condition but that further testing was required. He returned appellant to regular duty and noted that she had not missed work due to this injury. However, Dr. Bridger failed to specifically provide medical reasoning explaining why any current condition or disability was due to the employment injury. Additionally, he did not seem to be aware that appellant no longer worked for the employing establishment or how work activities aggravated her underlying preexisting conditions and why it was not due to nonwork-related factors such as age-related degenerative changes or duties from her current employment. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁹

⁷ For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship. *See Alice J. Tysinger*, 51 ECAB 638 (2000).

⁸ *See Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁹ *See id.*

Similarly, in form reports dated October 11 to December 9, 2013, Dr. Bridger diagnosed sprain and strain of the lumbar spine, sciatica, and recurrent herniated disc at L4-5. He noted that appellant was released to her former position without restrictions. In employer discharge summaries dated October 11 to December 9, 2013, Dr. Bridger noted a history of injury and diagnosed herniated disc of the lumbar spine, left sciatica, and sprain of the lumbar region and returned appellant to work regular duty. However, Dr. Bridger did not specifically explain whether appellant sustained a recurrence of disability causally related to the accepted employment condition or otherwise provide medical reasoning explaining why any current condition or disability was due to the employment injury. This is especially important where the claim was dormant for a number of years. Likewise, in an October 11, 2013 Ohio workers' compensation form report, Dr. Bridger diagnosed herniated disc of the lumbar spine, left sciatica and sprain of the lumbar region. He noted with a checkmark "yes" that appellant's condition was causally related to the industrial injury. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹⁰

The Board further notes that, in a February 8, 2014 report, an OWCP medical adviser reviewed the medical evidence and opined that appellant's L5-S1 condition was not causally related to the accepted injury. He noted that appellant's physicians had not explained why appellant's degenerative condition would take more than three years to develop into a clinically significant disc herniation as a result of her work injury.

Appellant submitted reports from a nurse practitioner dated October 4, 2013; however, the Board has held that treatment notes signed by a nurse are not considered medical evidence as this provider is not a physician under FECA.¹¹ Likewise, medical reports of record, such as reports of diagnostic testing do not address causal relationship between the claimed disability and the accepted displacement of lumbar disc intervertebral at L4-5 and lumbar sprain.

On appeal appellant asserts that her work-related injury of a herniated disc at L4-5 caused her to have another disc herniation at L5-S1. She notes that she has back and leg pain with weakness and numbness. However, as explained, the medical evidence lacks a rationalized medical opinion explaining why her claimed recurrent condition or disability was due to the work injury. There is also no contemporaneous evidence of record establishing such assertions.

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.

¹⁰ *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006).

¹¹ *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of FECA,¹² OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”¹³

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.¹⁴

ANALYSIS -- ISSUE 2

Following OWCP’s February 19, 2014 merit decision denying appellant’s claim for a recurrence, appellant requested reconsideration of the matter.

In her request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. In an undated statement, appellant referenced an MRI scan from 2009 and reports from Dr. Bridger which she believed supported that she sustained a disc herniation at L5-S1 from the original injury. She asserted that the disc herniation at L5-S1 was from the 2009 work injury and sought that this condition be accepted as work related. These assertions do not show a legal error by OWCP or a new and relevant legal argument.

The underlying issue in this case is whether appellant submitted medical evidence establishing that she sustained a recurrence of disability on or about September 30, 2013 causally related to her August 29, 2009 work injury. That is a medical issue which must be addressed by relevant new medical evidence.¹⁵ However, appellant did not submit any new and relevant medical evidence in support of her claim. Appellant submitted an MRI scan of the lumbar spine dated October 17, 2009, reports from Dr. Meagher dated October 8 and December 4, 2013 and an OWCP decision dated February 19, 2014. However, this evidence is duplicative of evidence

¹² 5 U.S.C. § 8128(a).

¹³ 20 C.F.R. § 10.606(b)(2).

¹⁴ *Id.* at § 10.608(b).

¹⁵ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

previously submitted and was considered by OWCP in its decision dated February 19, 2014 and found insufficient. 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.¹⁶ Therefore, this evidence is insufficient to require OWCP to reopen the claim for a merit review.

Appellant submitted a written note from Dr. Bridger dated March 24, 2014 which noted that neurosurgery supported the delayed development for a previous injury and traction forces related to the previous surgery as a neurosurgical complication flow through injury of a juxtaposed disc. Although this note is new, it is not relevant because it does not clearly address the particular issue involved, whether appellant established that she sustained a recurrence on or about September 30, 2013 causally related to the accepted work injury of August 29, 2009.¹⁷ Dr. Bridger did not clearly reference the work injury or specifically indicate that she had a recurrence of that injury. Therefore, this new evidence is not relevant and 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). She 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 appellant's request for reconsideration.

¹⁶ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

¹⁷ *Phillip S. Deering*, 47 ECAB 692 (1996).

ORDER

IT IS HEREBY ORDERED THAT the June 23 and February 19, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 12, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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