

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

P.P., Appellant

and

**DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, Fairton, NJ, Employer**

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**Docket No. 16-1232
Issued: December 23, 2016**

Appearances:
*Thomas R. Uliase, Esq., for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 25, 2016 appellant, through counsel, filed a timely appeal from a March 10, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ This case was previously before the Board. Docket No. 15-0731 (issued April 20, 2015). On February 4, 2015 appellant filed an appeal with the Board to review an OWCP decision dated November 14, 2014. By letter dated March 24, 2015 and received by the Board on March 30, 2015, appellant, through counsel, requested that the Board dismiss his appeal. By order dated April 20, 2015, the Board dismissed appellant's appeal.

ISSUE

The issue is whether appellant met his burden of proof to establish a recurrence of disability on February 22, 2013 causally related to a June 9, 2012 employment injury.

FACTUAL HISTORY

On June 11, 2012 appellant, then a 42-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on June 9, 2012 he strained his upper right back when he twisted to retrieve a shotgun in the back of his truck. He stopped work that day. OWCP accepted his claim for right rhomboid strain and sprain of back, thoracic region.⁴ Appellant received wage-loss compensation for disability until July 30, 2012 when appellant returned to full-time light-duty work and continued to receive medical treatment.

Dr. Kimberley Y. Smith, Board-certified in psychiatry and pain management, began to treat appellant on December 10, 2012. In examination notes and attending physician reports (Form CA-20) dated February 21 and 22, 2013, Dr. Smith indicated a date of injury of June 9, 2012. She reported physical examination findings and diagnosed thoracic spine pain, thoracic sprain, and displacement of thoracic intervertebral disc without myelopathy. She marked that appellant was totally disabled beginning February 22, 2013 and would continue to be disabled until he underwent surgery. Dr. Smith indicated that the diagnosed condition and recommended treatment was causally related to the work incident of June 9, 2012.

Appellant received medical treatment from Dr. Rahul Shah, a Board-certified orthopedic neck and spine surgeon, who provided examination notes and attending physician's reports (Form CA-20) dated March 5 and 6, 2013. In a March 6, 2013 report, Dr. Shah noted a date of injury of June 9, 2012. He related appellant's complaints of worsening lumbar pain and discomfort. Dr. Shah reviewed appellant's history and provided examination findings. He diagnosed cervicgia, neck strain, thoracic spine pain, displacement of thoracic intervertebral disc without myelopathy, thoracic sprain and strain. He related that appellant was unable to work.

In a March 6, 2013 letter, appellant informed the employing establishment that he was totally disabled beginning on February 22, 2013 per his attending physician's order. He related that he would use annual leave through March 9, 2013 and that starting March 10, 2013 he would be on leave without pay (LWOP) status until further notice.

On March 18, 2013 appellant filed a recurrence claim (Form CA-2a) alleging that on February 22, 2013 he sustained a recurrence of disability of the June 9, 2012 employment injury. He reported that following the original injury he returned to light duty until February 22, 2013 when he was placed on total disability because of a worsening of his condition. Appellant explained that since the June 9, 2012 employment injury he attended medical and physical therapy appointments and underwent two spinal injections, but continued to experience worsening pain in his back, shoulder, neck, and arm. He related that on February 22, 2013 he

⁴ The record reveals that appellant has a previously accepted claim for thoracic sprain for an April 14, 2009 employment injury (OWCP File No. xxxxxx128). He returned to limited duty and received medical treatment.

was examined by Dr. Smith for complaints of pain in the neck, shoulder, back, and arm and was advised to not work.

On the back of the claim form, appellant's supervisor indicated that appellant never returned to full duty. He reported that following the original injury, appellant returned to sedentary duty on July 27, 2012 until February 22, 2013 when appellant was placed out of work on total disability for a worsening condition. Appellant's supervisor further stated that appellant's statement appeared correct, but pointed out that it was unclear why appellant's history had gone on this long without resolution or clearer treatment goals. He noted that more medical evidence was needed to support appellant's claim of a worsening condition. Appellant submitted various claims for wage-loss compensation (Form CA-7) for the period April 6 to July 12, 2013.

In a March 18, 2013 magnetic resonance imaging (MRI) scan of the cervical spine examination report, Dr. Nitesh Bhagat, a Board-certified diagnostic radiologist, noted a history of neck pain and right C7 radiculopathy. He reported multilevel degenerative disc disease and spondylosis.

Dr. Shah continued to treat appellant and in a March 19, 2013 examination note, work capacity evaluation form (Form CA-5a), and attending physician's report (Form CA-20), noted a date of injury of June 9, 2012. He related appellant's complaints of increasing pain and indicated that radiographic review showed degenerative disc bulge and spondylosis. Dr. Shah provided physical examination findings and diagnosed cervicgia, neck sprain and strain, thoracic pain, displacement of thoracic intervertebral disc without myelopathy, and cervical spondylosis. He indicated that appellant was not able to work.

Appellant was also examined by Dr. Smith who reported in an April 1, 2013 examination note that appellant complained of pain in his mid-thoracic spine radiating into the posterior shoulder blade more to the right side than the left. Dr. Smith related that the prior MRI scan of the cervical spine revealed tenderness and protrusion at the right C5-6 and C6-7 level. She conducted an examination and diagnosed thoracic spine pain, displacement of thoracic intervertebral disc without myelopathy, and displacement of cervical intervertebral disc without myelopathy. Dr. Smith indicated that the diagnosis and recommended treatment were causally related to the work incident of June 9, 2012.

By letter dated April 2, 2013, OWCP acknowledged that it had received appellant's recurrence of disability claim. It advised appellant that to establish his claim he must show that he was unable to work his limited-duty assignment because of a change in the nature and extent of his work-related injury or a change in the nature and extent of his light-duty requirements. OWCP requested that appellant respond to specific questions regarding the February 22, 2013 date of alleged recurrence and submit medical evidence which established how appellant was unable to work during his claimed period as a result of his accepted injury. A similar letter was sent to the employing establishment. Appellant was afforded 30 days to submit the additional evidence.

On April 22, 2013 OWCP received appellant's response to its development letter. Appellant stated that on February 22, 2013 he went to his follow-up appointment with Dr. Smith

and was placed on full disability due to his continually worsening condition and negative results from two injections in his thoracic spine. He explained that since his return to light duty his symptoms in the upper back and right arm/hand had continuously worsened to the point that he could not sit for very long, had trouble writing down information, and could no longer hold a pen.

Medical notes from Dr. Smith dated April 22 and 25, 2013, indicated a date of injury of June 9, 2012 and diagnoses of lumbar spondylosis, and cervical and thoracic disc herniation. Dr. Smith indicated that appellant was not able to work.

By letter dated May 30, 2013, OWCP informed appellant that it appeared that he was claiming disability due to a material change or worsening of his accepted right rhomboid strain and thoracic sprain. It advised him that the medical evidence submitted was insufficient to establish a recurrence of disability and requested that appellant submit additional medical evidence to establish his claim.

Appellant continued to receive medical treatment from Dr. Smith. In June 10, 2013 work capacity evaluation form and attending physician's report, Dr. Smith noted a date of injury of June 9, 2012 and diagnosis of cervical and thoracic disc herniation. On the attending physician's report she checked a box "yes," that appellant's condition was caused or aggravated by the described employment activity. Dr. Smith noted that appellant was totally disabled beginning March 5, 2013. She related that appellant was waiting authorization for cervical surgery. In a June 21, 2013 narrative report, Dr. Smith discussed the medical treatment that appellant received, including thoracic epidurals, injections, and physical therapy, and related that appellant mentioned minimal relief. She reported that she originally placed appellant on sedentary duties as of December 10, 2012 and then placed him out of work on February 21, 2013.

In a June 13, 2013 narrative report, Dr. Shah noted that appellant was diagnosed with cervical spinal stenosis at C6-7 with right-sided cervical radiculopathy, which began after a June 2012 work-related, twisting type injury. He related that appellant's pain was essentially the same. Dr. Shah provided physical examination findings and opined that appellant would benefit from additional treatment, including further pain management and possibly surgical intervention.

OWCP denied appellant's claim for recurrent disability in a decision dated July 18, 2013. It found that the medical evidence failed to support that appellant's accepted right rhomboid and thoracic sprain conditions had worsened to the extent that he was unable to work his light-duty job position as of February 22, 2013.

On July 29, 2013 OWCP received appellant's request, through counsel, for a hearing before an OWCP hearing representative. Appellant submitted a supplemental letter to his April 23, 2013 statement. He related that he had a previously accepted work-related injury on April 14, 2009 which was accepted for a thoracic sprain. Appellant described how the pain he experienced in his thoracic area and right shoulder blade area with his current injury was similar to his experience with his previous injury. He explained that his current condition was worsening because his left arm, hand, and shoulder were now being affected in the same way as his right arm, hand, and shoulder and that the pain and numbness in his arms, hands, shoulders, and thoracic spine had increased greatly. Appellant expressed concerns of permanent damage

due to the delay and refusal of medical treatment. Appellant resubmitted medical reports dated June 14, 2012 to April 1, 2013.

In a September 19, 2013 MRI scan of the cervical spine report, Dr. Eric Alves, an osteopath specializing in neuroradiology, noted a history of neck pain and left C7 radiculopathy.

On November 8, 2013 a hearing was held. Counsel was present. Appellant described the physical duties of his job and an April 14, 2009 work-related back injury. He related that his back was feeling fine following the April 14, 2009 injury until the June 9, 2012 employment injury. Appellant explained that on June 9, 2012 he twisted his back to retrieve a shotgun in the back of his pickup and felt immediate, intense pain similar to the pain he experienced in 2009. He described the medical treatment he received and noted that he eventually returned to sedentary duty. Appellant asserted that despite the medical treatment, his back pain progressively worsened. He further alleged that he experienced additional symptoms of pain and numbness in his arms, which prevented him from being able to use his hands. Appellant related that on February 22, 2013 he had a follow-up appointment with Dr. Smith who recommended that appellant not work. Counsel alleged that Dr. Smith's February 22, 2013 report adequately outlined her examination findings and appellant's inability to work. He further asserted that the totality of medical evidence demonstrated an overall worsening of appellant's work-related condition sufficient to establish his recurrence claim. Counsel also argued that since appellant's inability to work occurred shortly after his return to work, the emphasis should be more on disability than causal relationship.

By letter dated November 14, 2013, counsel indicated that he was submitting Dr. Smith's February 22, 2013 note which confirmed that appellant was unable to work from that date and would provide additional medical evidence in support of his recurrence claim. Appellant resubmitted medical records dated December 10, 2012 to February 22, 2013.

In a December 10, 2013 report, Dr. Shah examined appellant for follow-up of his cervical stenosis, C6-C7, and for his complaints of cervical pain. He reviewed appellant's history and conducted an examination. Dr. Shah advised that appellant remain out of work.

In a decision dated January 15, 2014, an OWCP hearing representative affirmed the July 8, 2013 decision. He determined that there was insufficient evidence to support that appellant was disabled on or after February 22, 2013 as a result of his June 9, 2012 employment injury. The hearing representative pointed out that, although appellant's physicians indicated that appellant was unable to work beginning February 22, 2013, they attributed his inability to work to various medical conditions that were not accepted by OWCP.

On February 27, 2014 OWCP received appellant's request, through counsel, for reconsideration. He submitted a February 12, 2014 narrative report by Dr. Shah who accurately described the June 9, 2012 employment incident and the medical treatment that appellant received. Dr. Shah related that Dr. Smith's December 10, 2012 report showed evidence of disc herniation. He reported that despite epidural injections, pain medications, and activity modification, appellant had persistent and worsening discomfort. Dr. Shah noted that cervical spine MRI scan revealed evidence of spinal stenosis greatest at C6-7 and advised that appellant should undergo cervical surgery. He opined that appellant's symptoms were directly related to

his work-related injury of June 9, 2012 and explained that appellant's discomfort worsened until he was no longer able to work as of February 22, 2013 due to his work-related injury of June 9, 2012.

By letter dated March 6, 2014, the employing establishment informed OWCP that it sent appellant to undergo two medical evaluations and would be submitting those evaluations.

On February 25, 2014 Dr. Peter A. Feinstein, a Board-certified orthopedic surgeon, prepared a report for the employing establishment which described the June 9, 2012 employment injury and the medical treatment appellant had received. He related that presently appellant complained of neck pain after sitting, standing, or walking for more than 10 minutes at any one time. Upon examination of appellant's cervical spine and upper extremities, Dr. Feinstein observed bilateral central paravertebral muscular discomfort to palpation and limited range of motion of the cervical spine. He opined that appellant should make a full recovery with successful surgery as long as appellant stopped smoking.

The employing establishment also submitted a December 31, 2013 report by Dr. Mitchell L. Horowitz, a Board-certified internist who specializes in pulmonary disease. Dr. Horowitz described the June 9, 2012 employment injury and the medical treatment that appellant received. He related that appellant presently complained of mid thoracic, right upper back, neck, trapezius, and low back pain and right arm parasthesias and numbness to his thumb associated with weakness. Dr. Horowitz indicated that appellant did not work from June to August 2012 then returned to restricted duty. He explained that appellant stopped work again in February 2013 due to back and arm pain and an inability to sit for a prolonged period of time. Dr. Horowitz provided physical examination findings and diagnosed resolving cervical sprain/strain and lumbar sprain/strain. He opined that "appellant's symptoms were out of proportion to his claimed injury and his clinical findings on exam[ination]." Dr. Horowitz reported that appellant could not return to his original work duties, but could continue restricted duty.

Appellant submitted various diagnostic examination reports. A March 13, 2014 examination of the thoracic spine, by Dr. Fazlollah Golestaneh, a Board-certified diagnostic radiologist, revealed a normal study. In an April 2, 2014 MRI scan of the cervical spine, Dr. Alves noted advanced degenerative disc disease of C6-C7 and spondylotic disc bulge, small, central disc protrusion at C5-C6, and minimal posterior disc bulge at C4-C5.

By decision dated November 14, 2014, OWCP denied modification of the January 15, 2014 decision. It determined that the newly submitted medical reports did not discuss appellant's alleged recurrent disability beginning in February 2013 and failed to address the causal relationship between appellant's current complaints and his accepted June 9, 2012 work injury.

OWCP received appellant's reconsideration request, through counsel, on May 7, 2015.

In a February 27, 2015 narrative report, Dr. Shah provided a description of the June 9, 2012 employment injury and the conservative medical treatment that appellant had received. He noted that appellant's nonoperative treatment was ineffective in restoring him back to his

previous level of function. Dr. Shah reported: “it appears that appellant’s discomfort was causally related to his twisting injury, which caused an onset of neck discomfort as well as subsequent arm discomfort.” He explained that based on appellant’s background and medical rationale there was a clear explanation of the relationship between the diagnoses of cervical radiculopathy and cervical disc herniation and the specific employment factors of twisting and applying an axial plane force of torque.

By letter dated December 11, 2015, appellant, through counsel, requested that OWCP provide a formal decision on his request for reconsideration. He argued that Dr. Shah provided detailed medical reasons why he believed appellant’s neck condition was caused or at least aggravated by the work injury. Counsel further argued that Dr. Shah had clearly explained that the June 9, 2012 employment injury precipitated appellant’s herniated discs and the cervical spine with radiculopathy in the upper extremity. He suggested that Dr. Shah’s report should be read in conjunction with his previous report wherein he confirmed that appellant’s neck condition worsened to a point where he could not continue working beginning February 22, 2013.

By decision dated March 10, 2016, OWCP denied modification of the November 14, 2014 decision. It found that the medical evidence of record was insufficient to establish that appellant’s recurrence of disability beginning February 22, 2013 was causally related to the June 9, 2012 employment injury. OWCP determined that the medical reports failed to demonstrate that appellant’s work-related right rhomboid and thoracic injury worsened to the extent that appellant was no longer able to work his limited-duty assignment.

LEGAL PRECEDENT

OWCP’s implementing regulations define a recurrence of disability as 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 new exposure to the work environment.⁵

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.⁶ This burden includes the necessity of furnishing evidence from a qualified 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.⁷

For each period of disability claimed, the employee must establish that he was disabled for work as a result of the accepted employment injury. The Board will not require OWCP to

⁵ 20 C.F.R. § 10.5(x).

⁶ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *see Dominic M. DeScala*, 37 ECAB 369 (1986).

⁷ *Nicolea Bruso*, 33 ECAB 1138 (1982).

pay compensation for disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.⁸

ANALYSIS

OWCP accepted that appellant sustained a right rhomboid strain and thoracic sprain as a result of the June 9, 2012 employment injury. He stopped work and returned to full-time light duty on July 30, 2012. Appellant stopped work again on February 22, 2013 and filed a claim for recurrence of disability. He attributed his inability to work to a worsening of back, shoulder, neck, and arm pain. In various decisions, OWCP denied his claim for recurrence of disability. The Board finds that appellant has failed to establish a recurrence of disability beginning February 22, 2013 causally related to his June 9, 2012 employment injury.

Appellant submitted various reports by Dr. Shah. In reports dated March 5, 2013 to February 27, 2015, Dr. Shah noted a date of injury of June 9, 2012. He discussed appellant's medical treatment and related his continued complaints of worsening pain and discomfort. Upon examination of the cervical spine and upper extremities, Dr. Shah observed tenderness in the bilateral trapezius and positive Spurling's test. He related that the cervical spine MRI scan revealed evidence of spinal stenosis greatest at C6-7. Dr. Shah diagnosed cervicalgia, neck strain, thoracic spine pain, displacement of thoracic intervertebral disc without myelopathy, thoracic sprain and strain, thoracic disc bulges, and cervical stenosis at C6-7. He reported that appellant was not able to work. In a February 12, 2014 narrative report, Dr. Shah explained that despite epidural injections, pain medications, and activity modification, appellant had persistent worsening discomfort. He opined that appellant's "discomfort continued to worsen until his point of no longer being able to work on February 22, 2013 as a direct result of his work-related injury of June 9, 2012." Dr. Shah further reported in a February 27, 2015 narrative report that "it appears that appellant's discomfort was causally related to his twisting injury, which caused an onset of neck discomfort as well as subsequent arm discomfort."

Although Dr. Shah opined that appellant was not able to work as of February 22, 2013, the Board notes that he did not provide a definitive opinion on the cause of appellant's current condition, nor a fully-rationalized explanation as to why appellant was disabled beginning February 22, 2013 as a result of his accepted June 9, 2012 employment injury.⁹ Dr. Shah reported that appellant's discomfort and pain worsened to the point that he was unable to work. The Board notes that Dr. Shah did not provide any objective findings to demonstrate how appellant's accepted right rhomboid and thoracic conditions had worsened to the point of disability, but merely attributed appellant's inability to work to subjective complaints of pain and discomfort. Dr. Shah further explained that it "appears" that appellant's neck and arm discomfort was related to his twisting injury. An award of compensation, however, may not be based on surmise, conjecture, or speculation that there is causal relationship between his claimed condition and his employment.¹⁰

⁸ *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁹ *See W.H.*, Docket No. 16-0634 (issued June 17, 2016); *D.D.*, 57 ECAB 734, 738 (2006).

¹⁰ *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

Additionally, Dr. Shah's opinion does not support a spontaneous recurrence of appellant's accepted right rhomboid and thoracic strain; rather the opinion suggests that appellant's June 9, 2012 employment injury caused additional conditions of cervicalgia, neck strain, thoracic spine pain, displacement of thoracic intervertebral disc without myelopathy, thoracic disc bulges, and cervical stenosis at C6-7. Regardless of whether Dr. Shah attributed appellant's inability to work to a worsening of his accepted conditions or to additional conditions, his opinion is insufficiently rationalized as he failed to provide a medical explanation of how these conditions were causally related to the June 9, 2012 employment injury, nor did he provide adequate bridging evidence to show a spontaneous worsening of the accepted conditions.¹¹ Rather, he correlated in general terms that appellant's conditions were caused by the work-related June 9, 2012 injury. Such generalized statements do not establish causal relationship because they are unsupported by adequate medical rationale explaining how the specific physical activity actually caused the diagnosed conditions.¹² 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 a relationship.¹³ Accordingly, the Board finds that Dr. Shah failed to provide a sufficiently rationalized medical opinion explaining how he was totally disabled beginning February 22, 2013 due to a worsening of his accepted June 9, 2012 employment injury or to any additional conditions.

Dr. Smith also treated appellant. In a February 22, 2013 examination note, Dr. Smith diagnosed thoracic spine pain, thoracic sprain, displacement of thoracic intervertebral disc without myelopathy, and displacement of cervical intervertebral disc without myelopathy. She marked a box on a form report that appellant could not return to work. Dr. Smith indicated that the diagnosed conditions and the recommended treatment were causally related to the work incident of June 9, 2012. She continued to comment in treatment notes dated April 1 to August 6, 2013 that appellant was not able to work and that the diagnoses and treatment were causally related to the June 9, 2012 employment incident. The Board finds that Dr. Smith did not specifically explain whether appellant's disability beginning February 22, 2013 was causally related to his accepted rhomboid strain and thoracic sprain or otherwise provide medical reasoning explaining why any current condition or disability was due to the accepted employment injury. She merely noted the date of June 9, 2012. None of Dr. Smith's treatment notes specifically explain how appellant's disability beginning February 22, 2013 was causally related to the June 9, 2012 employment injury.¹⁴

Appellant submitted diagnostic test results from Drs. Bhagat and Golestaneh, however these reports offered no opinion regarding the cause of appellant's diagnosed conditions. The Board has found that medical evidence that does not offer any opinion regarding the cause of an

¹¹ *J.D.*, Docket No. 16-0064 (issued June 1, 2016); *L.G.*, Docket No. 11-142 (issued August 12, 2011).

¹² *L.M.*, Docket No. 16-0188 (issued March 24, 2016); *K.W.*, Docket No. 10-98 (issued September 10, 2010).

¹³ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁴ *C.L.*, Docket No. 16-0004 (issued June 14, 2016); *William A. Archer*, 55 ECAB 674 (2004).

employee's condition is of limited probative value on the issue of causal relationship. Therefore, these diagnostic reports fail to establish causal relationship and appellant's recurrence claim.¹⁵

Likewise, the additional reports from Drs. Alves, Feinstein, and Horowitz do not specifically support that appellant sustained a recurrence of disability beginning February 22, 2013 causally related to his June 9, 2012 employment injury. These reports fail to address a spontaneous worsening or change in his accepted rhomboid and thoracic condition beginning February 22, 2013, causing disability.¹⁶

On appeal counsel alleges that appellant has provided *prima facie* evidence to establish that he suffered an overall worsening of his neck and back conditions beginning February 22, 2013 and became disabled from performing his light-duty position. He specifically asserted that Dr. Shah's February 12, 2014 report specifically addressed the mechanism of injury on June 9, 2012 and noted that appellant's cervical stenosis and disc herniation were directly related to the June 9, 2012 employment injury. As explained above, however, Dr. Shah's reports lack sufficient medical rationale to establish that appellant was totally disabled as of February 22, 2013 due to residuals of his accepted injury. Dr. Shah failed to establish by the weight of the reliable, probative, and substantial evidence, a change in the nature and extent of appellant's injury-related conditions resulting in his inability to perform his limited-duty position.¹⁷

Appellant may submit new evidence or argument with a written request for reconsideration to the OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 16.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability on February 22, 2013 causally related to a June 9, 2012 employment injury.

¹⁵ *K.H.*, Docket No. 16-0776 (issued October 19, 2016).

¹⁶ *See M.P.*, Docket No. 15-0361 (issued September 27, 2016).

¹⁷ Counsel also alleged that OWCP presumably denied authorization for cervical surgery and requested a determination on the need for cervical fusion. As the record does not contain a final, adverse decision by OWCP regarding the issue of authorization for cervical fusion surgery, the Board may not properly exercise jurisdiction to review this issue. 5 U.S.C. § 8149; 20 C.F.R. §§ 501.2(c) and 501.3(a).

ORDER

IT IS HEREBY ORDERED THAT the March 10, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 23, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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