



## ISSUE

The issue is whether appellant has established a recurrence of disability on or after October 4, 2015 as a result of her June 26, 2013 accepted work injuries.

## FACTUAL HISTORY

On June 27, 2013 appellant, then a 61-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on June 26, 2013 she tripped on a mat causing her to wrench her back. OWCP accepted the claim for lumbar sprain, temporary aggravation of L5 radiculopathy, temporary aggravation of degenerative disc disease, and temporary aggravation of L3-L4 disc bulge. Appellant stopped work on the date of injury. She received compensation benefits on the supplemental and periodic rolls from August 15, 2013 to April 4, 2015.

On October 29, 2014 appellant underwent the removal of hardware at L4-L5 with decompression and L3-L4 posterior lumbar interbody fusion (PLIF) and posterior lateral fusion by Dr. William Muir, Board-certified in orthopedic surgery. OWCP approved both the lumbar spine and disc surgery. The claim was later expanded to include the accepted conditions of lumbar sprain, lumbosacral radiculitis, degeneration of lumbar intervertebral disc, and displacement of lumbar intervertebral disc without myelopathy.

Per Dr. Muir's instructions, appellant was released to work with permanent light-duty restrictions on March 28, 2015. She accepted a limited-duty assignment, effective March 30, 2015, which restricted her to intermittent walking, standing, lifting, pushing, and pulling, and no twisting at the waist or bending/stooping.

In a September 16, 2015 report, Dr. Muir noted complaints of numbness in the right thigh and back pain. He noted postoperative findings of persistent L5 radiculopathy and chronic L5 sensory radiculopathy significantly worsened after the June 2013 injury. Dr. Muir requested a magnetic resonance imaging (MRI) scan of the lumbar spine.

In an October 1, 2015 diagnostic report, Dr. Bhuvana P. Kittusamy, a Board-certified diagnostic radiologist, reported that the lumbar spine MRI scan revealed L2-L3 broad-based posterior disc osteophyte complex including central disc protrusion with ligamentum flavum and facet joint hypertrophic changes causing mild-to-moderate narrowing of the lateral recess and neural foramina; L3-L4 postsurgical changes with posterior hypertrophic and facet joint hypertrophic changes causing moderate bilateral neural foraminal narrowing; L4-L5 postsurgical changes with posterior hypertrophic and facet joint hypertrophic changes; postsurgical changes in the posterior elements and posterior paraspinal soft tissues at L4-L5 and L5-S1 and mild soft tissue enhancement likely representing scar tissue; L5-S1 broad-based posterior annular bulge with ligamentum flavum and facet joint hypertrophic changes; and posterior intervertebral disc abnormalities from T10-T11 to T12-L1 which were only seen in the sagittal images.

In an October 8, 2015 medical report, Dr. Muir reported that review of the October 1, 2015 lumbar spine MRI scan revealed right foraminal disc herniation at L2-3. He recommended

a right-sided discectomy at L2-L3 and restricted appellant from working due to disc herniation requiring surgery and progressive loss of strength and sensation.

In an October 8, 2015 attending physician's report (Form CA-20), Dr. Muir reported findings of lumbar stenosis, lumbar radiculitis, and lumbar postlaminectomy syndrome. He noted prior treatment on October 29, 2014 for hardware removal at L4-L5 and lumbar fusion. Dr. Muir diagnosed lumbar degenerative disc disease and lumbar disc displacement without myelopathy. He checked the box marked "yes" when asked if the condition was caused or aggravated by the employment activity, noting the slip and fall back injury on the job in June 2013. Dr. Muir restricted appellant from walking, standing, lifting up to 10 pounds, kneeling, and using stairs. He reported that she was to remain off work until November 20, 2015. An October 8, 2015 work capacity evaluation (OWCP-5c) form was also submitted providing appellant restrictions.

On October 16, 2015 appellant filed a claim for compensation (Form CA-7) for leave without pay beginning October 4, 2015 and continuing.

By letter dated November 16, 2015, OWCP informed appellant that the evidence of record was insufficient to support her recurrence claim beginning October 4, 2015. It noted that her Form CA-7 claiming compensation for the period beginning October 4, 2015 appeared to be claiming disability due to a material change/worsening of her accepted work-related conditions. Appellant was advised of the medical and factual evidence necessary to support a recurrence claim and was afforded 30 days to submit the additional evidence.

On November 12, 2015 appellant filed a notice of recurrence (Form CA-2a) alleging a return/increase of disability as of October 4, 2015. She reported that she was on limited duty and was required to monitor an exit, which entailed a lot of walking. Appellant explained that after returning to work she used her cane to walk, but experienced pain. She reported that in August 2015 she was bending and felt pain radiate down her thigh which did not subside. Appellant stated that her physician informed her that she had a new herniated disc which could weaken and reoccur. He provided her permanent restrictions noting that she could never return to full duty.

In a November 17, 2015 Form CA-20, Dr. Muir restricted appellant from working until December 20, 2015.

In a November 17 and December 15, 2015 medical report, Dr. Muir reported that appellant sustained a right foraminal disc herniation at L2-L3 as evidenced by physical examination and an October 1, 2015 MRI scan of the lumbar spine. He recommended a right-sided discectomy at L2-3 due to progressive weakness and pain. Dr. Muir further reported that appellant was unable to work due to disc herniation requiring surgery and progressive loss of strength and sensation.

By decision dated December 23, 2015, OWCP denied appellant's recurrence claim as the medical evidence failed to establish that her alleged disability beginning October 4, 2015 was due to a material change/worsening of her accepted work-related conditions.

## 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>3</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.<sup>4</sup>

OWCP procedures provide 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 a 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>5</sup>

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish, 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 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>6</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>7</sup>

## ANALYSIS

OWCP accepted appellant's claim for a sprain of the back lumbar region, lumbosacral radiculitis, degeneration of lumbar intervertebral disc, and displacement of lumbar intervertebral disc without myelopathy. On October 29, 2014 appellant underwent removal of hardware at L4-L5 with decompression and L3-L4 PLIF and posterior lateral fusion which was approved by OWCP. She stopped work on the date of injury and returned to full duty with restrictions on March 30, 2015. The issue is whether appellant has established a recurrence of total disability beginning October 4, 2015 and continuing causally related to her accepted June 26, 2013 injuries.

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<sup>3</sup> 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

<sup>4</sup> *Id.*

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013). *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

<sup>6</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>7</sup> *Mary A. Ceglia*, Docket No. 04-113 (issued July 22, 2004).

Appellant has not alleged a change in her light-duty job requirements. Instead, she attributed her inability to work to a change in the nature and extent of her employment-related conditions. Appellant, therefore, has the burden of proof to provide medical evidence to establish that she was disabled due to a worsening of her accepted work-related conditions.<sup>8</sup> She filed claims for compensation for the period beginning October 4, 2015 alleging that she was totally disabled due to her accepted June 26, 2013 employment injuries. However, appellant did not submit probative medical evidence demonstrating total disability for this period of time due to her accepted conditions. The Board finds that she has not met her burden of proof to establish her recurrence claim.

In medical reports dated September 16 through December 15, 2015, Dr. Muir treated appellant for complaints of numbness in the right thigh and back pain. He noted that an October 1, 2015 MRI scan of her lumbar spine revealed right foraminal disc herniation at L2-L3 and recommended a right-sided discectomy at L2-3. Dr. Muir restricted appellant from working beginning October 8, 2015 due to disc herniation requiring surgery and progressive loss of strength and sensation.

The Board finds that the opinion of Dr. Muir is insufficiently rationalized. The reports of Dr. Muir fail to provide sufficient medical rationale to establish total disability due to a recurrence. Dr. Muir did not relate appellant's L2-L3 right foraminal disc herniation to her June 26, 2013 employment injuries or residuals of the October 29, 2014 lumbar surgery, nor did he provide adequate bridging evidence to show a spontaneous worsening of the accepted conditions.<sup>9</sup> His lack of explanation makes it unclear if the October 1, 2015 MRI scan findings are the result of a preexisting nonoccupational condition, caused by a new injury from appellant's limited-duty assignment, or due to a recurrence of disability.<sup>10</sup> While Dr. Muir found her disabled as a result of the L2-L3 disc herniation, he failed to provide the required link relating the disability to her previously accepted work injuries to establish a spontaneous worsening of the accepted conditions.<sup>11</sup>

On his Form CA-20 Dr. Muir restricted appellant from returning to work and checked the box marked "yes" when asked if her condition was caused or aggravated by the employment activity, noting the slip and fall back injury on the job in June 2013. However, the Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the work condition caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.<sup>12</sup> Although Dr. Muir generally supported that appellant's continued symptoms were a result of her occupational lumbar injuries, his opinion on

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<sup>8</sup> *D.L.*, Docket No. 13-1653 (issued November 22, 2013).

<sup>9</sup> *J.H.*, Docket No. 14-775 (issues July 14, 2014).

<sup>10</sup> *P.O.*, Docket No. 14-1675 (issued December 3, 2015).

<sup>11</sup> *T.M.*, Docket No. 06-440 (issued August 7, 2006).

<sup>12</sup> See *Calvin E. King, Jr.*, 51 ECAB 394 (2000); see also *Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

causal relationship was conclusory as to how the conditions caused disability or remained symptomatic.<sup>13</sup>

Dr. Muir restricted appellant from standing, walking, lifting up to 10 pounds, kneeling, stooping, and using stairs. He reported that appellant's progressive loss of strength and sensation, and need for surgery, rendered her unable to return to work. While Dr. Muir generally explained appellant's inability to work, he failed to relate the L2-L3 disc herniation to her accepted conditions to establish total disability.<sup>14</sup> He did not discuss her limited-duty assignment to profess some knowledge as to why she could not work for the claimed periods. The Board has held that a medical opinion that is not fortified by rationale is of diminished probative value.<sup>15</sup>

OWCP also received an October 1, 2015 MRI scan report from Dr. Kittusamy. This diagnostic report, however, did not address disability or causal relationship and was therefore of limited probative value.<sup>16</sup>

Appellant did not submit any medical reports from a physician who, on the basis of a complete and accurate factual and medical history, concluded that she was totally disabled on or after October 4, 2015 due to residuals of her accepted injuries.<sup>17</sup> She failed to establish by the weight of the reliable, probative, and substantial evidence, a change in the nature and extent of the injury-related condition resulting in her inability to perform her employment duties.

As appellant has not submitted medical evidence establishing a recurrence of disability on or after October 4, 2015 due to her accepted employment injuries, the Board finds that she has not met her burden of proof.<sup>18</sup> For the reasons stated above, OWCP's denial of the claimed compensation for disability was proper under the law and facts of the case.<sup>19</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.

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<sup>13</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>14</sup> *R.A.*, Docket No. 14-1327 (issued October 10, 2014).

<sup>15</sup> *Cecilia M. Corley*, 56 ECAB 662 (2005).

<sup>16</sup> See *S.B.*, Docket No. 13-1162 (issued December 12, 2013).

<sup>17</sup> The Board notes that appellant could be entitled to wage-loss compensation for attending medical appointments on or after October 4, 2015. If a claimant has returned to work following an accepted injury or the onset of an occupational disease and must leave work and lose pay or use leave to undergo treatment, examination or testing for the accepted condition, compensation should be paid for wage loss under section 8105 of FECA, while undergoing the medical services and for a reasonable time spent traveling to and from the location where services were rendered. 5 U.S.C. § 8105. For a routine medical appointment, a maximum of four hours of compensation is usually allowed. See FECA Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.19 (February 2013). See also *William A. Archer*, 55 ECAB 674 (2004).

<sup>18</sup> *J.G.*, Docket No. 13-737 (issued October 29, 2013).

<sup>19</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish a recurrence of total disability on or after October 4, 2015, causally related to her accepted employment injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 23, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 18, 2016  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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