

degenerative disc disease at C3-C7, and permanent aggravation of lumbar degenerative disc disease at L4-S1 while in the performance of duty.

On August 26, 2012 appellant stopped work. She returned to full-time modified-duty work on March 11, 2014 and stopped work on that same day.

Appellant filed numerous Form CA-7 claims for compensation for leave without pay for the period March 11 to May 31, 2014. A time analysis form (Form CA-7a) dated April 3, 2014 indicated that after working 4.75 hours on March 11, 2014 she left work. The Form CA-7a also indicated that appellant used 43.75 hours of leave without pay from March 11 to 22, 2014.

Reports dated January 2 to December 18, 2013 of Dr. John M. Tyler, Jr., a Board-certified physiatrist, indicated that appellant returned for pain management needs related to an August 31, 2012 workers' compensation injury. Dr. Tyler noted that she had reached maximum medical improvement as of January 15, 2013, according to Dr. Vernon M. Rubick, a Board-certified osteopath, with ongoing lumbar spine pain and evidence of an L5-S1 disc herniation that caused narrowing of the right lateral recess and possible compression of the S1 nerve root. There was also evidence of multilevel degenerative disc disease of the lumbar spine based on a January 20, 2012 magnetic resonance imaging scan. Dr. Tyler noted appellant's accepted right shoulder injury and addressed her pain medication treatment. In the December 18, 2013 report, he noted that a functional capacity evaluation performed for Dr. Rubick revealed that appellant had a 16 percent whole person impairment of the right shoulder. Dr. Tyler noted that she was waiting for her disability status to be completed.

In a May 6, 2013 functional residual capacity form report, Dr. Rubick diagnosed cervical, thoracic, and lumbar strain, cervicalgia, right shoulder tendinitis, left carpal tunnel syndrome, and left cubital syndrome. He advised, among other things, that appellant was incapable of performing even low stress jobs and that her impairments were expected to last at least 12 months. Dr. Rubick listed her physical restrictions and concluded that she would likely be absent from work more than three days a month as a result of her impairments or treatment.

In a March 12, 2014 letter, Greg Howland, a physician's assistant, requested that appellant be excused from work through March 20, 2014.

Dr. Jamie D. Glover, a Board-certified family practitioner, in a March 12, 2014 letter and March 20, 2014 prescription, excused appellant from work through September 9, 2014 due to chronic pain and a past injury. In a May 16, 2014 letter, she stated that appellant related to him that her modified-duty work requirements exceeded the physical restrictions set forth by Dr. Rubick on January 15, 2013. Appellant also related her current limitations and symptoms. Dr. Glover provided findings on examination and diagnosed degeneration of the lumbar and cervical intervertebral discs, low back pain, chronic pain related to back and neck strain, chronic shoulder tendinitis, and abnormal posture and gait.

In decisions dated June 16, July 9, and August 6, 2014, OWCP found that the medical evidence submitted had not established a recurrence of disability from March 11 to May 31, 2014 causally related to appellant's April 15, 2012 employment injuries.

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 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 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

OWCP accepted on July 17, 2012 that appellant sustained, due to employment factors, right shoulder strain, cervical and lumbar sprain, permanent aggravation of cervical degenerative disc disease at C3-C7, and permanent aggravation of lumbar degenerative disc disease at L4-S1. Appellant stopped work on August 26, 2012 and returned to full-time modified light-duty work on March 11, 2014. After working over four hours, she stopped work on that same day. 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 injuries. Furthermore, appellant has not presented evidence that the employing establishment either withdrew her light-

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).

duty job or altered the assignment so as to require her to exceed her physical restrictions before she stopped work.

Dr. Glover's March 12, 2014 letter and March 20, 2014 prescription excused appellant from work through September 9, 2014 due to chronic pain and a past injury. While she opined that appellant was totally disabled, she did not explain how her disability during the stated period was causally related to the April 15, 2012 employment-related injuries. The Board has held that a medical opinion not supported by medical rationale is of little probative value.⁷ Dr. Glover's May 16, 2014 letter noted appellant's contention that her modified-duty work requirements exceeded the physical restrictions set forth by Dr. Rubick's January 15, 2013 functional capacity evaluation. She provided findings on examination and advised that appellant continued to suffer from the diagnoses listed in Dr. Rubick's January 15, 2013 evaluation, as well as, degeneration of the lumbar and cervical intervertebral discs, low back pain, chronic pain related to back and neck strain, chronic shoulder tendinitis, and abnormal posture and gait. Dr. Glover did not provide an opinion on the causal relationship between the accepted April 15, 2012 employment injuries and the diagnosed conditions or any resultant disability. The Board has held that a physician's opinion, which does not address causal relationship, is of diminished probative value.⁸ Further, Dr. Glover did not provide an opinion addressing whether appellant's modified work duties exceeded Dr. Rubick's restrictions. She merely reported her concerns about the job. For the stated reasons, the Board finds that Dr. Glover's letters and prescription are insufficient to establish appellant's claim.

The January 2 to December 18, 2013 reports signed by Dr. Tyler addressed the April 15, 2012 work-related injuries, an August 31, 2012 injury, and appellant's current lumbar conditions, right shoulder impairment, medical treatment, and disability. These reports, however, predate the claimed period of disability and fail to provide an opinion stating that appellant was totally disabled from March 11 to May 31, 2014 due to the accepted employment injuries.⁹ The Board finds, therefore, that Dr. Tyler's reports are insufficient to establish appellant's burden of proof.

Similarly, Dr. Rubick's May 6, 2013 functional residual capacity form report is insufficient to establish a claim for a recurrence of disability from March 11 to May 31, 2014 as it substantially predates the period of claimed disability. It also did not adequately explain how the diagnosed cervical, thoracic, lumbar, right shoulder, and left upper extremity conditions, and appellant's impairments prevented her from performing any work.¹⁰ The Board finds, therefore, that Dr. Rubick's functional capacity report is insufficient to establish appellant's claim.

⁷ *Caroline Thomas*, 51 ECAB 451 (2000).

⁸ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

⁹ *See A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁰ *Supra* note 7.

The March 12, 2014 letter from Mr. Howland, a physician's assistant, has no probative medical value. A physician's assistant is not a physician as defined under FECA.¹¹

Appellant failed to submit rationalized medical evidence establishing that her disability from March 11 through May 31, 2014 resulted from residuals of her accepted employment-related right shoulder, cervical, and lumbar conditions.

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 failed to establish a recurrence of total disability from March 11 to May 31, 2014 due to her April 15, 2012 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the August 6, July 9, and June 16, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 23, 2015
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

¹¹ 5 U.S.C. § 8101(2); A.C., Docket No. 08-1453 (issued November 18, 2008).