



turning, and lifting caused a herniated lumbar disc.<sup>2</sup> OWCP accepted aggravation of preexisting low back strain on November 17, 2006. In an August 22, 2007 decision, it denied appellant's claim for compensation for the period November 4 to December 4, 2006.

In September 2011, appellant's attending physician, Dr. Marshall McHenry, a Board-certified internist, forwarded treatment notes dated February 27, 2004 to April 1, 2011. He diagnosed lumbar disc disease on June 10, 2005. In a report dated June 20, 2011, Dr. McHenry noted seeing appellant for complaints of bilateral foot pain and right shoulder discomfort after arthroscopy. On November 11, 2011 he noted that he had begun treating appellant for back strain in April 2006 and that a magnetic resonance imaging (MRI) scan demonstrated mild disc desiccation at L5-S1. Dr. McHenry noted that appellant was still having a lot of lumbar pain and discomfort.

OWCP referred appellant to Dr. E. Gregory Fisher, a Board-certified orthopedic surgeon, in June 2012. In a June 29, 2012 report, Dr. Fisher noted the history of injury, his review of the medical record including MRI scans in 2006 and 2011,<sup>3</sup> and appellant's report that he worked as a mail processing clerk with restrictions and had constant, radiating low back pain, but was able to perform activities of daily living. Appellant complained of generalized discomfort and tenderness over the lumbar and sacral areas and over each buttock. Physical examination showed a normal gait. He had no muscle spasms, muscle guarding, or trigger points over the lumbar or sacral regions, but complained of pain with range of motion. Motor examination of the lower extremities was 5/5. Sensory examination was intact to light touch. Dr. Fisher advised that the accepted aggravation of preexisting lumbar strain had healed without residuals, noting no objective clinical findings of lumbar strain. He opined that any continued low back complaints were due to the nonemployment-related degenerative disc disease over L5-S1 and that, in regard to the accepted condition, appellant could perform full duties as a mail processing clerk, but had restrictions due to the degenerative disc disease.

On September 14, 2015 appellant filed claims for compensation for the period August 18 to September 4, 2015. An attached time analysis form indicated that he stopped work on August 18, 2015. By letter dated September 18, 2015, OWCP informed appellant of the evidence needed to support his compensation claim. On September 25, 2015 appellant filed a claim for recurrence of disability (Form CA-2a). He alleged that he had sustained a recurrence of disability on July 14, 2015 and stopped work on August 14, 2015. Appellant reported that he had surgery on September 3, 2015.

A lumbar MRI scan dated August 20, 2015, submitted on November 2, 2015, demonstrated disc extrusion at L2-3, unchanged mild-to-moderate spinal canal stenosis at L3-4, and unchanged mild-to-moderate multilevel bilateral neural foraminal stenosis. In an August 28, 2015 treatment note, Dr. Mark Magner, a neurosurgeon, noted a history of severe pain radiating into the left lower extremity of no known cause. He reviewed the imaging study reports and discussed physical examination findings. Dr. Magner's diagnoses included cervical disc disorder and herniation of lumbar intervertebral disc with radiculopathy. He advised that the extruded

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<sup>2</sup> The record includes modified assignments dated March 22, 2007 and August 23, 2010.

<sup>3</sup> Copies of the MRI scan reports are not found in the case record before the Board.

disc at L2-3 caused severe stenosis and severe radiculopathy into both legs. Dr. Magner indicated that appellant wished to proceed with recommended microdiscectomy surgery.

On September 3, 2015 Dr. Magner performed left microdiscectomy surgery at L2-3. In an undated report received by OWCP on October 27, 2015 he noted that he had last seen appellant on October 13, 2015. Dr. Magner indicated that appellant's diagnoses of lumbar intervertebral disc disorder with radiculopathy and cervical spondylosis with myelopathy or radiculopathy limited his ability to work.

By decision dated November 2, 2015, OWCP denied that appellant sustained a recurrence of disability on August 18, 2015 and continuing. It noted that Dr. Magner advised that appellant could not work due to conditions that had not been accepted under this claim and failed to explain how these diagnoses were related to factors of employment or the accepted lumbar strain.

### **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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>4</sup> This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>5</sup>

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.<sup>6</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>4</sup> 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

<sup>5</sup> *Id.*

<sup>6</sup> *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>7</sup>

### ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish a recurrence of disability on August 18, 2015 causally related to the accepted aggravation of a preexisting lumbar strain. Appellant was initially treated by Dr. McHenry who indicated that appellant had lumbar pain. Subsequently, he was seen by Dr. Fisher a second opinion physician who advised that the accepted aggravation had resolved, but had restrictions due to the underlying degenerative disc disease. The record does not indicate that appellant has returned to work since the claimed recurrence.

The medical evidence submitted subsequent to the claimed recurrence includes a lumbar MRI scan dated August 20, 2015. The Board has long held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>8</sup>

In his August 28, 2015 treatment note, Dr. Magner, a neurosurgeon, noted a history of severe pain radiating into the left lower extremity of no known cause. He reviewed the imaging study reports and discussed physical examination findings. Dr. Magner's diagnoses included cervical disc disorder and herniation of lumbar intervertebral disc with radiculopathy. He advised that the extruded disc at L2-3 caused severe stenosis and severe radiculopathy into bilateral legs. Dr. Magner indicated that appellant wished to proceed with recommended microdiscectomy surgery. On September 3, 2015 he performed left microdiscectomy surgery at L2-3. In an undated report received by OWCP on October 27, 2015, Dr. Magner noted that he had last seen appellant on October 13, 2015. He indicated that appellant's diagnoses of lumbar intervertebral disc disorder with radiculopathy and cervical spondylosis with myelopathy or radiculopathy limited his ability to work.

Although Dr. Magner advised that appellant could not work, he advised that this was caused by intervertebral disc disease of the cervical and lumbar spines, conditions that have not been accepted. He provided no opinion regarding whether appellant was disabled due to the accepted aggravation of lumbar strain and exhibited no knowledge of the modified duties he was performing when he stopped work. Dr. Manger's opinion is insufficient to establish a recurrence of disability on August 18, 2015.

Medical opinion evidence submitted by appellant to support a claim for compensation should reflect a correct history and should offer a medically sound explanation by Dr. Magner of how the modified duties appellant was performing when he stopped work on August 15, 2015

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<sup>7</sup> S.S., 59 ECAB 315 (2008).

<sup>8</sup> Willie M. Miller, 53 ECAB 697 (2002).

physiologically caused or aggravated the accepted aggravation of lumbar strain.<sup>9</sup> Appellant submitted no such evidence in this case.

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>10</sup> Dr. Magner provided insufficient rationale. His opinion, therefore, is of diminished probative value.<sup>11</sup>

As appellant did not submit sufficient medical evidence to establish a recurrence of disability on August 18, 2015 causally related to accepted aggravation of lumbar strain, he did not meet his burden of proof.<sup>12</sup>

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 did not meet his burden of proof to establish a recurrence of disability on August 18, 2015 causally related to an April 20, 2006 employment injury.

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<sup>9</sup> *Supra* note 7.

<sup>10</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001).

<sup>11</sup> *See T.M.*, Docket No. 08-975 (issued February 6, 2009).

<sup>12</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 2, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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