



## **FACTUAL HISTORY**

On April 19, 2012 appellant, then a 53-year-old consumer safety inspector, filed a traumatic injury claim (Form CA-1) alleging that on April 17, 2012 he sustained injury when he lifted himself out of a seat while exiting a car at work and his back “went crunch.” He stopped work on April 19, 2012.<sup>2</sup>

In an April 18, 2012 report, Dr. James Kipnis, an attending Board-certified orthopedic surgeon, indicated that appellant presented on that date with acute low back pain which he reported had occurred the prior day. Appellant indicated that, when he exited a car while at work, he felt pain in his lumbar spine and a “crunching” sensation in the lateral aspect of his left leg. He later experienced occasional discomfort in his left anterior thigh. Dr. Kipnis noted that April 18, 2012 x-ray testing of appellant’s low back showed some degenerative disc disease. He diagnosed acute back sprain and recommended that appellant be treated with symptomatic care, physical therapy, and anti-inflammatory medication.

In an April 26, 2012 report, Dr. Kipnis noted that appellant reported on that date that he still had a lot of back pain and that the pain now radiated into his left buttock and down his left leg. He indicated that, upon physical examination, appellant’s lower extremity strength was intact and straight leg raising was positive. Dr. Kipnis diagnosed left lumbar radiculitis and left lumbar disc herniation. He noted that a magnetic resonance imaging (MRI) scan would be obtained for appellant’s low back in order to “assess for a disc herniation.”<sup>3</sup>

In May 9, 2012 letter, OWCP accepted that appellant sustained a lumbar sprain. It indicated that it was unable to accept his claim for degenerative disc disease of his back and directed him to submit additional medical evidence if he felt that he sustained any employment-related medical conditions on April 17, 2012 in addition to the accepted lumbar sprain.<sup>4</sup>

Appellant submitted the findings of a May 10, 2012 MRI scan, which contained an impression of small left lateral and foraminal disc herniation at L4-5 with mild facet arthropathy, mild to moderate compression of the exiting left L4 nerve root and left L5 nerve root, and minimal posterior bulging disc annulus at L4-5 with mild facet arthropathy (causing mild thecal sac deformity). On May 22, 2012 Dr. Kipnis noted that he had reviewed the findings of the May 10, 2012 MRI scan and pointed out that they showed degenerative changes and disc herniation. He diagnosed lumbar sprain, degenerative lumbar disc, and left lumbar radiculitis.

Appellant continued to submit periodic reports in which Dr. Kipnis discussed treatment of his medical condition. In a report dated June 28, 2012, Dr. Kipnis provided the diagnoses of lumbar sprain, left lumbar radiculitis, and left herniated lumbar disc. He noted that appellant continued to complain of back and left leg pain, but that he was able to perform his work. On

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<sup>2</sup> On May 28, 2012 appellant returned to his regular work for the employing establishment on a full-time basis.

<sup>3</sup> In an August 26, 2012 note, Dr. Kipnis indicated that appellant would be “out of work until further notice due to back injury.”

<sup>4</sup> Appellant later claimed that he sustained employment-related conditions on April 17, 2012, in addition to the accepted lumbar sprain, including degenerative disc disease, intervertebral disc disorder, and lumbar radiculopathy.

October 18, 2012 Dr. Kipnis diagnosed degenerative lumbar disease, left lumbar radiculitis, and left herniated lumbar disc. Appellant also submitted numerous reports, dated between May 2012 and November 2015, that were completed by his physical therapist.

In an October 7, 2015 report, Dr. Kipnis noted that appellant reported that he was performing his regular work on a full-time basis. Appellant continued to report pain radiating from his low back into his left buttock. Dr. Kipnis detailed the findings of a physical examination he performed on that date and provided a diagnosis of intervertebral disc disorders of the lumbar region with radiculopathy. He prescribed pain medication and indicated that appellant would perform a home exercise program. In a note dated October 7, 2015, Dr. Kipnis indicated, “[Appellant] is unable to work from October 7 to 12, 2015.” He noted that appellant was able to return to work on October 13, 2015.

Appellant stopped work on October 7, 2015 and filed a notice of recurrence (Form CA-2a) alleging that he sustained a recurrence of disability on October 7, 2015 due to his April 17, 2012 employment injury.<sup>5</sup>

In a letter dated October 21, 2015, OWCP requested that appellant submit additional factual and medical evidence in support of his claim for a recurrence of disability on October 7, 2015 due to his April 17, 2012 employment injury.

Appellant submitted a November 16, 2015 report in which Dr. Kipnis noted that appellant reported that he was working his full-duty position. Dr. Kipnis provided a diagnosis of intervertebral disc disorder of the lumbar region with radiculopathy.

In a December 17, 2015 decision, OWCP denied appellant’s claim that he sustained additional employment-related conditions on April 17, 2012 other than a lumbar sprain, finding that he did not submit sufficient medical evidence in support of his claim. It found that the medical evidence did not show that he sustained employment-related degenerative disc disease, intervertebral disc disorder, or lumbar radiculopathy.

In another December 17, 2015 decision, OWCP denied appellant’s claim that he sustained a recurrence of disability on or after October 7, 2015 due to his April 17, 2012 employment injury, finding that the medical evidence did not establish such a recurrence of disability.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any specific condition and/or disability for which compensation is claimed are

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<sup>5</sup> Appellant also filed a claim for compensation (Form CA-7) claiming disability compensation beginning October 7, 2015.

causally related to the employment injury.<sup>6</sup> The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup>

Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition for which he or she claims compensation is causally related to the accepted injury.<sup>8</sup> For conditions not accepted by OWCP as employment related, appellant has the burden of proof to establish causal relationship.<sup>9</sup>

### ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a lumbar strain on April 17, 2012 due to lifting himself from a seat while exiting a car at work. Appellant later claimed that he sustained additional employment-related conditions on April 17, 2012 including degenerative disc disease, intervertebral disc disorder, and lumbar radiculopathy.

The Board finds that appellant did not meet his burden of proof to establish additional employment-related conditions on April 17, 2012 because he did not submit sufficient medical evidence in support of his claim.

In an April 26, 2012 report, Dr. Kipnis, an attending Board-certified orthopedic surgeon, noted that appellant reported on that date that he still had a lot of back pain and that the pain now radiated into his left buttock and down his left leg. He diagnosed left lumbar radiculitis and left lumbar disc herniation. On May 22, 2012 Dr. Kipnis noted that he had reviewed the findings of a May 10, 2012 MRI scan and pointed out that they showed degenerative changes and disc herniation. He diagnosed lumbar sprain, degenerative lumbar disc, and left lumbar radiculitis. In a report dated June 28, 2012, Dr. Kipnis provided the diagnoses of lumbar sprain, left lumbar radiculitis, and left herniated lumbar disc. On October 18, 2012 he diagnosed degenerative lumbar disease, left lumbar radiculitis, and left herniated lumbar disc. In October 7 and November 16, 2015 reports, Dr. Kipnis provided a diagnosis of intervertebral disc disorders of the lumbar region with radiculopathy.

Although these reports contain several diagnoses other than lumbar sprain, including herniated lumbar disc, and left radiculopathy, Dr. Kipnis provided no opinion on the cause of these additional conditions. He did not provide an opinion that appellant sustained any condition other than a lumbar sprain due to his April 17, 2012 employment injury. The Board has held that

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<sup>6</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>7</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>8</sup> *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>9</sup> *See Jaja K. Asaramo*, 55 ECAB 104 (2004).

medical evidence which does not offer a clear opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>10</sup> Therefore, these reports of Dr. Kipnis do not establish appellant's claim for additional employment-related medical conditions.<sup>11</sup>

For these reasons, the Board finds that appellant did not meet his burden of proof to establish additional employment-related conditions sustained on April 17, 2012.

### **LEGAL PRECEDENT -- ISSUE 2**

An individual 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 compensation is claimed is causally related to the accepted injury.<sup>12</sup> This burden includes the necessity of 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 causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>13</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

Appellant stopped work on October 7, 2015 and filed a claim alleging that he sustained a recurrence of disability on October 7, 2015 due to his April 17, 2012 employment injury. By decision dated November 17, 2015, OWCP denied his recurrence of disability claim because he did not submit sufficient medical evidence in support of his claim.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after October 7, 2015 due to his April 17, 2012 employment injury.

In an October 7, 2015 report, Dr. Kipnis noted that appellant continued to report pain radiating from his low back into his left buttock. He detailed the findings of a physical

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<sup>10</sup> See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

<sup>11</sup> Appellant also submitted numerous reports, dated between May 2012 and November 2015, that were completed by his physical therapist and an acupuncturist. However, the Board notes that physical therapists and acupuncturists are not considered physicians under FECA and therefore their opinions do not constitute medical opinion evidence and have no weight or probative value on medical matters. *C.E.*, Docket No. 14-710 (issued August 11, 2014); *Jane A. White*, 34 ECAB 515 (1983).

<sup>12</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986). Under 20 C.F.R. § 10.5(x), a recurrence of disability is defined, in part, as "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."

<sup>13</sup> *L.F.*, Docket No. 15-1069 (issued August 12, 2015); *Mary S. Brock*, 40 ECAB 461, 471-72 (1989).

<sup>14</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

examination he performed on that date and provided a diagnosis of intervertebral disc disorders of the lumbar region with radiculopathy. In a note dated October 7, 2015, Dr. Kipnis indicated that, “[Appellant] is unable to work from October 7 to 12, 2015.” He noted that appellant was able to return to work on October 13, 2015.

The Board notes that, although Dr. Kipnis found disability from October 7 to 12, 2015, he provided no opinion on the cause of this disability. Due to the lack of an opinion on the cause of disability, the report is of limited probative value on the issue of whether appellant sustained a recurrence of disability on or after October 7, 2015 due to his April 17, 2012 employment injury.<sup>15</sup> As noted above, appellant’s claim has only been accepted for the condition of lumbar sprain and the medical evidence does not establish that he sustained employment-related intervertebral disc disorders of the lumbar region with radiculopathy or any other back or lower extremity condition.

Appellant submitted a November 16, 2015 report in which Dr. Kipnis noted that appellant reported that he was working his full-duty position. Dr. Kipnis provided a diagnosis of intervertebral disc disorder of the lumbar region with radiculopathy. The submission of this report would not establish appellant’s claim for a recurrence of disability on or after October 7, 2015 as Dr. Kipnis provided no indication that appellant was disabled from work for any reason.

For these reasons, appellant did not meet his burden of proof to establish a recurrence of disability on or after October 7, 2015 due to his April 17, 2012 employment injury. He 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 failed to meet his burden of proof to establish additional employment-related conditions causally related to factors of his federal employment. The Board further finds that he failed to meet his burden of proof to establish a recurrence of disability on or after October 7, 2015 due to his April 17, 2012 employment injury.

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<sup>15</sup> See *supra* note 10.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 17, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 3, 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