



## **FACTUAL HISTORY**

On April 16, 2013 appellant, then a 54-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 16, 2013 she was casing mail when she fell down on her side and sustained injuries to her hip and back. At that time, she was working modified duty as a result of a previous employment-related back injury.<sup>3</sup> Appellant continued to work with restrictions. OWCP administratively paid medical expenses for the injury because there was no time loss from work.

On January 27, 2014 appellant filed a recurrence of disability claim (Form CA-2a) alleging that on November 16, 2013 she sustained a recurrence of her April 16, 2013 employment injury. She stated that she had previously been placed on work restrictions of limited walking and climbing and that her right hip injury required essentially the same restrictions. Appellant explained that her right hip gradually worsened so she made an appointment with her doctor. She noted that on November 16, 2013 her doctor ordered additional restrictions of no driving over 10 miles. Appellant asserted that management could not accommodate these restrictions and sent her home. She returned to work on November 20, 2013.

OWCP advised appellant that as the original claim had not been fully developed, it would develop the initial claim. In an April 16, 2013 report, Dr. Robert Bowen, a Board-certified internist, related that she was at work when she fell and injured her back, right hip, and buttocks. He noted examination findings of swelling, tenderness, and limited range of motion. Straight leg raise testing was negative bilaterally. Dr. Bowen indicated that an x-ray of the lumbar spine revealed no acute fracture. He diagnosed lumbar strain and right hip contusion. Dr. Bowen authorized appellant to work modified duty on April 22, 2013 with restrictions of no repetitive motion, no kneeling or squatting, no climbing stairs or ladders, and no lifting, pushing, or pulling over 10 pounds. He also submitted an attending physician's report and discharge summary.

The record contains a job offer dated April 16, 2013 for a modified full-time city letter carrier position. The duties required standing for two hours, sitting for six hours, and casing and hub work for two hours each. The modified position required reaching above the shoulder, simple grasping, bending, stooping, fine manipulation, and driving for up to eight hours.

On November 12, 2013 appellant accepted a different modified job offer, under protest. The duties required picking up Express Mail for one to two hours. The physical requirements were stated as driving for one to two hours, lifting 10 pounds for less than one hour, standing and walking for less than an hour.

According to a November 12, 2013 Web Electronic Search Process (WebESP) computer screen printout, appellant and her supervisor acknowledged, with their signatures, that work was not selected for her because it exceeded her restrictions.

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<sup>3</sup> The record reveals that OWCP accepted a traumatic injury claim for a February 25, 2002 crush injury of the left foot and left ankle sprain (File No. xxxxxx757). OWCP also accepted a September 15, 2004 injury for right wrist and ankle injury, (File No. xxxxxx345) and a February 12, 2008 injury for lumbar strain (File No. xxxxxx941).

Appellant came under the treatment of Dr. Linda Shu, a Board-certified internist, who in a November 15, 2013 report, indicated that appellant should work with restrictions of no lifting greater than 10 pounds, no repetitive bending or stooping, and no driving more than 10 miles, for the next three months due to hip pain.

On December 17, 2013 appellant accepted under protest a modified job offer as a mail carrier with duties of casing mail for half an hour to one hour and pulling down a route for half an hour. The physical requirements of the position involved bending, stooping, kneeling, pushing, pulling, standing, and walking for 1 hour and lifting less than 10 pounds for 45 minutes.

In a January 23, 2014 report, Dr. Shu opined that appellant should be off work from January 23 to February 28, 2014. She noted that appellant could return to work on March 1, 2014.

On the back of the recurrence claim form, appellant's supervisor, Michelle Lewis, noted a date of injury of February 12, 2008. She explained that after the original injury appellant worked under restrictions which only allowed her to work for 2.5 hours before being placed on stand-by time.<sup>4</sup> The supervisor related that on April 16, 2013 appellant sustained an accident at work when she tripped and fell. Appellant continued to work her modified-duty job of working 2.5 hours and then stand-by time. Ms. Lewis related that appellant brought in new restrictions that she could not drive more than 10 miles and could not work more than one hour, therefore, a new job offer was provided. She explained that the recurrence did not occur until November 12, 2013 when job searches through WebESP were started and appellant was sent home because of her restrictions and hours of work. Ms. Lewis noted that appellant did not believe that her back condition had changed, but that because of her April 16, 2013 work incident she needed new restrictions. She explained that the employing establishment continued to do work searches, but appellant was currently off work due to her restrictions.

On February 24, 2014 OWCP accepted appellant's claim for sprain of the lumbosacral joint ligament and contusion of the right hip.

By second letter dated February 24, 2014, OWCP advised appellant that if she were claiming a recurrence of disability, she would need to demonstrate that she sustained a spontaneous change in her accepted employment injury without an intervening injury or new exposure to factors causing the original injury or a withdrawal of a light-duty assignment made specifically to accommodate her condition due to the work-related injury. It requested that she submit additional evidence to establish her claim.

On March 10 and April 8, 2014 appellant also requested disability compensation for the period February 15 to April 4, 2014 due to the April 16, 2013 employment injury.

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<sup>4</sup> There is evidence in the record that suggests appellant had been offered the April 16, 2013 position due to a May 14, 2012 prearbitration settlement. She started work in that position on April 16, 2013. Appellant stopped work on November 16 until 20, 2013.

By letter dated March 12, 2014, OWCP informed appellant that it had received her claim for disability compensation for the period beginning February 16, 2014. It advised her to refer to the February 24, 2014 letter for evidence necessary to establish her recurrence claim.

In an April 3, 2014 report, Dr. Shu related that she had examined appellant on April 17, 2013 after appellant injured her back and right hip at work. She noted that appellant had a history of chronic back pain due to previous work injuries. Upon examination, Dr. Shu observed decreased range of motion in appellant's lower back and paraspinal muscles and weakness in her right leg. She reported that an October 15, 2013 x-ray of the hip revealed osteoarthritis of the hip, right greater than left. Dr. Shu indicated that appellant could not stand for long periods of time and could not bend or lift due to pain, which was required for her work duties. She concluded that appellant continued to be unable to work.

In a decision dated April 25, 2014, OWCP denied appellant's claims for recurrence of disability for the periods November 16 to 20, 2013 and February 16, 2014 and continuing as the evidence failed to establish disability due to a change or worsening of her accepted employment conditions. It noted that Dr. Shu's April 3, 2014 report diagnosed appellant with osteoarthritis of appellant's hips, and lumbar back pain and radiculopathy, likely secondary to neural foraminal compression, sacroilitis, and facet arthropathy, which were not accepted conditions.

On April 29, 2014 appellant, through her representative, disagreed with the decision and requested a telephone hearing before an OWCP hearing representative of the Branch of Hearings and Review.

Appellant continued to receive treatment from Dr. Shu. In reports dated August 29 to November 24, 2014, Dr. Shu noted that appellant had diagnoses of low back pain and right hip pain. She reported that appellant could not work from August 29, 2014 to January 12, 2015, but could return to work on January 13, 2015.

On November 12, 2014 a telephone hearing was held. Appellant's representative participated and testified that appellant had sustained three back injuries in her work history and described them. He related how she initially had a job offer dated April 16, 2013 that provided for four hours of work. On November 12, 2013 appellant's job was modified to allow for one to two hours of work that involved a single driving errand. Appellant's representative explained that this job offer was not included in the file, but he provided it for the record. He stated that the employing establishment withdrew all work from appellant between November 16 to 20, 2013 due to the implementation of a new WebESP that allowed for management to search for work for injured persons on line rather than directly. Appellant's representative also alleged that appellant had a valid recurrence claim under ECAB decision *Terry R. Hedman*.<sup>5</sup> He pointed out that the employing establishment clearly looked through work previously assigned in April 2013 and tried to find work on November 12, 2013 as a direct consequence of WebESP. The representative noted, however, that later appellant's doctor disabled appellant in April 3, 2013 and January 23, 2014 medical reports. He further asserted that her claim had been improperly developed.

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<sup>5</sup> 38 ECAB 222 (1986).

Upon direct examination, appellant explained that she was working limited duty due to a prior back injury when she was reinjured on April 16, 2013. She continued to work the same job she had been working until November 12, 2013 when the employing establishment changed her job offer. The hearing representative questioned whether the employing establishment changed the job because they were trying to accommodate work restrictions in this present case or one of appellant's previous cases. Appellant stated that she worked the modified job offer until November 16, 2013 when the employing establishment informed her that they did not have any work to accommodate her restrictions. The hearing representative noted that it was unclear whether she was claiming disability due to her present condition changing and worsening, or whether she was claiming disability because the employing establishment withdrew a job assignment created to accommodate a previously accepted back injury. Appellant responded that when she returned to work on November 20, 2013 she returned to the job that was changed on November 12, 2013. She stopped working in January 2014 because her hip condition was worsening the longer that she stood. Appellant noted that the buildings had concrete floors and that when she stood to case the mail she had to walk and get mail and then return.

In a December 3, 2014 report, Dr. Shu noted that appellant had been a patient for many years for diagnoses of chronic low back pain, herniated disc, degenerative spondylosis, bilateral hip arthritis, sacroiliac joint pain, trochanteric bursitis, and history of vertebral fracture. She explained that because of these chronic conditions, which caused constant lower back and leg pain, appellant was unable to sit for more than a couple of hours, to stand for more than 30 minutes, and to walk for more than a few blocks. Dr. Shu reported that this made it impossible for appellant to do full duty as a city letter carrier. Examination of appellant's low back revealed tenderness over her paraspinal muscles in the lower lumbar area, sacroiliac joints, and in her groin. Dr. Shu observed that range of motion was decreased to approximately 75 degrees due to pain. She explained that appellant's conditions were chronic despite treatments such as physical therapy, pain medications, and injections and would continue to limit appellant's ability to do full work as a city letter carrier ever in the future.

By decision dated January 22, 2015, an OWCP hearing representative affirmed the April 25, 2014 denial decision, finding that appellant had failed to establish a recurrence of disability.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA bears the burden of proof to establish the essential elements of his or her claim by the weight of the evidence. For each period of disability claimed, the employee must establish that she was disabled for work as a result of the accepted employment injury.<sup>6</sup>

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-

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<sup>6</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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>7</sup> Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing April 2012 and her accepted employment injury.<sup>8</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 employment factors and supports that conclusion with sound medical reasoning.<sup>9</sup>

Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of reliable, probative, and substantial medical opinion evidence.<sup>10</sup> Findings on examination and a physician's opinion, supported by medical rationale, are needed to show how the injury caused the employee disability for her particular work.<sup>11</sup> For each period of disability claimed, the employee must establish that she was disabled for work as a result of the accepted employment injury. The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of 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.<sup>12</sup>

### ANALYSIS

OWCP accepted that on April 16, 2013 appellant sustained a lumbar sprain and right hip contusion as a result of falling down at work. Appellant continued to work modified duty. She stopped work on November 16, 2013 and returned to work on November 20, 2013. Appellant requested disability compensation for that period alleging that she was sent home because management did not accommodate her restrictions. She further claimed a recurrence of disability as of February 15, 2014 and continuing.

The Board finds that appellant failed to establish that she was unable to work from November 16 to 20, 2013 due to her April 16, 2013 work injury. The only medical evidence of record that addresses this time period is a November 15, 2013 report by Dr. Shu, who noted that appellant should work with restrictions of no lifting greater than 10 pounds, no repetitive bending or stooping, and no driving more than 10 miles. She noted that these restrictions were due to appellant's hip pain. Dr. Shu did not provide any objective evidence that these restrictions were necessary due to appellant's accepted April 16, 2013 employment injury. Work restrictions

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<sup>7</sup> 20 C.F.R. § 10.5(x).

<sup>8</sup> *Dominic M. Descaled*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>9</sup> *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>10</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

<sup>11</sup> *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>12</sup> *Amelia S. Jefferson*, *supra* note 10.

must be based upon objective evidence, not subjective complaints.<sup>13</sup> While the employing establishment was unable to offer appellant work within these restrictions, she did not establish that these restrictions were required due to the April 16, 2013 employment injury. The Board also notes that Dr. Shu did not report that appellant was totally disabled from work, but rather that she required work restrictions. Accordingly, the Board finds that appellant has not established disability from November 16 to 20, 2013 as a result of her original April 16, 2013 employment injury.

Appellant also alleged that she was disabled from work beginning February 15, 2014 because her hip condition had worsened to the extent that she was no longer able to work modified duty. The Board finds that she has failed to provide sufficient medical evidence to establish disability as a result of the original April 16, 2013 accepted employment injury.

Appellant submitted various medical reports dated January 23 to April 3, 2014 from Dr. Shu, which noted the April 16, 2013 work injury. Dr. Shu reviewed appellant's history of chronic back pain, provided findings on examination, and reported that appellant could not stand for long periods of time and could not bend or lift due to pain. In a January 23, 2014 report, she concluded that appellant was unable to work from January 23 to February 28, 2014. In reports dated August 29 to November 29, 2014, Dr. Shu noted appellant's diagnoses of low back and right hip pain and opined that appellant remained unable to work. On December 3, 2014 she reported that appellant had received treatment for diagnoses of chronic low back pain, herniated disc, degenerative spondylosis, bilateral hip arthritis, sacroiliac joint pain, trochanteric bursitis, and history of vertebral fracture. Dr. Shu explained that because of these chronic conditions, which caused constant lower back and leg pain, appellant was unable to sit for more than a couple of hours, to stand for more than 30 minutes, and to walk for more than a few blocks. She reported that this made it impossible for appellant to do full duty as a city letter carrier.

The Board notes that Dr. Shu provided an accurate history and findings on examination. Dr. Shu noted that appellant had received treatment for various conditions including low back pain, herniated disc, degenerative spondylosis, bilateral hip arthritis, sacroiliac joint pain, trochanteric bursitis, and history of vertebral fracture. She explained that due to appellant's restrictions she was unable to work as a city letter carrier. The Board notes that Dr. Shu attributed appellant's disability to various conditions, but not to the specified accepted conditions from the April 16, 2013 employment injury. The Board has found that, when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of FECA.<sup>14</sup> As well, Dr. Shu failed to explain how appellant's disability from work commencing February 15, 2014 was causally related to her April 16, 2013 injury. On the other hand, she attributed appellant's disability to various back and hip conditions. The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician, who on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to his or her employment injury

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<sup>13</sup> See *B.A.*, Docket No. 13-1257 (issued November 7, 2013).

<sup>14</sup> *A.M.*, Docket No. 09-1895 (issued April 23, 2010).

and supports that conclusion with sound medical reasoning.<sup>15</sup> As these reports fail to meet that standard, they are insufficient to establish appellant's claim.

On appeal, appellant alleges that she sustained a serious amount of back disability for many years, which was exacerbated by her April 16, 2013 work injury. She asserts that her doctor clearly documented her current injury, its mechanism of injury as arising from her fall at work, and her current disabling diagnoses. As noted above, however, Dr. Shu's reports fail to adequately explain how appellant was disabled from November 16 to 20, 2013 and beginning February 15, 2014 as a result of the accepted April 16, 2013 employment injury.

Further, the Board finds that appellant's light-duty position was not withdrawn due to her work-related condition; rather it was additional nonwork related restrictions which required the position to be withdrawn.<sup>16</sup>

Therefore, the Board finds that appellant has failed to establish a recurrence of disability from November 16 to 20, 2013 and from February 15, 2014 and continuing causally related to the original April 16, 2013 employment injury.

Appellant may submit new evidence or argument as part of a formal 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 did not establish a recurrence of disability from November 16 to 20, 2013 and from February 15, 2014 and continuing as a result of her April 16, 2013 employment injury.

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<sup>15</sup> *V.L.*, Docket No. 12-1444 (issued November 27, 2012); *see also R.D.*, Docket No. 11-1551 (issued August 8, 2012).

<sup>16</sup> *Supra* note 7.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 22, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 2, 2016  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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