



returned to modified-duty work on August 30, 2012. OWCP accepted the claim for lumbar sprain and permanent aggravation of degeneration of lumbar or intervertebral disc. Appellant had a prior medical history of disc bulge, cervical fracture requiring fusion, and tibia/fibular injury. He was released to full-time, regular duty work on September 24, 2012.

Appellant resigned from federal employment effective June 12, 2013 for personal reasons.

On August 4, 2014 appellant filed a Form CA-2a, notice of recurrence, claiming a recurrence of total disability beginning June 12, 2013. He indicated that the nature and extent of his injury was unchanged from the date of injury to the present. On the claim form, the employing establishment challenged the claim as it had accommodated appellant's work injury until he resigned from his employment. Appellant also filed a Form CA-7 claiming total disability from work from June 12, 2013 to August 9, 2014. He claimed no earnings from employment during this period.

On August 25, 2014 OWCP advised appellant of the deficiencies in his claim and requested medical evidence that established disability for work during the entire period claimed. It also noted that clarification was needed concerning the dates of work stoppage and leave used during the period claimed. Appellant was afforded 30 days to provide the requested information.

In a September 17, 2014 report, Dr. Douglas T. Shepherd, an orthopedist, noted that appellant's primary diagnosis was chronic low back pain, with multilevel imaging changes. He noted the history of the August 27, 2012 work injury and that, despite conservative treatment including a release for light duty, appellant continued to have persistent symptoms and ongoing disability. Dr. Shepherd noted that appellant last worked on June 11, 2013 and that he was medically stable as of June 17, 2013. He noted that at the time appellant reached maximum medical improvement, it was his understanding that he was unable to perform the essential job duties as a police officer and that restrictions were provided at that time. Restrictions were imposed related to limitations associated with appellant's chronic back condition.

By letter dated October 3, 2014, OWCP again provided appellant an opportunity to submit additional evidence in support of his claim for recurrence of disability.

In an October 20, 2014 letter, counsel for appellant advised that appellant's recurrence of disability was due to his inability to meet the physical requirements of his position. He also alleged that appellant's medical condition had deteriorated to the point he could no longer perform the modified position his employing establishment had provided him.

By decision dated January 23, 2015, OWCP denied appellant's recurrence claim as the medical evidence did not support a material worsening of the accepted work injury.

On January 27, 2015 appellant requested a telephonic hearing before an OWCP hearing representative. At the hearing, held on August 5, 2015, counsel for appellant argued that appellant's light-duty position had been withdrawn based on innuendo and accusations without any official finding of wrongdoing. He argued that the case should be decided on the medical evidence. Appellant testified that he was placed on light duty when he returned to work three days after his work injury. He explained that he performed the same duties as a regular officer,

other than he was disarmed and did not wear body armor. Appellant testified that he worked gates to check identification and he was therefore on his feet, although he was not supposed to be. He indicated that he had constant pain, which would increase by the end of the day. Appellant indicated that the employing establishment had tested him for alcohol six times and only had four positive findings. He noted that the employing establishment had an eight-hour rule regarding alcohol and he always stopped drinking within eight hours of the beginning of his shift. Appellant testified that his back did not get better in the light-duty position and he kept reaggravating his injury both at work and at home. He testified that he had no other chronic medical conditions. Appellant noted that his Veterans Administration benefits were his current source of income. He indicated that since June 2013 he has not worked in any capacity. Appellant noted that at home he took care of chickens and rabbits, mowed the lawn, and walked for exercise.

By decision dated September 28, 2015, an OWCP hearing representative affirmed OWCP's January 23, 2015 decision. She found that this was not a case where the employing establishment withdrew appellant's modified job. In this situation, appellant had resigned from his federal employment position effective June 12, 2013.

### **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 which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.<sup>2</sup> This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations and which is necessary because of a work-related injury or illness is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.<sup>3</sup>

OWCP procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from the previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>4</sup>

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence

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<sup>2</sup> 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008).

<sup>3</sup> *Id.*

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013). *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.<sup>5</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>6</sup>

### ANALYSIS

OWCP accepted that appellant's August 27, 2012 employment injury resulted in lumbar sprain and aggravation of degenerative lumbar intervertebral disc. Following the August 27, 2012 work injury, appellant returned to modified-duty work on August 30, 2012. On June 12, 2013 he resigned from the employing establishment. Appellant filed a recurrence of disability claim, effective June 12, 2013. He has the burden of proof to establish a recurrence of disability due to either a change in his injury-related condition, without intervening injury, or withdrawal of limited-duty employment subsequent to his June 12, 2013 resignation.

Appellant argued that the employing establishment effectively withdrew his modified assignment on June 12, 2013. The Board, however, has held that, when a claimant stops work for reasons unrelated to his accepted employment injury, he has no disability within the meaning of FECA.<sup>7</sup> In this case, appellant resigned for personal reasons. His resignation for personal reasons does not establish a recurrence of disability on or about June 12, 2013 because it had nothing to do with his ability to perform the limited-duty requirements of his position.<sup>8</sup> The record does not demonstrate that the employing establishment either explicitly or implicitly withdrew appellant's limited-duty assignment due to his accepted medical condition.<sup>9</sup>

The record also does not contain any medical opinion evidence, based upon a complete and accurate history, to support that appellant sustained a spontaneous material change in his accepted injury that would prevent him from performing the modified-duty position he held at the time of his resignation from federal employment.

Dr. Shepherd had an accurate history of appellant's lower back conditions and he noted appellant's work restrictions. However, he did not explain whether and how appellant's August 27, 2012 work injury caused the need for those work restrictions, and he did not explain whether in fact appellant was totally disabled as of June 12, 2013 due to his accepted work injury. This explanation is important as appellant sustained several lower back injuries after the August 27, 2012 work injury which caused him to seek medical attention, at least one injury caused him to return to modified duty, and at least one injury at home caused him to lose time from work.

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<sup>5</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>6</sup> *Mary A. Ceglia*, Docket No. 04-113 (issued July 22, 2004).

<sup>7</sup> *Supra* note 4 at Chapter 2.1500.7 (June 2013), *see also John W. Normand*, 39 ECAB 1378 (1988); *Carolyn R. Gray*, Docket No. 05-1700 (issued June 20, 2006).

<sup>8</sup> *See* 20 C.F.R. § 10.5(x); *E.S.*, Docket No. 11-657 (issued February 9, 2012); *see also Lester Covington*, 47 ECAB 539, 542 (1996); *Major W. Jefferson, III*, 47 ECAB 295, 298 (1996).

<sup>9</sup> *See G.M.*, Docket No. 11-961 (issued November 1, 2011).

The medical evidence at the time of appellant's June 12, 2013 resignation establishes that he was capable of working eight hours a day with restrictions. Additionally, there is no evidence of any spontaneous material worsening, demonstrated by objective findings, without intervening injury, to support that appellant's work injury made him incapable of performing the modified-duty police officer job effective June 12, 2013 at the date of his resignation from federal employment.<sup>10</sup> Accordingly, the Board will affirm OWCP's September 28, 2015 decision.

Appellant may submit new evidence or argument as part of 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 his burden of proof to establish a recurrence of disability as of June 12, 2013 causally related to his August 27, 2012 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated September 28, 2015 is affirmed.

Issued: July 7, 2016  
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

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<sup>10</sup> *E.S., supra* note 8; *William C. Thomas*, 5 ECAB 591 (1994).