



slipped backward on a roof while removing metal. He stopped work on June 26, 2012. OWCP accepted the claim for sprains of the lumbar and thoracic spine.

Appellant resumed his usual employment on July 12, 2012. In an October 23, 2012 telephone call, the employing establishment advised OWCP that his seasonal assignment ended November 3, 2012.

In an October 23, 2012 work restriction evaluation, Dr. Ashley Fritzius, an osteopath, found that appellant could continue performing his modified employment and provided work restrictions. The record also contains an October 23, 2012 form report completed by Dianna Adkins, a physician assistant.

On October 29, 2012 Dr. Fritzius reported that appellant injured his back on June 26, 2012 when he slipped on a roof while pulling metal. She noted that he reported his condition to be work related. Dr. Fritzius diagnosed lumbar and thoracic strains of the back. In an accompanying work status form, she provided work restrictions.

A magnetic resonance imaging (MRI) scan study of the lumbar spine, obtained November 6, 2012, revealed a disc herniation at L5-S1 without impingement. An MRI scan of the thoracic spine dated November 6, 2012 showed a cystic cavity that was a possible syrinx.

In a report dated November 9, 2012, Dr. Fritzius discussed appellant's complaints of increased leg pain particularly with walking. She reviewed the findings on MRI scan studies of a herniated disc at L5-S1 and a possible thoracic syrinx. In a duty report dated November 9, 2012, Dr. Fritzius found that appellant was unable to work.

By letter dated November 16, 2012, OWCP requested that appellant submit a Form CA-2a if he was alleging a recurrence of disability. It also requested that he submit additional factual and medical information, including a rationalized medical report addressing why he was disabled as a result of the accepted work incident.

On December 4, 2012 appellant filed a recurrence of disability (Form CA-2a) alleging that he sustained a recurrence of disability on October 23, 2012 causally related to his June 25, 2012 employment injury. In an accompanying statement, he related that four days after his injury a derecho storm struck his area and caused widespread power outages, including at his home. Appellant received medical treatment at the emergency room on June 26, 2012, but could not keep follow-up appointments because of the storm. He returned to work on July 2, 2012 even though he still experienced pain. Appellant asked his employing establishment whether he should work, but no one could tell him because the administrative personnel were not there because of the power outage. His coworkers helped him with activities that he could not perform. Appellant was unable to find out whether he could take sick leave and go to physical therapy. He was afraid that he would lose his job because he worked seasonally. Appellant's back pain worsened until he was no longer able to work.

In a statement dated December 4, 2012, Jamie Keach, an OWCP coordinator for the employing establishment, noted that appellant's ability to obtain medical treatment after his injury was affected by a June 29, 2012 derecho wind storm. She also indicated that she was on maternity leave at the time and unable to assist him with workers' compensation questions.

In a December 4, 2012 response to OWCP's November 16, 2012 letter, appellant again related that he did not improve after his June 25, 2012 work injury and asserted that his injury "was severely compounded by the lack of guidance received from my direct supervisor and employer, which was also compounded by the huge storm we received, where all medical facilities did not have power." Appellant's coworkers assisted him after he returned to work but his back continued to worsen. He related that his original diagnosis was not correct and that an MRI scan study showed a significant injury.

In a statement dated December 13, 2012, Michael K. Hartsog, who works in operations, and Charles B. Perry, Jr., a supervisor, related that from June 2 to October 23, 2012 appellant "was in obvious pain in the way he walked and moved. [Appellant] had communicated this pain to his supervisor and his coworkers. He was placed back working with the same crew of people when he was injured, this crew knew of his injury and pain. They helped him with the physical aspects of his job where he was unable to perform." Mr. Hartsog and Mr. Perry related that appellant took seven days of sick leave before his seasonal employment ended November 3, 2012.

By decision dated December 20, 2012, OWCP found that appellant failed to establish a recurrence of disability beginning October 23, 2012 causally related to his June 25, 2012 work injury.

In a report dated January 22, 2013, Dr. Adnan N. Silk, a Board-certified neurosurgeon, obtained a history of appellant twisting his back on June 25, 2012 pulling metal sheets off a roof and experiencing significant back and hip pain. He reviewed the findings on MRI scan studies of cystic changes of the thoracic spine and a possible herniated disc at L5-S1. On examination, Dr. Silk found tenderness of the lumbar and thoracic spine with pain on straight leg raise but no radiculopathy. He diagnosed a "[l]ow back sprain and possible herniated disc at L5-S1 with a possible syrinx in the thoracic spinal cord." Dr. Silk referred appellant for repeat imaging studies and stated, "I feel this lesion in the thoracic cord and the herniated disc at L5-S1 are related to the back injury he sustained on June 25, 2012. [Appellant] remains disabled at this time."

In a disability certificate dated January 22, 2013, Dr. Silk found that appellant was disabled from work as a result of his June 25, 2012 back injury.

On February 11, 2013 appellant requested reconsideration.

By decision dated February 27, 2013, OWCP denied modification of its December 20, 2012 decision. It found that appellant had not submitted rationalized evidence supporting that he was unable to work beginning October 2012 due to his June 25, 2012 employment injury.

In a progress report dated March 14, 2013, Dr. Silk related that appellant reported no back problems prior to his June 2012 work injury. He noted that appellant continued to experience pain in his thoracic and lumbar spine. Dr. Silk stated:

"Certainly, it is very difficult to determine [the origin] of this problem of the disc at L5-S1 and the cystic lesion. Nobody can be certain if this could be due to the accident of June 25, 2012. But the point is [appellant] had no back problem until

he was involved in the accident of June 25, 2012. [He] was advised about his condition and he is disabled at this time and will not be able to work for at least one more year.”

An MRI scan study of the lumbar spine, obtained on June 15, 2013, revealed a posterior central annular tear at L5-S1 and a small disc herniation. An MRI scan study of the thoracic spine also dated June 15, 2013 showed a bilateral disc herniation at T6-7 and “borderline central canal stenosis without spinal cord impingement.”

In a report dated August 12, 2013, Dr. Silk discussed appellant’s continued complaints of low back pain with radiculopathy on the left side and some pain in the right leg. He reviewed the findings from the June 15, 2013 MRI scan studies. Dr. Silk noted that appellant had not experienced problems with his back prior to June 25, 2012. He stated, “Unfortunately, [appellant] did not have [an] MRI [scan] to his back prior to the injury and this is the only way to compare the MRI [scan] before the injury with MRI [scan] after the injury. The point I would like to make [is] that [appellant] had no symptoms and no back pain until he sustained the injury on June 25, 2012.”

On September 23, 2013 appellant, through his counsel, requested reconsideration based on Dr. Silk’s August 12, 2013 report.<sup>2</sup>

In an October 8, 2013 progress report, Dr. Silk noted that electrodiagnostic testing showed L4-5 left radiculopathy and reviewed the results of the MRI scan studies. He advised that appellant was disabled.

On July 11, 2014 appellant’s counsel requested that OWCP expand acceptance of his claim to include a herniated disc and thoracic syrinx at T9.

By decision dated September 29, 2014, OWCP denied modification of its February 27, 2013 decision.

### **LEGAL PRECEDENT**

Where 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 the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. 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 light-duty job requirements.<sup>3</sup>

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<sup>2</sup> On September 23, 2013 appellant underwent an electromyogram that was abnormal but limited in nature due to pain.

<sup>3</sup> *Richard A. Neidert*, 57 ECAB 474 (2006); *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

OWCP regulations provide that 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>4</sup> This term also means 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, (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>5</sup>

### ANALYSIS

OWCP accepted that appellant sustained lumbar and thoracic back sprains due to a June 25, 2012 employment injury. Appellant stopped work on June 26, 2012 and returned to work on July 12, 2012. He and the employing establishment advised that upon his return to work his coworkers assisted him in the performance of his job duties. Appellant filed a recurrence of disability on October 23, 2012 due to his June 25, 2012 employment injury.

Appellant has not alleged a change in the nature and extent of his light-duty job requirements. He worked until his seasonal appointment ended on November 3, 2012. Although withdrawal of a light-duty position may establish a recurrence of disability, the termination of a temporary appointment, when the employee was a temporary employee at the time of injury, does not itself establish a recurrence of disability.<sup>6</sup> Appellant must thus provide medical evidence to establish that he was disabled for the light-duty position.<sup>7</sup>

Appellant submitted reports from Ms. Adkins, a physician assistant. A physician assistant, however, is not considered a "physician" as defined by section 8101(2) of FECA.<sup>8</sup> Consequently, these reports have no probative value.

In an October 23, 2012 work restriction evaluation, Dr. Fritzius determined that appellant could continue with his modified employment and listed work restrictions. She did not, however, specifically address the cause of his restrictions or find that he was unable to perform his modified work duties.<sup>9</sup>

On October 29, 2012 Dr. Fritzius indicated that appellant injured his back on June 26, 2012 when he slipped pulling metal on a roof. She noted that he asserted that his condition was

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<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> *Id.*

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(c)(1) (June 2013); *see also* Shelly A. Paolinetti, 52 ECAB 291 (2001).

<sup>7</sup> *See Jackie D. West, supra* note 3.

<sup>8</sup> *See* 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551 (2002).

<sup>9</sup> *See S.H.*, Docket No. 14-1574 (issued March 27, 2015).

work related. Dr. Fritzius diagnosed lumbar and thoracic strains of the back. In an accompanying duty form, she provided work restrictions. While Dr. Fritzius indicated that appellant related his condition to his employment, she did not provide an independent opinion linking the work restrictions with the employment injury. A physician's report is of little probative value when it is based on a claimant's belief rather than the physician's independent judgment.<sup>10</sup>

In a report dated November 9, 2012, Dr. Fritzius related that appellant complained of increased leg pain, particularly with walking. She reviewed the findings on MRI scan studies of a herniated disc at L5-S1 and a possible thoracic syrinx. In a duty status report dated November 9, 2012, Dr. Fritzius found that appellant was unable to work. She did not, however, specifically attribute the disability to his work injury or explain how his employment-related condition changed such that he was unable to work.<sup>11</sup>

On January 22, 2013 Dr. Silk discussed appellant's history of twisting his back on June 25, 2012 pulling metal sheets off a roof. He reviewed the results of diagnostic studies and listed examination findings of lumbar and thoracic tenderness without radiculopathy. Dr. Silk diagnosed a sprain of the low back, a possible L5-S1 herniated disc, and a possible thoracic syrinx. He attributed the thoracic lesion and L5-S1 herniated disc to the June 25, 2012 employment injury and found that appellant was disabled from employment. OWCP, however, accepted only thoracic and lumbar sprains as employment related. Where appellant claims that a condition not accepted or approved by OWCP was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.<sup>12</sup> Dr. Silk did not provide any rationale for his opinion that the work injury caused a herniated L5-S1 disc and thoracic lesion. Medical conclusions unsupported by rationale are of little probative value.<sup>13</sup>

In a report dated March 14, 2013, Dr. Silk indicated that appellant complained of pain in the thoracic and lumbar spine. He related that it was uncertain whether the L5-S1 disc condition and thoracic cyst resulted from the June 25, 2012 employment injury. Dr. Silk noted, however, that appellant did not experience difficulty with his back prior to the work incident. He advised that he was disabled from work. Dr. Silk's opinion that it was uncertain whether appellant's work injury caused the diagnosed conditions and disability is speculative in nature and thus of diminished probative value.<sup>14</sup>

On August 12, 2013 Dr. Silk reviewed the findings on the June 15, 2013 MRI scan studies and discussed appellant's complaints of low back pain with radiculopathy on the left side and some pain in the right leg. He again noted that appellant did not have any back problems

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<sup>10</sup> *Earl David Seale*, 49 ECAB 152 (1997).

<sup>11</sup> *See K.W.*, 59 ECAB 271 (2008).

<sup>12</sup> *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>13</sup> *Willa M. Frazier*, 55 ECAB 379 (2004); *Jimmy H. Duckett*, 52 ECAB 332 (2001).

<sup>14</sup> *See L.R. (E.R.)*, 58 ECAB 369 (2007); *A.D.*, 58 ECAB 149 (2006).

before his work injury on June 25, 2012. However, a medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.<sup>15</sup> Dr. Silk did not provide a definite finding regarding causation or provide medical rationale for his opinion. Consequently, his opinion is insufficient to support that the findings on the MRI scan studies of the lumbar and thoracic spine and appellant's resulting disability from employment arose from the June 25, 2012 employment injury.<sup>16</sup>

In a report dated October 8, 2013, Dr. Silk reviewed the results of diagnostic studies, provided findings on examination, and opined that appellant was disabled. He did not, however, address causation and thus his report is of little probative value.<sup>17</sup>

As appellant has not submitted rationalized medical evidence showing that his claimed disability beginning October 23, 2012 was causally related to his accepted employment injury, he has 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 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established a recurrence of disability on October 23, 2012 causally related to his June 25, 2012 employment injury.

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<sup>15</sup> *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

<sup>16</sup> *See S.S.*, 59 ECAB 315 (2008) (medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof).

<sup>17</sup> *See supra* note 11.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 29, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 19, 2015  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board