



## **FACTUAL HISTORY**

On June 10, 2010 appellant, a 49-year-old materials handler, injured her lower back while bending over to pick up a basket of laundry. She filed a traumatic injury claim (Form CA-1), which OWCP accepted for lumbar sprain. Appellant did not stop work.

On May 7, 2014 appellant filed a claim for recurrence of disability (Form CA-2a), alleging that her inability to work as of October 29, 2013 was causally related to her accepted June 10, 2010 employment injury. She reported on the form that the recurrence occurred when she was pulling and pushing linen carts which weighed between 250 to 300 pounds. Appellant's supervisor noted on the claim form that appellant had returned to regular duty after the initial injury.

By letter dated August 5, 2014, OWCP advised appellant that it required additional factual and medical evidence, including a comprehensive medical report, to support her claim that her condition/or disability as of October 29, 2013 was causally related to her accepted lumbar sprain condition.

In a September 11, 2014 report, Dr. Sheldon Marokus, Board-certified in orthopedic surgery, advised that appellant was experiencing lumbar spine pain stemming from a work-related injury. He related the history of injury and noted that her current symptoms began in October 2013. Appellant had intermittent episodes of pain in the lumbar spine and sacroiliac area; she described pain as stabbing and moderate, with symptoms aggravated by standing. Dr. Marokus advised that she underwent physical therapy from February to June 2014, but continued to experience flare-ups, lack of strength, and decreased range of motion in her lumbar spine. Appellant rated her current level of pain as a 5 on a scale of 1 to 10, with sharp pain in her lower back, mostly in the morning. She related that the pain radiated to her hips and legs and increased with walking; she constantly experienced pins and needle sensations in her lower extremities often resulting in numbness.

Dr. Marokus advised that appellant underwent a magnetic resonance imaging (MRI) scan on May 15, 2014 which showed degenerative changes and moderate narrowing of the left L5-S1 neural foramen. Appellant also underwent x-ray tests on June 10, 2010 which showed an acute lumbar muscle strain. Dr. Marokus noted that she was referred for a bilateral lower extremity electromyogram (EMG) and nerve conduction velocity (NCV) study to determine the full extent of her condition.

Dr. Marokus opined that the effects of the 2010 work injury persisted and that pain and disability from the injury limited appellant's activities of daily living. He prescribed a course of physical rehabilitation and concluded that, based on her medical records and description of the accident, she had a lumbar sprain impairment caused by her June 10, 2010 work injury, which caused her to have intermittent flare-ups and trouble with walking, bending, twisting, and lifting due to the repetitive duties of a materials handler. Dr. Marokus opined that this was a "return of symptoms with no new mechanism of injury; *i.e.*, a recurrence of the original injury of June 10, 2010."

By decision dated October 10, 2014, OWCP denied the claim for a recurrence of disability.

By letter dated October 20, 2014, appellant's counsel requested an oral hearing before an OWCP hearing representative. The hearing was held on May 18, 2015.

In a November 3, 2014 report, Dr. Marokus advised that the results of the September 24, 2014 EMG/NCV study were abnormal showing mild evidence of lumbosacral radiculopathy at the L5-S1 level, prominently on the right. He noted that there was no electrodiagnostic evidence to suggest entrapment neuropathy or myopathy. Dr. Marokus advised that the lumbar spine MRI scan appellant underwent on May 15, 2014 showed degenerative changes of the lower lumbar spine with moderate narrowing of the left L5-S1 neural foramen. He advised that she had a lumbar spine condition as a result of straining her back on June 10, 2010. Dr. Marokus noted that appellant continued to do the same daily job duties she did when she initially got hurt on June 10, 2010. He opined that she was experiencing recurrent symptoms of the incident because her job duties had not changed. Appellant was still required to push, pull, lift, and carry linens, whether soiled or not, despite her petite size. Dr. Marokus reported that prolonged standing bothered her and that when a patient has a lower back injury, prolonged standing tends to agitate the lower back. He advised, however, that in appellant's case it did not prove that she reinjured her back because she had been standing for a long period of time while working at her usual job.

Dr. Marokus opined that the daily repetitive work-related duties of being a materials handler at the employing establishment continued to give appellant recurrent symptoms from her initial traumatic lumbar injury of June 10, 2010.

Appellant also submitted several attending physician reports (Forms CA-17) from Dr. Marokus in which he advised that she was unable to work due to a lumbar sprain injury and outlined work restrictions.

By decision dated July 29, 2015, an OWCP hearing representative affirmed the October 10, 2014 decision.

### **LEGAL PRECEDENT**

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>2</sup> Disability means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.<sup>3</sup>

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> 20 C.F.R. § 10.5(f).

causally related to the employment injury, and who supports that conclusion with sound medical reasoning.<sup>4</sup> A recurrence of disability is defined as the inability to work caused by a spontaneous change in a medical condition which results from a previous injury or illness without an intervening injury or new exposure in the work environment that caused the illness.<sup>5</sup>

### ANALYSIS

In the instant case, appellant has failed to submit rationalized, probative medical evidence which explains disability for work due to her June 10, 2010 work injury. For this reason, she has not discharged her burden of proof to establish a recurrence of disability.

In support of her claim appellant submitted reports from Dr. Marokus. In his September 11, 2014 report, Dr. Marokus advised that she was experiencing intermittent episodes of pain in the lumbar spine and sacroiliac area which originated from a work-related injury. He reported that appellant had flare-ups, lack of strength, and decreased range of motion in her lumbar spine. Dr. Marokus noted that a May 15, 2014 lumbar MRI scan showed degenerative changes and moderate narrowing of the left L5-S1 neural foramen and that x-ray tests taken on June 10, 2010 revealed an acute lumbar muscle strain. He opined that the effects of the 2010 injury lingered and that pain and disability from the injury curtailed appellant's activities of daily living. Dr. Marokus opined that she had a lumbar sprain impairment caused by her June 10, 2010 work injury, which caused her to have intermittent flare-ups and trouble with walking, bending, twisting, and lifting due to the repetitive duties of a materials handler. He concluded that this was a return of symptoms with no new mechanism of injury and constituted a recurrence of the June 10, 2010 injury. In a November 3, 2014 report, Dr. Marokus advised that the results of a September 24, 2014 EMG/NCV study showed mild evidence of lumbosacral radiculopathy at the L5-S1 level. He opined that because appellant continued to perform the same work duties she did when she initially got hurt on June 10, 2010 this indicated that she was experiencing recurrent symptoms of the 2010 work injury. Dr. Marokus concluded that the daily repetitive work duties of being a materials handler continued to give her recurrent symptoms from her initial June 10, 2010 traumatic lumbar injury.

The Board notes initially that Dr. Marokus offered no medical explanation as to why appellant was disabled from work beginning October 29, 2013. Whether a particular injury caused disability from employment is a medical issue which must be resolved by competent medical evidence.<sup>6</sup> Dr. Marokus noted in general terms that appellant performed repetitive duties, but offered no explanation as to which employment duties she was unable to perform, and how this disability was related to her accepted lumbar strain condition.

Dr. Marokus' opinion regarding causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.<sup>7</sup> He did not describe

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<sup>4</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); *Id.* at §10.121(a).

<sup>5</sup> *See id.* at § 10.5(x); *Donald T. Pippin*, 54 ECAB 631 (2003).

<sup>6</sup> *See Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>7</sup> *William C. Thomas*, 45 ECAB 591 (1994).

how appellant's accepted lumbar sprain condition would have been competent to cause the claimed recurrence of disability as of October 29, 2013. While Dr. Marokus noted increased symptoms and diagnosed degenerative changes based on a May 15, 2014 MRI scan, he offered no medical explanation as to why her previous lumbar sprain would now cause disability from work. He did not explain with medical rationale whether appellant's current degenerative changes or the lumbosacral radiculopathy diagnosed by the November 3, 2014 EMG/NCV study were causally related to the accepted lumbar sprain.<sup>8</sup> The Board notes in this regard that OWCP has not accepted any condition other than lumbar sprain. The record remains unclear as to whether the previous lumbar strain caused appellant's current disability, or the degenerative changes, which have not been established to be work related.

Dr. Marokus' opinions are further of limited probative value as they are generalized in nature. He did not establish a change in the nature and extent of the accepted injury-related condition.<sup>9</sup> As noted, appellant has the burden of proof to submit rationalized medical evidence establishing the relationship of the claimed recurrence to the original injury. The weight of the medical opinion evidence is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of a physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested, and the medical rationale expressed in support of stated conclusions.<sup>10</sup> For these reasons, the medical evidence is insufficient to establish a recurrence of disability causally related to the accepted lumbar strain injury. The Board will affirm OWCP's July 29, 2015 decision.

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 met her burden to establish a recurrence of disability as of October 29, 2013 causally related to her accepted lumbar strain condition.

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<sup>8</sup> See *E.M.*, Docket No. 12-0774 (issued October 3, 2012).

<sup>9</sup> *Id.*

<sup>10</sup> See *Ann C. Leanza*, 48 ECAB 115 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 29, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2016  
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