



## **FACTUAL HISTORY**

This case has previously been on appeal before the Board.<sup>3</sup> The facts and history contained in the prior appeal are incorporated by reference. The relevant facts include that on November 15, 2002, appellant, a maintenance mechanic, was injured when he was struck by a bulk mail container. OWCP accepted the claim for lumbar strain, neck strain, left knee strain, and radiculopathy. In an April 9, 2009 decision, the Board found that the case was not in posture for decision with regard to whether appellant had a recurrence of disability beginning October 4, 2007. The Board remanded the case for OWCP to further develop the factual evidence to determine if appellant was required to perform duties beyond his medical restrictions. The Board found that the restrictions prescribed by the treating physician, Dr. Andrew Gordon, a Board-certified neurologist, limited appellant to stand, climb, kneel, bend, stoop, twist, pull, push, reach above the shoulder or do fine manipulation for no more than 30 minutes per day. The Board found that these were clearly more restrictive on appellant's activities than the requirements specified by the employing establishment and that OWCP did not make any further inquiries regarding whether the modified-duty job had changed or otherwise define the precise job duties during the period October 4 to November 7, 2007.

On remand OWCP developed the claim.<sup>4</sup> In an August 10, 2009 decision, it found that the evidence was insufficient to establish a recurrence of disability for the period October 4 to November 17, 2007, causally related to his accepted November 15, 2002 employment injury.

Appellant continued to submit reports from Dr. Gordon noting his status and treatment options. In a September 2, 2011 duty status report, Dr. Gordon noted appellant's work restrictions.

In a letter dated April 30, 2012, the employing establishment advised appellant that no work was available within his current medical restrictions. It stated that it was unable to locate adequate work that he could perform with or without an accommodation. Appellant was informed that he was in administrative leave status until April 5, 2012, at which time he was placed in a leave without pay (LWOP) injured-on-duty status.

In a June 22, 2012 report, Dr. Gordon noted that appellant was following up and had complaints of burning, numbness, and tingling of the lower extremity. Appellant reported right foot weakness and diffuse painful paresthesias and radiculopathy in the right leg. He diagnosed thoracic or lumbosacral neuritis or radiculitis, foot drop, and idiopathic progressive polyneuropathy.

On August 6, 2012 appellant filed a Form CA-7 claim for disability compensation for the period April 7 to June 29, 2012. The employing establishment noted that he stopped work on April 7, 2012 because no work was available for him, and that he retired on June 30, 2012.

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<sup>3</sup> Docket No. 08-1774 (issued April 9, 2009).

<sup>4</sup> On August 10, 2009 the employing establishment responded to OWCP's inquiry regarding appellant duties. It stated that it considered his limitation, noted his job duties, and advised that he did not refuse any assignments.

By letter dated September 10, 2012, OWCP advised appellant of the type of medical and factual evidence needed to support his claim.<sup>5</sup>

OWCP received a September 12, 2012 report from Dr. Gordon. Dr. Gordon repeated his previous findings and recommended follow up in six months.

In a September 19, 2012 statement, appellant noted that as far as his ability to work for the period April 7 through June 29, 2012, he would have worked had he not been “evicted” from the employing establishment. He also noted that his supervisor instructed him to “stand by and do no work until notified otherwise.” Received on September 24, 2012 was a statement from Stella Bishop, an employing establishment injury compensation specialist, who stated that there was no work available for appellant from April 7 to June 29, 2012, as his restrictions could not be accommodated.

In a January 25, 2013 report, Dr. Gordon diagnosed idiopathic progressive polyneuropathy, foot drop other acquired deformity of ankle and foot, thoracic or lumbosacral neuritis or radiculitis, unspecified, and neuralgia, neuritis and radiculitis, unspecified. He continued to treat appellant and recommended physical therapy.<sup>6</sup>

In a March 19, 2014 report, Dr. Sanford Sherman, Board-certified in medical generics and genomics, diagnosed right lower extremity cellulitis and likely sepsis, bilateral lower extremity weakness on the right greater than the left, especially with hip flexion, history of lumbar spine injury, and bilateral lower extremity neuropathy.

In an October 9, 2014 report, Dr. Daniele Anderson, a Board-certified neurologist, noted the history cited by Dr. Gordon and diagnosed cervicgia neck pain and neuralgia, neuritis and radiculitis. OWCP also received physical therapy reports.

By decision dated March 18, 2015, OWCP denied appellant’s claim for disability for the period April 7 through June 29, 2012. It found that the medical evidence did not establish that appellant lost time from work due to an accepted injury and that the evidence did not list his work restrictions.

### **LEGAL PRECEDENT**

Section 10.5(x) of OWCP’s 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. The 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

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<sup>5</sup> OWCP noted that it had received evidence which suggested the possibility of a recurrence of disability. It explained that, if appellant believed he had a recurrence, he should file a Form CA-2a, as the present evidence was not sufficient to proceed with further development of his claim for a recurrence at this time.

<sup>6</sup> OWCP authorized physical therapy.

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>7</sup>

### ANALYSIS

OWCP accepted appellant's claim for lumbar strain, neck strain, left knee strain and radiculopathy.

On August 6, 2012 appellant filed a claim for disability for the period April 7 to June 29, 2012. The employing establishment noted that he stopped work on April 7, 2012 and he received 480 hours LWOP as no work was available. The record establishes that in a letter dated April 30, 2012, the employing establishment advised appellant that no work was available within his current medical restrictions. It explained that it was unable to locate adequate work that he could perform with or without an accommodation. Appellant was informed that he was in administrative leave status until April 5, 2012, after which time he was placed in an LWOP status. Generally, a withdrawal of a light-duty assignment would constitute a recurrence of disability where the evidence established continuing injury-related disability for regular duty.<sup>8</sup>

The current record includes limited information regarding the position appellant held immediately prior to the April 7, 2012 job withdrawal. While the record also contains numerous reports from Dr. Gordon noting appellant's status, there is little medical evidence addressing appellant's work restrictions beginning April 7, 2012 and whether they were necessitated by appellant's accepted conditions.<sup>9</sup> The Board therefore finds that the case is not in posture for decision.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden to establish entitlement to compensation; however, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>10</sup> Accurate information regarding appellant's employment duties is essential to determine whether he suffered a recurrence of disability beginning April 7, 2012. The employing establishment is responsible for submitting to OWCP all relevant and probative factual and medical evidence in its possession.<sup>11</sup>

Because the record lacks sufficient evidence for the Board to render an informed decision, the case shall be remanded to OWCP for further development. On remand, OWCP should request from the employing establishment information regarding appellant's job that was

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<sup>7</sup> 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6a(4) (June 2013).

<sup>9</sup> See *id.* (it should be clear from the medical evidence of record that the claimant continues to suffer residuals of the work injury that are disabling). The most contemporaneous work restrictions are contained in Dr. Gordon's September 2, 2011 duty status report.

<sup>10</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>11</sup> *M.M.*, Docket No. 14-1783 (issued February 27, 2015).

withdrawn on April 7, 2012 and confirm whether his work restrictions were necessitated by his accepted conditions. It shall also request that appellant submit a medical report addressing whether, beginning April 7, 2012, appellant had residuals of his work injury that precluded a return to regular duty. Following this and any other development that it deems necessary, OWCP shall issue a *de novo* decision regarding appellant's claimed disability beginning April 7, 2012.

**CONCLUSION**

The Board finds that the case is not in posture for a decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 18, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: October 9, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board