



reported that she was putting a tray of mail in the employing establishment vehicle and felt low back pain. Appellant did not initially stop working. OWCP accepted the claim on September 2, 2005 for a lumbar sprain/strain. The record indicates that appellant filed intermittent claims for wage-loss compensation commencing September 10, 2010. OWCP paid intermittent compensation through March 1, 2012.

Appellant submitted treatment reports from Dr. Douglas Bostick, III, a Board-certified orthopedic surgeon. In a report dated May 22, 2014, Dr. Bostick indicated that appellant was treated for low back pain and bilateral hip pain, worse with prolonged standing or walking. The history noted that appellant had been diagnosed in 2012 with a medial meniscus tear and underwent arthroscopic right knee surgery in 2012. Dr. Bostick submitted a report dated October 16, 2014 indicating appellant was treated for hip pain. He noted that appellant had a “history of trauma from a work-related injury.” By report dated May 18, 2015, Dr. Bostick reported that appellant complained of low back pain with radiation into both legs. He also noted bilateral hip pain. In a report dated October 28, 2015, Dr. Bostick diagnosed lumbago and bilateral knee patellofemoral arthralgia.

In a brief report dated November 5, 2015, Dr. Bostick wrote that appellant was seen for hip pain on October 16, 2014, bilateral knee and left ankle pain on January 7, 2015,<sup>2</sup> and for her lumbar spine on May 18, 2015. He opined, “All of which are related to workers’ comp[ensation] injury and claim.” In a note dated November 16, 2015, Dr. Bostick wrote that, due to appellant’s workers’ compensation injuries, she was “able [sic] to work 8 hours per day/40 hours per week until further notice.”

Appellant submitted a notice of recurrence (Form CA-2a) dated December 31, 2015 indicating that she was seeking medical treatment only. She indicated that the date of the original injury was July 1, 2005 and that her pain had never stopped. In a report dated January 6, 2016, Dr. Bostick reported that appellant was seen for worsening low back pain. He indicated that the pain was worse with prolonged sitting and standing, and appellant had a bad flare up of symptoms during the holidays. Dr. Bostick provided results on examination and diagnosed lumbar back sprain.

In a report dated January 6, 2016, Dr. Bostick reported that appellant had back pain that was worse with prolonged standing or sitting. He provided results on examination and diagnosed lumbar back sprain. In a report dated February 17, 2016, Dr. Bostick reported that appellant was seen for follow up of low back pain with radiation into her right hip. He diagnosed lumbago and lumbar back sprain. Dr. Bostick also completed duty status reports dated January 6 and February 17, 2016 indicating that appellant could work with restrictions.

By letter dated February 23, 2016, OWCP requested that appellant submit additional evidence with respect to the claim for a recurrence of a medical condition.

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<sup>2</sup> The record does not contain a January 7, 2015 report. In a report dated November 7, 2014, Dr. Vicki Hebert, Board-certified in internal medicine, reported that appellant sustained a knee and ankle injury when she tripped and fell to her knees while delivering mail.

In a decision dated March 23, 2016, OWCP denied the claim. It found the medical evidence of record did not establish how appellant's current condition was causally related to the original employment injury.<sup>3</sup>

On April 27, 2016 OWCP received a request for a review of the written record before an OWCP hearing representative. The request was postmarked April 25, 2016.<sup>4</sup>

By decision dated April 28, 2016, OWCP's Branch of Hearings and Review denied the request for a review of the written record. The Branch found the request was untimely filed as the request was not made within 30 days of the March 23, 2016 decision. In addition, the Branch considered the request in its discretion and found that it could be equally well addressed in a reconsideration request.

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

A recurrence of a medical condition is defined under OWCP regulations as "a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage."<sup>5</sup> It is appellant's burden of proof to establish a recurrence of a medical condition.<sup>6</sup> When a claim for a recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting an attending physician's report which contains a description of current objective findings and provides medical rationale for the causal relationship between the claimant's current condition(s) and the accepted condition(s).<sup>7</sup> Medical rationale is a medically sound explanation for the opinion offered.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

In the present case, the original injury occurred while appellant was putting trays of mail into a truck on July 1, 2005 and was accepted for a lumbar sprain/strain. Appellant submitted a Form CA-2a dated December 31, 2015 indicating she believed her continuing medical treatment was causally related to the 2005 work injury. It is her burden of proof to submit rationalized medical evidence on causal relationship between the current condition and the employment injury.<sup>9</sup>

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<sup>3</sup> OWCP found appellant last received medical treatment for her employment-related condition on May 18, 2015.

<sup>4</sup> The copy of the Express Mail envelope in the record is difficult to read. USPS tracking information shows that the document was submitted and accepted on August 25, 2016.

<sup>5</sup> 20 C.F.R. § 10.5(y).

<sup>6</sup> See *E.C.*, Docket No. 16-0413 (issued June 20, 2016).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013).

<sup>8</sup> See *Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator that the conclusion drawn is rational, sound and logical).

<sup>9</sup> *Supra* note 6.

The Board finds that the medical evidence of record is insufficient to meet appellant's burden of proof. In his November 5, 2015 report, Dr. Bostick referred to appellant's treatment for hip pain, knee and ankle injuries, and low back pain. He opined that "all of these" are work injuries, without further explanation. The knee and ankle injuries appear to be a reference to a different work injury in November 2014, not the 2005 back injury. Dr. Bostick does not discuss a current diagnosed condition or explain any causal connection to the July 1, 2005 employment injury.<sup>10</sup> There is no proper medical and factual history or any medical rationale to establish that appellant's current condition was employment related. The February 17, 2016 report from Dr. Bostick does not discuss causal relationship with the July 1, 2005 employment injury, lacking a rationalized medical opinion establishing causal relationship, this report is of limited probative value.<sup>11</sup>

On appeal, appellant argues that Dr. Bostick explained there was no gap in her treatment and she was still in pain. The issue in the case is whether there is probative medical evidence establishing that appellant continued to have a medical condition causally related to the July 1, 2005 employment injury. The Board has reviewed the medical evidence that was before OWCP at the time of the March 23, 2016 decision and finds it is insufficient to meet appellant's burden of proof for the reasons discussed above.

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.

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

5 U.S.C. § 8124(b)(1) provides that "a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."<sup>12</sup> 20 C.F.R. § 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.<sup>13</sup> The regulations provide that a request for a hearing or review of the written record must be made within 30 days, as determined by the postmark or other carrier's date marking, of the date of the decision.<sup>14</sup>

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

In the present case, appellant's request for a review of the written record was mailed April 25, 2016. The 30<sup>th</sup> day following the March 23, 2016 OWCP decision was Friday,

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<sup>10</sup> See e.g. J.C., Docket No. 15-0765 (issued September 2, 2016) (no opinion on causal relationship).

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

<sup>12</sup> 5 U.S.C. § 8124(b)(1).

<sup>13</sup> 20 C.F.R. § 10.615.

<sup>14</sup> *Id.* at § 10.616(a).

April 22, 2016. Since the request for a review of the written record was made more than 30 days after the March 23, 2016 OWCP decision, appellant is not entitled to a review of the written record as a matter of right.

Although appellant's request for a review of the written record was untimely, OWCP has discretionary authority with respect to granting the request and OWCP must exercise such discretion.<sup>15</sup> In this case OWCP advised appellant that the issue could be addressed through the reconsideration process and the submission of new evidence. This is considered a proper exercise of OWCP's discretionary authority.<sup>16</sup> There is no evidence of an abuse of discretion in this case with respect to the denial of request for review of the written record.

### **CONCLUSION**

The Board finds that appellant did not establish a recurrence of a medical condition on or about December 31, 2015. The Board further finds that OWCP properly denied the request for a review of the written record.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 28 and March 23, 2016 are affirmed.

Issued: October 11, 2016  
Washington, DC

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

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

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

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<sup>15</sup> See *Cora L. Falcon*, 43 ECAB 915 (1992).

<sup>16</sup> *Id.*