



2007 while on the performance of duty. OWCP has accepted the following conditions: abrasion of multiple sites, contusion of left knee, sprain of right hand, closed dislocation of left thumb, right shoulder rotator cuff tear, right shoulder impingement, right biceps rupture, cervical strain, cervical radiculopathy, aggravation of cervical degenerative disc disease, and herniated cervical disc. Appellant worked intermittently and received compensation for total disability on the periodic rolls commencing November 21, 2010.<sup>3</sup>

In a report dated March 22, 2011, Dr. Ali Najafi, a Board-certified orthopedic surgeon, indicated that appellant underwent cervical surgery. The procedure included a cervical discectomy with partial corpectomy at C5-7, and arthrodesis interbody at C5-7. In a report dated August 2, 2012, Dr. Najafi provided brief results on examination and diagnosed postoperative cervical fusion. In a note dated December 18, 2012, Dr. Najafi indicated that appellant should lift no more than 35 pounds.

OWCP referred appellant for a second opinion examination by Dr. Mojinder Nijjar, a Board-certified orthopedic surgeon. In a report dated January 31, 2013, Dr. Nijjar provided a history and results on examination. He opined that appellant could return to his regular full-time job. As to a 35-pound lifting restriction, Dr. Nijjar stated that appellant had good range of motion and the lifting restriction was not appropriate.

The employing establishment offered appellant a modified position that included a 35-pound lifting restriction.<sup>4</sup> Appellant accepted the position and began working on June 15, 2013.

On June 25, 2013 appellant filed a claim for a recurrence of disability commencing June 21, 2013. In a note dated June 24, 2013, Dr. Najafi reported that appellant was disabled from June 22 to July 6, 2013. The note stated that appellant was last seen on May 6, 2013. In a report dated June 28, 2013, Dr. Amarjit Mangat, a preventative medicine specialist, indicated that appellant stated that he was seen by Dr. Najafi on June 24, 2013 and found to be totally disabled. He provided results on examination and stated that neck range of motion was about 50 percent. Dr. Mangat diagnosed chronic neck pain and cervical degenerative disc disease.

By letter dated July 26, 2013, OWCP requested that appellant submit additional medical evidence. It indicated that he should submit a report discussing objective findings and an explanation as to disability.

In a report dated August 1, 2013, Dr. Najafi stated that appellant had been seen on May 6, 2013, with complaints of worsening neck pain and upper extremity pain compared to the year prior. He indicated that appellant was seen on June 24, 2013 with complaints of severe neck pain and right arm pain. According to Dr. Najafi, appellant “stated he experienced severe neck pain while delivering mail on June 22, 2013 due to the vibration from walking on his route. At that time, I pulled him off of work until his next office visit on July 9, 2013.” He stated that

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<sup>3</sup> OWCP issued a schedule award decision dated December 7, 2009 for a three percent right arm permanent impairment, and a March 24, 2010 decision finding a five percent permanent impairment to the left arm.

<sup>4</sup> A vocational rehabilitation counselor stated in a June 5, 2013 report that Dr. Nijjar had imposed a 35-pound lifting restriction and the job offer should reflect the restriction.

appellant continued to have worsening upper neck pain, and the most recent magnetic resonance imaging (MRI) scan had shown cervical degenerative changes.<sup>5</sup> Dr. Najafi recommended that appellant remain off work until September 9, 2013.

By decision dated September 5, 2013, OWCP denied the claim for a recurrence of disability commencing June 22, 2013. It found the medical evidence insufficient to establish the claim.

Appellant requested a hearing before an OWCP hearing representative, which was held on March 18, 2014. In a report dated March 14, 2014, Dr. Rasheed Amireh, a Board-certified anesthesiologist, provided results on examination and recommended cervical facet joint injections.

By decision dated June 4, 2014, the hearing representative affirmed the September 5, 2013 decision. She found that the medical evidence was insufficient to establish the claimed recurrence of disability commencing June 22, 2013.

### **LEGAL PRECEDENT**

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury.<sup>6</sup> OWCP's procedure manual discusses the evidence necessary if recurrent disability for work is alleged within 90 days of return to duty. It is noted that the focus is on disability rather than causal relationship of the accepted condition to the work injury.<sup>7</sup>

The Board has held that if recurrent disability for work is claimed within 90 days or less from the first return to duty, the attending physician should describe the duties which the employee cannot perform and the demonstrated objective medical findings that form the basis for the renewed disability for work.<sup>8</sup> When a physician's statements regarding an employee's ability to work consists only of repetition of the employee's complaints that he or she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>9</sup>

### **ANALYSIS**

In the present case, appellant had returned to a light-duty job offered by the employing establishment on June 15, 2013 and claimed a recurrence of disability as of June 22, 2013. As noted above, when the claim for a recurrence is within 90 days of a return to work, the focus is

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<sup>5</sup> The record indicated that appellant had a cervical MRI scan on June 3, 2013.

<sup>6</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 (June 2013).

<sup>8</sup> *See G.P.*, Docket No. 14-1150 (issued September 15, 2014); *R.C.*, Docket No. 14-201 (issued May 8, 2014).

<sup>9</sup> *See S.E.*, Docket No. 14-1125 (issued October 1, 2014).

on disability, rather than whether appellant continued to have an employment-related condition. But as to disability, the medical evidence must provide a description of the job duties appellant cannot perform and the objective findings that support disability. In addition, the disability must be related to an accepted employment-related condition.

Attending physician Dr. Najafi indicated that he treated appellant on June 24, 2013, but the record does not contain a report of that date with physical examination findings or other relevant evidence. In an August 1, 2013 report, he states that he saw appellant on June 24, 2013 with increased neck and arm pain. A complaint of too much pain to work without more support does not establish a recurrence of disability. Dr. Najafi did not provide a discussion of objective medical findings on June 24, 2013 or refer to appellant's job duties to explain why he felt appellant could not perform the light-duty job. He noted a June 3, 2013 MRI scan, without discussing how this related to appellant's alleged total disability commencing June 22, 2013.

Dr. Mangat treated appellant on June 28, 2013. He noted that appellant reported that he had seen Dr. Najafi and been found to be disabled, without providing his own opinion as to disability. Dr. Mangat noted decreased neck range of motion, but he did not discuss appellant's job duties or provide an opinion that he was disabled for the light-duty job.

The Board finds the medical evidence in this case insufficient to meet appellant's burden of proof to establish a recurrence of disability. Focusing on the issue of disability, the evidence does not contain an opinion supported by objective findings and discussing specific job duties, establishing a recurrence of disability commencing June 22, 2013.

On appeal, appellant argues that OWCP failed to properly consider the medical evidence. The Board has considered the medical evidence of record as of June 4, 2014. For the reasons noted above, the Board finds that appellant did not meet his burden of proof. 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 established a recurrence of disability from June 22 to August 23, 2013.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 4, 2014 is affirmed.

Issued: March 2, 2015  
Washington, DC

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

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

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