



## ISSUE

The issue is whether appellant has established that she sustained a recurrence of disability on March 5, 2012 causally related to her June 5, 2010 employment injury.

## FACTUAL HISTORY

On June 10, 2010 appellant, then a 46-year-old census enumerator crew leader assistant, filed a traumatic injury claim (Form CA-1) alleging that on June 5, 2010, she injured her back, spine, and foot while lifting and carrying boxes in the performance of duty. She stopped work on June 7, 2010. The employing establishment explained that, when appellant returned to work, the job held on the date of injury was no longer available and she was provided a clerk position. It advised that her medical restrictions included no lifting over 10 pounds and were “congenial” with the date-of-injury position. The employing establishment noted that appellant returned to work on July 17, 2010 until the clerk position ended due to lack of work on August 29, 2010.<sup>3</sup>

On July 7, 2010 OWCP accepted the claim for lumbar sprain. A July 12, 2010 magnetic resonance imaging (MRI) scan showed moderate-sized L5-S1 herniation and slight disc bulging at L3-4 and L4-5. The record indicates that appellant received medical treatment and physical therapy until September 2010.

An April 3, 2012 MRI scan read by Dr. Ross Mondshine, a Board-certified diagnostic radiologist revealed an interval increase in the size of the L5-S1 disc herniation, broad-based disc bulge at L4-5 with moderate facet joint arthropathy and a superimposed annular fissure.

In an August 13, 2012 report, Dr. Kevin S. Finnesey, a Board-certified orthopedic surgeon, noted that appellant had complaints of high level pain in the low back with radiation down the left leg and pain which worsened with activity. He noted that she walked with a cane with the right hand. Dr. Finnesey examined appellant and determined: she had a positive leg raise on the left at 45 degrees; a left Achilles reflex which was absent; diminished sensation about the left lateral foot; tenderness in the left lower lumbar paraspinal muscles; flexion to 60 degrees, which was painful; and peripheral pulses palpable in the legs. He diagnosed herniated lumbar discs and recommended a lumbar microdiscectomy. Dr. Finnesey noted that she had the pain for over a year and needed surgery. He advised that she was totally disabled. Dr. Finnesey also provided an August 18, 2012 report in which he indicated that appellant injured her back carrying a heavy box on June 5, 2010. He diagnosed a herniated lumbar disc L5-S1 on the left. Dr. Finnesey noted subjective findings, requested authorization for surgery, and found appellant unable to work.

On September 13, 2012 appellant filed a claim for a recurrence of disability Form CA-2a commencing March 5, 2012. She noted experiencing chronic pain in her back and leg since June 5, 2010. Appellant advised that she had some physical therapy and took medication, but she could no longer tolerate the chronic pain because “it became excruciating and unbearable.” The employing establishment indicated that when appellant was released to work after her injury,

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<sup>3</sup> Appellant’s date-of-injury job was a temporary position that was scheduled to end no later than December 31, 2010. She received continuation of pay from June 6 to July 17, 2010.

the date-of-injury job was no longer available so she worked as a clerk from July 17 through August 29, 2010, at which point the clerk job ended due to lack of work. It contended that her job was consistent with her work restrictions. The employing establishment also related its understanding that appellant worked for the YMCA before, during, and after the injury. It noted that, prior to the alleged recurrence, she had not sought treatment for the accepted injury for 18 months (September 2010 through March 2012).<sup>4</sup>

On September 14, 2012 Lorie Plegue, an employing establishment workers' compensation specialist, controverted the claim. She noted that the employing establishment had learned that appellant had an auto accident, a disabled daughter, and a job with the YMCA that could have caused her current medical condition.

Dr. Finnesey, in an October 1, 2012 report, advised that appellant was doing well and had returned to work. Appellant had some pain, but not severe, and no radiating pain. Dr. Finnesey provided findings which included no focal deficits of the extremities on neurologic examination. He diagnosed cervical and lumbar soft tissue sprain, and cervical disc protrusion, improving. Dr. Finnesey advised that appellant was not a surgical candidate, she was at maximum medical improvement, and he would see her on an as needed basis.

By letter dated October 9, 2012, OWCP advised appellant of the evidence needed to establish her recurrence of disability claim. It requested that she provide a detailed description to explain why she stopped work on March 5, 2012. OWCP requested that appellant specify the activity she was engaged in at the moment she suffered the recurrence. It noted that she had not worked for the employing establishment since August 29, 2010 and requested an explanation as to why she did not seek medical treatment for the accepted injury for 18 months from September 2010 to March 2012. OWCP further requested that appellant address whether she sustained any injuries while working with the YMCA.

Appellant subsequently submitted a May 14, 2012 report from Dr. Finnesey. Dr. Finnesey indicated that her history included being in a work-related accident on June 5, 2010 when she was lifting boxes of documents and developed low back pain with eventual radiation down into the right leg. Appellant currently had quite severe pain in the left leg for the last few weeks. The pain was worse with any activity and inhibited her activities of daily living. Dr. Finnesey examined appellant and diagnosed herniated lumbar disc. He found her totally disabled and requested authorization for lumbar laminectomy and discectomy. OWCP also received copies of previously submitted reports.

In a November 1, 2012 letter, appellant stated that she had learned to live with chronic pain since June 5, 2010, but she reached the point where it was no longer tolerable. She indicated that she wanted surgery or spinal injections. Appellant denied that she sustained any injuries while working for the YMCA in a light-duty position.

In a November 6, 2012 report, Dr. Finnesey indicated that appellant continued to have severe low back pain radiating down the left buttock and posterior thigh with associated

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<sup>4</sup> Appellant notes that she was a director of the YMCA aftercare program and supervised counselors and children with afterschool activities. She held this position from "October 2008 or 2009" to March 2012.

numbness of the leg, foot, and back, as well as leg tingling and weakness. Appellant's leg pain on the left was greater than the back pain. She also had an episode of right leg pain a few weeks earlier. Dr. Finnesey diagnosed herniated lumbar disc at L5-S1 on the left. He questioned the extensive delay in appellant's treatment and advised that appellant had incapacitating pain and needed surgery. In a separate November 6, 2012 report, he declared that appellant had subjective findings of pain greater than back pain and tenderness at L5-S1, a straight leg raise of 45 degrees, and full reflexes and he requested authorization for a lumbar discectomy at L5-S1 and checked a box marked "yes" in response to whether the injury or illness was the result of a work-related incident or condition of employment. Dr. Finnesey checked a box marked "no" in response to whether appellant reported a preexisting injury and placed her off work.

In a December 14, 2012 decision, OWCP denied appellant's claim for a recurrence. It found that the factual basis of her claim remained unclear as she did not provide a clear statement to explain why she stopped work on March 5, 2012 and why she did not see a doctor from September 2010 to March 2012. OWCP also found that the medical evidence of record was unclear.

On January 2, 2013 counsel for appellant requested a telephonic hearing, which was held on April 16, 2013. In response to what happened between June 2010 and March 2012, appellant reiterated that she was in constant pain and that, as of March 5, 2012, she was unable to tolerate the pain. She stated that she had previously tolerated the pain in the hopes that it would get better.

In a February 4, 2013 report, Dr. Finnesey noted reevaluating appellant. Appellant continued to complain of high level pain in her low back with radiation down both legs, left greater than the right. Dr. Finnesey explained that she had significant difficulty with activities of daily living including dressing, bathing, shopping, and caring for her disadvantaged daughter. He provided findings which included: left lower lumbar paraspinal tenderness; lumbar flexion of 45 degrees with pain; a positive straight leg raise on the left at 45 degrees, and negative on the right to 60 degrees. Neurologic examination revealed a diminished left Achilles reflex; left calf strength of 4/5, and sensation was diminished over the left lateral foot. Regarding appellant's June 5, 2010 work injury, Dr. Finnesey noted that she was carrying two to three boxes filled with papers, which weighed 20 pounds each. He indicated that she had to lift the boxes from her vehicle and bring them into various buildings. Appellant developed severe low back pain at the time with radiation down both legs. An MRI scan showed a disc protrusion at L5-S1 affecting both S1 nerve roots. Dr. Finnesey indicated that appellant "specifically denied problems with her back prior to this work-related injury." He opined:

"[It was his] opinion that the work injury of June 5, 2010, was directly responsible for the patient's medical treatment. I believe it is clear that there is a causal relationship between the claimant's conditions to the injury sustained while in the course of employment. My reasoning is that the patient, as I mentioned, had no difficulty with her back prior to this injury. Appellant clinical examination along with the MRI scan of the lumbar spine supports this opinion. Based upon my examination and the objective medical evidence I have outlined, the patient's condition again is causally related to the job duties described. In my opinion as provided, it was in a reasonable degree of medical certainty."

Dr. Finnesey repeated his request for surgery and continued to submit reports.

In a May 2, 2013 letter, counsel for appellant submitted additional medical evidence. This included an April 23, 2013 report from Dr. Finnesey. Appellant related that her pain was persisting and worsening, with her activities of daily living becoming more difficult. Dr. Finnesey advised that, since the June 5, 2010 lifting injury, there were no other specific injuries affecting the problem. He related her symptoms and diagnosed herniated lumbar disc at L5-S1 on the left. Dr. Finnesey recommended lumbar discectomy at the L5-S1 level. He advised that appellant remained totally disabled.

By decision dated July 3, 2013, an OWCP hearing representative affirmed the December 14, 2012 decision. He found that, while appellant had a herniated disc at L5-S1 on the left, there was insufficient evidence to show this was causally related to the accepted work trauma, or that the work injury contributed to appellant's claimed disability.

A July 26, 2013 electromyography (EMG) study read by Dr. Danielle Groves, Board-certified in physical medicine and rehabilitation, revealed evidence of bilateral L5 and right S1 radiculopathies.

On June 30, 2014 counsel for appellant requested reconsideration and submitted additional reports from Dr. Finnesey, who continued to treat appellant.<sup>5</sup>

The reports included a March 1, 2014 operative report, in which Dr. Finnesey performed a lumbar laminotomy, foraminotomy, partial facetectomy, and discectomy at L5-S1 on the left. On June 26, 2014 Dr. Finnesey noted initially evaluating appellant on May 14, 2012 for a June 5, 2010 work injury. He advised that she developed acute low back pain and was treated with epidural blocks as well as physical therapy and medication. Dr. Finnesey noted that a July 12, 2010 MRI scan showed a "moderately large disc herniation" at L5-S1, which was contacting the L5 and S1 nerve roots. A follow-up MRI scan on April 3, 2012 revealed an "interval increase in the size of L5-S1 during disc herniation." Dr. Finnesey further indicated that an updated study in 2014 also showed a large disc herniation at L5-S1 which severely impinged on the left lateral recess. He advised that conservative treatment failed and that appellant had a lumbar discectomy due to the large size of the disc and the incapacitating pain. Regarding causation, Dr. Finnesey opined that appellant's current clinical condition was "directly attributable and causally related to the job activities...." He also noted that appellant had a disabled daughter at home and bathing, lifting, or carrying her was painful as were other activities of daily living. Dr. Finnesey advised that appellant denied any significant episodes of low back pain in the past which needed treatment and that she was fully functional before the June 5, 2010 injury.

In a July 22, 2014 report, Dr. Finnesey examined appellant and noted that appellant was gradually improving. He indicated that she had some low back pain, but her radicular pain had improved. Dr. Finnesey noted findings which included full strength and sensation in the lower extremities. He diagnosed herniated lumbar disc and opined that the disc "herniation and subsequent surgery is causally related to the work involving lifting the documents...." In a separate July 22, 2014 report, Dr. Finnesey checked a box marked "yes" in response to whether

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<sup>5</sup> The record contains numerous reports dating from April 23, 2013 to July 22, 2014.

the injury or illness was employment related. He also noted that appellant did not have a preexisting injury to the same body area. Dr. Finnesey placed appellant off work.

By decision dated August 25, 2014, OWCP denied modification of its prior decision. It noted that appellant did not submit a clear statement explaining why she stopped work on March 15, 2012 and why she sought no medical treatment from September 2010 to March 2012.

### **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.<sup>6</sup>

When an employee who is disabled from the job he or she 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.<sup>7</sup> 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.<sup>8</sup> In the absence of rationale, the medical evidence is of diminished probative value.<sup>9</sup> 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.<sup>10</sup>

### **ANALYSIS**

OWCP accepted that appellant sustained a lumbar sprain on June 5, 2010. Appellant returned to work on July 17, 2010 with a 10-pound lifting restriction. The employing establishment accommodated this restriction by providing her a clerical job until August 29,

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<sup>6</sup> *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).

<sup>7</sup> *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>8</sup> *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

<sup>9</sup> *Id.*; *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>10</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

2010 when the position ended due to lack of work.<sup>11</sup> There is no evidence of record that appellant was not provided appropriate work within her restrictions while work was available. Thus, the question before the Board is whether she experienced a change in the nature and extent of the June 5, 2010 employment injury that resulted in recurrence of disability on March 5, 2012.

Medical evidence of bridging symptoms must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.<sup>12</sup> The Board notes that there is no evidence of record that appellant sought medical treatment from September 2010, when she had been cleared to work restricted duty, until March 2012. Although appellant asserts that she remained in significant pain during this period, there is no medical evidence between these dates documenting that she continued to have significant residuals as she alleges. She indicated that she did not seek treatment as she thought her condition would improve without medical treatment. The medical evidence from Dr. Finnesey, who did not begin treating appellant until May 14, 2012, does not sufficiently explain with sound medical reasoning how the June 5, 2010 work injury disabled appellant for work on and after March 5, 2012, the date of the alleged recurrence. In the absence of rationalized medical opinion evidence, appellant did not meet her burden of proof.

As noted, Dr. Finnesey provided several reports opining that appellant's current condition, and need for the March 1, 2014 surgery, is causally related to the June 5, 2010 work injury. They included his May 14, August 13, October 1, November 6, 2012, February 4, April 23, 2013, June 26, and July 22, 2014 reports. Dr. Finnesey noted the history of injury of the June 5, 2010 work injury, diagnosed a herniated lumbar disc, and found appellant totally disabled. He noted that a 2010 MRI scan showed a herniated disc. Dr. Finnesey contended that her herniated disc and associated conditions were caused or aggravated by her work injury and noted that appellant denied any other similar conditions. However, the only condition accepted by OWCP is a lumbar sprain.<sup>13</sup> The Board has also held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before an injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.<sup>14</sup> These numerous reports do not provide sufficient support for a recurrence of disability on March 5, 2012 caused by a spontaneous change in the accepted lumbar sprain without an intervening injury or new exposure to the work environment that caused the illness. The need for detailed medical rationale is particularly important due to the passage of time between the original injury and the resumption of treatment.<sup>15</sup> Furthermore, appellant also

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<sup>11</sup> As noted, appellant's date-of-injury job was a temporary position that was scheduled to end no later than December 31, 2010. *See supra* note 3. OWCP procedures explain that a recurrence of disability does not include a work stoppage caused by a termination of a temporary appointment, if the claimant was a temporary employee at the time of the injury. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(c)(1) (June 2013).

<sup>12</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>13</sup> *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted by OWCP, she bears the burden of proof to establish that the condition is causally related to the employment injury).

<sup>14</sup> *John F. Glynn*, 53 ECAB 562 (2002).

<sup>15</sup> *See supra* note 12.

worked another job during the period in question in which she helped care for children as well as having to care for a disabled child at home. Dr. Finnesey did not sufficiently address how these activities would have affected appellant's condition.

Dr. Finnesey also provided form reports dated November 6, 2012 and July 22, 2014, in which he checked a box marked "yes" in response to whether the injury or illness was the result of a work-related incident or condition of employment. The Board has held that the checking of a box marked "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.<sup>16</sup>

Other medical evidence of record is insufficient to establish a recurrence as these reports do not contain a physician's opinion supporting that disability beginning March 5, 2012 was due to a spontaneous change in her accepted condition.

On appeal, counsel for appellant argues that appellant returned to a light-duty capacity and never returned to full duty. He indicated that the entire Census office was let go.<sup>17</sup> Counsel further argues that appellant addressed why she stopped work and did not seek medical attention from September 2010 to March 2012. He contends that the claim should be accepted. In the alternative, counsel notes that there was no contradictory medical evidence and the claim should be remanded for further development. As found above, the medical evidence of record is insufficient to establish appellant's claim or to require further development.

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 that she sustained a recurrence of disability on March 5, 2012 causally related to her June 5, 2010 employment injury.

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<sup>16</sup> See *Barbara J. Williams*, 40 ECAB 649, 656 (1989).

<sup>17</sup> See *supra* note 11 (a recurrence of disability does not include a work stoppage caused by a termination of a temporary appointment).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 25, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 14, 2016  
Washington, DC

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

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

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