



mid to lower back pushing a mail container with a faulty brake. OWCP accepted the claim for a left middle and lower back strain. Appellant stopped work on May 30, 2013 and returned to part-time, modified employment on December 13, 2013.

In a report dated May 1, 2014, Dr. John K. Czerwein, an attending Board-certified orthopedic surgeon, released appellant to resume his usual employment on May 22, 2014.<sup>2</sup> Appellant returned to his regular work without restrictions on May 22, 2014.

In a report dated June 23, 2014, Dr. Czerwein indicated that appellant returned to work and appeared “to have reaggravated that left paraspinal thoracic muscular area.” He noted that appellant had not worked for four days and found that he should remain off work until reevaluated on July 17, 2014.

On June 30, 2014 appellant filed a claim for recurrence of disability beginning June 19, 2014, causally related to his May 16, 2013 employment injury. He related that he awakened on July 20, 2014 unable to ease his back and shoulder tension. In a July 9, 2014 statement, appellant claimed that his pain was in the same area as his original injury. He stated that he was performing his regular duties and “must have posted something that reaggravated it.”

In a report dated July 16, 2014, Dr. Michel A. Arcand, a Board-certified orthopedic surgeon, evaluated appellant for possible snapping scapula of the left shoulder. He related, “[Appellant] states that when this first happened he had [a] workers’ compensation injury he had numbness and was not even able to feel a cup in his hand.” Dr. Arcand diagnosed possible tendinitis of the levator scapulae or possible cervical osteoarthritis with radiating pain. He recommended a scapular injection to see if appellant’s symptoms lessened.

On July 17, 2014 Dr. Czerwein advised that appellant was unable to work pending a magnetic resonance imaging (MRI) scan study.<sup>3</sup>

In a telephone call dated August 8, 2014, appellant informed OWCP that he also injured his shoulder and neck at the time of his injury. OWCP advised him to submit supporting medical evidence.

By decision dated August 28, 2014, OWCP found that appellant had not established a recurrence of disability as a result of his accepted work injury. It determined that the medical evidence was insufficient to show that he sustained left scapular bursitis and tendinitis, a snapping scapular, or cervical osteoarthritis due to his May 16, 2013 employment injury. OWCP further determined that it appeared appellant may be claiming a new occupational disease attributed to repetitive work exposure over the course of more than one work shift, or a new traumatic injury claim caused by a specific event or series of events within a single day or work shift.

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<sup>2</sup> In reports dated February 19 and March 20, 2014, Dr. Gilbert Shapiro, a Board-certified orthopedic surgeon and OWCP referral physician, found that appellant had no objective findings of his accepted work injury and advised that he could return to his usual employment.

<sup>3</sup> On July 15, 2014 Dr. Keith Perry, a Board-certified anesthesiologist, performed a steroid injection at the medial and superior edge of the scapula.

On September 15, 2014 appellant requested reconsideration.

In a progress report dated July 17, 2014, received by OWCP on October 14, 2014, Dr. Czerwein evaluated appellant for “ongoing left upper paraspinal thoracic/left lower paraspinal cervical pain.” He discussed his complaints of weakness in his left hand. Dr. Czerwein recommended a cervical MRI scan study.

In a progress report dated August 20, 2014, Dr. Arcand diagnosed a possible snapping scapula and possible scapular tendinitis. He recommended a cervical spine MRI scan study. In a note dated August 28, 2014, Dr. Arcand related, “I think that [appellant’s] neck injury is a result of his initial work injury, which is why he requires an MRI [scan] of his cervical spine.”

On September 15, 2014 Dr. Czerwein recommended a cervical MRI scan study to see whether appellant had cervical radiculopathy or a snapping scapula. In a progress report dated September 17, 2014, Dr. Arcand diagnosed a possible snapping scapula and rhomboid tendinitis.

In a disability certificate dated October 9, 2014, Dr. Czerwein found that appellant was unable to work pending authorization for the cervical MRI scan study.<sup>4</sup>

In a decision dated October 29, 2014, OWCP denied modification of its August 28, 2014 decision.

An October 14, 2014 MRI scan study of the cervical spine, received by OWCP on November 10, 2014, showed a left paracentral disc protrusion at C6-7 moderately to severely narrowing the left neural foramen and mildly indenting the thecal sac. It also showed straightening of the cervical lordosis and mild foraminal narrowing at the right at C4-5.

On October 27, 2014 Dr. Czerwein determined that appellant was not able to work pending an electromyogram (EMG). In a progress report dated January 15, 2015, he again recommended an EMG study.

On July 9, 2015 appellant, through counsel, requested reconsideration and, in support of his request, submitted a June 4, 2015 report from Dr. Czerwein. Counsel advised that a cervical spine MRI scan was positive at C4-5 and C6-7 and an EMG showed radiculopathy. He asserted that Dr. Czerwein found that appellant’s May 16, 2013 work injury aggravated the cervical pathology and requested expansion of his claim.

In a June 4, 2015 report, Dr. Czerwein related that he had treated appellant “for quite some time now for his thoracic strain/sprain from his work-related injury.” He discussed the results of diagnostic testing and opined:

“[Appellant] failed conservative measures from a muscular standpoint for this thoracic pain, and it is related to C6 dermatomal pain that radiates down into the left scapular area, particularly with a positive EMG. He had these underlying changes prior to the accident, but they were exacerbated and/or aggravated by the

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<sup>4</sup> On October 8, 2014 appellant’s counsel resubmitted his reconsideration request.

work-related injury, which is why, in my opinion, this C5-6 and C6-7 anterior cervical discectomy and fusion with instrumentation is necessary to cure, relieve, and/or rehabilitate [appellant] from his symptoms.”

By decision dated October 14, 2015, OWCP denied modification of the October 29, 2014 decision. It found that Dr. Czerwein did not support his opinion that appellant sustained an aggravation of a preexisting condition due to the accepted work injury with medical rationale.

On appeal appellant’s counsel argues that the evidence submitted supports his claim.

### **LEGAL PRECEDENT**

When appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician, who on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports this conclusion with sound medical reasoning.<sup>5</sup>

Section 10.5(x) of OWCP’s regulations provides in pertinent part:

“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.”<sup>6</sup>

### **ANALYSIS**

OWCP accepted that appellant sustained a strain of the left middle and lower back on May 16, 2013. Appellant stopped work on May 30, 2013 and returned to limited-duty employment on December 13, 2013 and to his regular employment on May 22, 2014. He filed a notice of recurrence of disability beginning June 19, 2014 as a result of his May 16, 2013 work injury.

Initially, the Board notes that appellant maintained that he aggravated his condition performing his usual work duties. Appellant indicated that his pain was in the same area as his original injury. A recurrence of disability, however, is an inability to work caused by a spontaneous change in an accepted medical condition without an intervening injury or new exposure in the work environment.<sup>7</sup> Any disability resulting from a condition aggravated by employment duties would be considered a new injury rather than a recurrence of disability.

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<sup>5</sup> *Ricky S. Storms*, 52 ECAB 349 (2001); *Helen Holt*, 50 ECAB 279 (1999).

<sup>6</sup> 20 C.F.R. § 10.5(x).

<sup>7</sup> *Id.* at 10.5(x); *see also J.H.*, Docket No. 15-0058 (issued May 1, 2015).

The Board finds that the medical evidence is insufficient to show that appellant became disabled beginning June 19, 2014 causally related to his accepted May 16, 2013 employment injury. In a report dated June 23, 2014, Dr. Czerwein indicated that appellant appeared to aggravate the area of his left thoracic musculature after he returned to work. He opined that he should not work until his next evaluation. As discussed, a recurrence of disability does not include disability resulting from exposure to new work factors.<sup>8</sup> Additionally, Dr. Czerwein's finding that appellant seemed to have aggravated his thoracic muscles at work is couched in speculative terms and thus of diminished probative value.<sup>9</sup>

In his July 16, 2014 report, Dr. Arcand evaluated appellant for possible snapping scapula of the left shoulder. He related that appellant initially had problems after an injury at work. Dr. Arcand diagnosed possible tendinitis of the lavatory scapulae or possible cervical osteoarthritis with radiating pain. He did not, however, provide a firm diagnosis, specifically discuss causation, or address whether appellant was disabled from employment; consequently, his report is of little probative value.<sup>10</sup>

In the progress report dated August 20, 2014, Dr. Arcand diagnosed a possible snapping scapula and possible scapular tendinitis and recommenced a cervical MRI scan study. As he did not address causation or disability, his report is insufficient to meet appellant's burden of proof.<sup>11</sup>

On August 28, 2014 Dr. Arcand attributed appellant's neck condition and resulting need for a cervical MRI scan study to his employment injury. OWCP, however, had not accepted a cervical condition due to the original work injury. Where appellant claims that a condition not accepted or approved by OWCP was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.<sup>12</sup> Dr. Arcand did not provide any rationale for his opinion that the work injury caused or aggravated a cervical condition. Medical conclusions unsupported by rationale are of little probative value.<sup>13</sup>

In his progress report dated July 17, 2014, Dr. Czerwein discussed appellant's complaints of pain in the left upper thoracic spine and left lower cervical spine and found that he was unable to work pending a cervical MRI scan study. He again recommended a cervical MRI scan study

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<sup>8</sup> *Id.*

<sup>9</sup> *Rickey S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

<sup>10</sup> *See A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of little probative value on the issue of causal relationship); *Carol A. Lyles*, 57 ECAB 265 (2005) (whether a particular injury caused an employee disability from employment is a medical issue which must be resolved by competent medical evidence).

<sup>11</sup> *Id.*

<sup>12</sup> *See X.J.*, Docket No. 15-1776 (issued December 10, 2015).

<sup>13</sup> *Willa M. Frazier*, 55 ECAB 379 (2004); *Jimmy H. Duckett*, 52 ECAB 332 (2001).

on September 15, 2014. In a progress report dated September 17, 2014, Dr. Arcand diagnosed possible snapping scapula and rhomboid tendinitis. On October 27, 2014 Dr. Czerwein opined that appellant was disabled from work until he underwent an EMG. In a progress report dated January 15, 2015, he again recommended an EMG study. As neither physician addressed causation, the progress reports are insufficient to meet appellant's burden of proof.<sup>14</sup>

On June 4, 2015 Dr. Czerwein discussed his treatment of appellant for thoracic strain and sprain due to his employment injury. He indicated that he had pain radiating into his left scapula from C6, as supported by a positive EMG study. Dr. Czerwein opined that appellant had preexisting changes to the area that were aggravated by the employment injury. He recommended a discectomy and fusion at C5-6 and C6-7. Dr. Czerwein, however, did not provide any rationale in support of his finding that the work injury aggravated a preexisting condition. A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof.<sup>15</sup>

On appeal appellant maintains that the evidence supports his claim. He has the burden, however, to submit supporting evidence from a physician who, considering his factual and medical history, finds that the condition is due to the accepted work injury and bolsters this opinion with sound medical reasoning.<sup>16</sup> Appellant failed to submit such evidence and thus did not meet his burden of proof.

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 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established a recurrence of disability on June 19, 2014 causally related to his May 16, 2013 employment injury.

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<sup>14</sup> See *supra* note 10.

<sup>15</sup> See *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>16</sup> See *Ricky S. Storms*, *supra* note 9.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 14, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 16, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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