

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**B.L., Appellant**

**and**

**U.S. POSTAL SERVICE, HOWELL MILL  
POST OFFICE, Atlanta, GA, Employer**

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**Docket No. 15-1452  
Issued: September 20, 2016**

*Appearances:*  
*Frankie Anderson, for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 25, 2015 appellant, through her representative, filed a timely appeal from January 9 and February 25, 2015 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant met her burden of proof to establish that her June 5, 2012 spinal surgery was causally related to the January 14, 2010 employment injury; and

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

(2) whether appellant met her burden of proof to establish a recurrence of disability commencing November 4, 2013 due to the accepted cervical, thoracic, and lumbar strains.

On appeal appellant's representative asserts that appellant has accepted spinal stenosis and lumbar spondylolisthesis and that OWCP did not follow the hearing representative's instructions to ask its medical adviser whether appellant's surgery was connected to the accepted injury.

### **FACTUAL HISTORY**

On January 14, 2010 appellant, then a 53-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her head, neck, shoulder, and back when a customer backed into her postal vehicle that day. She returned to modified duty. OWCP accepted cervical, thoracic, and lumbar strains.

Appellant filed a claim for wage-loss compensation for the period commencing September 30, 2010. She returned to modified duty on November 4, 2010.

By decision dated December 29, 2010, OWCP denied appellant's claim for compensation finding that the medical evidence failed to establish disability related to the accepted conditions.

On June 5, 2012 appellant underwent fusion surgery.

On July 10, 2012 the employing establishment informed OWCP that appellant had a third party recovery regarding the January 14, 2010 employment injury and forwarded a check for \$1,274.60. An attached statement of third-party recovery indicated that there was a surplus of \$51,424.19 as a credit against future benefits. The record indicates that appellant stopped work in June 2012 and took sick and annual leave until August 3, 2012, when she again began claiming compensation.

By letter dated October 9, 2013, OWCP informed appellant that it had received a retroactive authorization request for a hospital stay for a red blood cell disorder. It informed her of the medical evidence needed to establish that the diagnosed condition or hospitalization was employment related.

On December 4, 2013 appellant filed a claim for recurrence (Form CA-2a) commencing November 4, 2013. She alleged that she was unable to perform job duties of casing mail due to neck and lower back spasms and a swollen right knee. An employing establishment manager indicated that adjustments had been made to appellant's regular duties after the January 2010 employment injury.

Appellant also submitted claims for total disability compensation (Form CA-7) beginning in August 2012.<sup>3</sup> The record indicates that she returned to part-time modified duty in

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<sup>3</sup> The Form CA-7 claims were for the periods August 31, 2012 to October 1, 2013 (received by OWCP on December 4, 2013), August to September 3, 2012, (received December 18, 2013), October 25 to December 2, 2013 and December 2 to 13, 2013 (both received by OWCP on December 19, 2013).

October 2013 and thereafter worked two to three hours daily. Appellant's disability claims thereafter reflected that they were for partial disability.

In support of her recurrence claim, appellant submitted a January 14, 2010 cervical spine x-ray report that showed degenerative changes at C6-7. On a June 20, 2012 form report Dr. Lee A. Kelley, a Board-certified orthopedic surgeon, diagnosed lumbar stenosis, and spondylolisthesis and reported that appellant had surgery on June 5, 2012. In reports dated January 8 and 21, 2013, he noted that she was totally disabled following surgery with an anticipated return to work of June 10, 2013. In December 2, 2013 reports, Dr. Jason E. Berendt, an internist, noted appellant's complaint that her right leg hurt with standing and prolonged walking. He diagnosed lumbar radiculopathy and recommended that she follow up with her orthopedic physicians. Dr. Berendt advised that appellant could return to regular duty that day.

By letter dated December 13, 2013, OWCP informed appellant of the evidence needed to support her recurrence claim.

On December 26, 2013 Dr. Craig A. Kaplan, Board-certified in family medicine, advised that appellant could not work that day due to pain. On January 3, 2014 Dr. Alexis M. Atwater, Board-certified in family medicine, advised that she had been ill since December 31, 2013 and could resume unrestricted work on January 6, 2014.

In an October 21, 2013 treatment note, Dr. Kelley reported that appellant had returned to modified duty on October 21, 2013, but had increasing radiating lumbosacral pain and difficulty walking up and down stairs. Appellant had restricted lumbosacral range of motion. Sensory and motor examinations, and straight leg raising were negative. Dr. Kelley recommended a magnetic resonance imaging (MRI) scan. A November 5, 2013 lumbar spine MRI scan showed surgical changes and progression of degenerative disc disease at L2-3 and L3-4 when compared to a June 1, 2012 preoperative examination.<sup>4</sup> On November 25, 2013 Dr. Kelley discussed the MRI scan findings. He referred appellant for steroid injections at L3-4.

Appellant submitted additional claims for wage-loss compensation (Form CA-7) on January 14, 2014 for the period December 21, 2013 to January 4, 2014, and on February 6, 2014 for the period January 13 to February 24, 2014.

In a February 14, 2014 decision, OWCP denied appellant's claim for recurrence commencing on November 4, 2013 because the medical evidence failed to establish disability for that period was due to a material change or worsening of the employment injury. In another February 14, 2014 decision, it also denied her claims for wage-loss compensation for the periods August 1, 2012 to December 13, 2013 as she had failed to support her claims with sufficient medical evidence.

Appellant submitted a Form CA-7 on February 28, 2014 for the period January 27 to February 6, 2014.

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<sup>4</sup> Appellant also submitted medical evidence relating to her left shoulder, sinusitis, knee pain, edema, right lower quadrant abdominal pain, and a sore throat not relevant to the instant claim.

On March 7, 2014 appellant accepted a modified clerk position.

By letter dated March 19, 2014, appellant requested a hearing before an OWCP hearing representative. She submitted additional medical evidence including January 14, 2010 thoracic and lumbar spine x-rays that showed degenerative spondylosis and no acute findings. In a December 5, 2011 report, Dr. Kelley described the employment injury and noted that appellant was working regular duty at that time. He further noted her complaints of radiating right and left buttock pain. Examination demonstrated mild pain with bending. Straight leg raising was negative, and motor and sensory examination were normal. Dr. Kelley advised that a July 25, 2010 MRI scan demonstrated grade 1 spondylolisthesis at L4-5 with moderate to advanced stenosis and early spondylolisthesis at L5-S1. He recommended spinal fusion surgery. In reports dated November 25, 2013 and March 18, 2014, Dr. Kelley provided restrictions to appellant's activity.

OWCP denied appellant's claim for partial wage-loss compensation for the periods December 21, 2013 to January 4, 2014, 36 hours, and January 13 to February 24, 2014, 54 hours, by decision dated March 28, 2014. By decision dated April 7, 2014, OWCP denied appellant's claim for partial wage-loss compensation for the period January 27 to February 6, 2014 because the record failed to reflect sufficient support for disability for the claimed periods due to the employment injury.<sup>5</sup>

Appellant, who had been working part time since October 2013, stopped work on April 21, 2014. She returned to modified part-time work on May 13, 2014 and again stopped work on June 9, 2014.

On July 22, 2014 appellant claimed additional partial disability compensation for the period October 26, 2013 through June 27, 2014. Time analysis forms covering the period beginning October 26, 2013 indicated that she generally worked two to three hours daily with sporadic increases in the number of hours worked.

In a June 30, 2014 report, Dr. Zouheir A. Shama, a surgeon, noted appellant's complaint of radiating back pain. He described limited lumbar range of motion on physical examination and diagnosed lumbar, neck, and thoracic sprains. Dr. Shama recommended a lumbar MRI scan study and provided physical restrictions.

By decision dated August 27, 2014, an OWCP hearing representative set aside the February 14, 2014 recurrence decision and remanded the case to OWCP for further development. The hearing representative also found that OWCP had not followed its procedures prior to authorizing the June 5, 2012 fusion surgery. The case was remanded for OWCP to prepare a statement of accepted facts (SOAF) and seek an opinion from an OWCP medical adviser as to causal relationship between the June 5, 2012 lumbar fusion surgery and the January 14, 2010 employment injury and to thereafter revisit the claim for recurrence of disability commencing November 4, 2013.

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<sup>5</sup> Appellant also submitted medical evidence regarding a leg injury that occurred on April 1, 2014.

On September 3, 2014 Dr. H.P. Hogshead, a Board-certified orthopedic surgeon and OWCP medical adviser, noted the accepted conditions of lumbar, thoracic, and cervical sprain. He advised that surgical spinal fusion was never indicated for a sprain-type injury and concluded that the January 14, 2010 employment injury was not relevant to the subsequent surgery.

Appellant submitted a September 22, 2014 request for reconsideration and submitted additional medical evidence.<sup>6</sup>

Appellant thereafter submitted a May 2, 2014 report in which Dr. Shama described the employment injury and further noted that in 2013 she had a nonwork-related automobile accident. Dr. Shama noted examination findings and diagnosed lumbar, thoracic, and neck sprains. He opined that, following the January 14, 2010 employment injury, appellant continued to have residuals and continued to perform work duties that aggravated her condition. These included prolonged sitting, standing, bending, stooping, lifting, and walking. On June 2, 2014 Dr. Shama reiterated his findings and conclusions. On July 1 and August 5, 2014 he noted appellant's June 5, 2012 surgery for spinal stenosis, that she could not return to work until October 2013, and that she then worked modified duties. Dr. Shama further related that she had been off work since June 9, 2014 when she developed pain as a result of work duties of filing, sitting, standing, and walking. He advised that appellant could not work eight hours a day.

A June 1, 2012 lumbar MRI scan report showed a mild increase in central canal stenosis at L4-5 and L5-S1 when compared with a July 25, 2010 study. A June 5, 2012 operative report indicated that Dr. Kelley performed laminectomies and decompression with interbody implants and fusion from L4 to S1. He described preoperative and postoperative diagnoses as lumbar spinal stenosis at L3-4, L4-5, and L5-S1 with degenerative spondylolisthesis at L4-5 and L5-S1. A June 8, 2012 discharge summary described appellant's hospital course.

In a September 26, 2014 decision, OWCP denied appellant's July 22, 2014 claim for disability compensation for the periods October 26, 2013 to June 27, 2014 and any period thereafter because the medical evidence was insufficient to establish that the claimed disability was caused by the January 14, 2010 work injury. It further found that the June 5, 2012 fusion surgery was not necessitated by the January 14, 2010 work injury as it was for lumbar spinal stenosis and degenerative spondylolisthesis which were not accepted conditions.

On September 30, 2014 OWCP requested that appellant submit the June 1, 2012 lumbar MRI scan report and all hospital records regarding the June 5, 2012 surgery. On October 8, 2014 Dr. Shama indicated that it was expected that she would return to her bid assignment within six months.

In November 2014, consistent with the hearing representative's remand on the issue of disability, OWCP referred appellant to Dr. Alexander N. Doman, a Board-certified orthopedic surgeon, for a second opinion. A SOAF described the January 14, 2010 injury, the regular duties of a letter carrier, and the physical requirements of her most recent limited-duty position. It indicated that preexisting medical conditions included spondylolisthesis and stenosis at L5-S1

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<sup>6</sup> OWCP later clarified that the request for reconsideration was premature as the August 27, 2014 decision had remanded the case for further development.

and disc desiccation at L1-2, and that the accepted conditions were strains to the cervical, thoracic, and lumbar spine.

In a December 22, 2014 report, Dr. Doman noted his review of the SOAF and medical record and appellant's complaints of back pain. Examination demonstrated a normal gait, negative straight leg raising test, and no muscle atrophy. Dr. Doman opined that appellant exhibited symptom magnification and exaggeration. He noted that cervical spine x-rays were normal, and that x-rays of the lumbar spine showed a solid lumbar fusion from L4 to S1 with excellent placement of pedicle screws. In answer to specific OWCP questions, Dr. Doman advised that there were no objective findings on physical examination of residuals of the accepted cervical, thoracic, and lumbar strains. He opined that these conditions had resolved long ago and that it was his "firm and definite" opinion that the claim should not be expanded to include an additional diagnosis. Dr. Doman advised that the January 14, 2010 motor vehicle accident would have resulted in only a minor, temporary aggravation of appellant's preexisting degenerative lumbar spinal stenosis, and lumbar spondylolisthesis and that this aggravation would have ceased no later than April 14, 2010, when she reached maximum medical improvement. He advised that it was his "firm and definite" opinion that the 2012 lumbar fusion surgery was not in any way related to her employment injuries and was for the preexisting conditions of spondylolisthesis and degenerative spinal stenosis. Dr. Doman further opined that appellant's present subjective complaints of pain strongly indicated that she was intentionally malingering for the purposes of secondary gain. He concluded that she was able to perform regular full-time work with a minor restriction to avoid lifting more than 40 pounds, noting that this restriction was for her nonwork-related condition.

In a January 9, 2015 decision, OWCP issued its decision on remand and denied modification of the February 14, 2014 denial of recurrence claim. It found that the weight of the medical evidence rested with the opinion of Dr. Doman and concluded that the evidence of record was insufficient to support the recurrence of disability on November 4, 2013. OWCP noted that a formal decision denying the surgery and any resulting disability from that surgery had been issued on September 26, 2014 as the medical evidence failed to establish that the employment injury caused or aggravated appellant's preexisting back conditions. It noted that although appellant had filed a request for reconsideration after the August 27, 2014 decision that was incorrect as the case had been remanded.

On February 17, 2015 appellant requested reconsideration of the January 9, 2015 decision. She asserted that none of the recommendations of the hearing representative had been followed by OWCP, that instead of an OWCP medical adviser making a determination, she was sent for a second opinion evaluation, and he did not address the hearing representative's concerns.

In a merit decision dated February 25, 2015, OWCP found that the weight of the medical evidence regarding the need for back surgery rested with Dr. Doman who advised that it was not related to the employment injury. It further denied modification of the denial of her recurrence claim commencing November 4, 2013.

## LEGAL PRECEDENT -- ISSUE 1

Section 8103(a) of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.<sup>7</sup> While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.<sup>8</sup>

In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on OWCP's authority being that of reasonableness.<sup>9</sup> Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>10</sup> To be entitled to reimbursement of medical expenses, a claimant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.

Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.<sup>11</sup> In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.<sup>12</sup>

## ANALYSIS -- ISSUE 1

OWCP accepted cervical, thoracic, and lumbar strains due to a January 14, 2010 employment injury.

Regarding the June 5, 2012 surgery, Dr. Hogshead, the medical adviser, advised that surgical spinal fusion was not indicated for a sprain-type injury. He concluded that the January 14, 2010 employment injury was not relevant to the subsequent surgery. OWCP then referred the case to Dr. Doman who performed a second opinion evaluation and further found that the June 5, 2012 lumbar surgery was not related to the January 14, 2010 employment injury.

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<sup>7</sup> 5 U.S.C. § 8103(a); *see L.D.*, 59 ECAB 648 (2008).

<sup>8</sup> *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

<sup>9</sup> *See D.K.*, 59 ECAB 141 (2007).

<sup>10</sup> *Minnie B. Lewis*, 53 ECAB 606 (2002).

<sup>11</sup> *M.B.*, 58 ECAB 588 (2007).

<sup>12</sup> *R.C.*, 58 ECAB 238 (2006).

The Board finds that the weight of the medical evidence rests with the opinion of Dr. Doman. For a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.<sup>13</sup> The accepted conditions in this case are cervical, thoracic, and lumbar strains, and the pre and postoperative diagnoses for the June 5, 2012 surgery were spinal stenosis and lumbar spondylolisthesis which, contrary to appellant's assertion on appeal, have not been accepted.

In his December 22, 2014 report, Dr. Doman advised that the accepted cervical, thoracic, and lumbar strains had been long resolved, and indicated that it was his "firm and definite" opinion that the claim should not be expanded to include an additional diagnosis. He advised that the January 14, 2010 motor vehicle accident would have resulted in only a minor, temporary aggravation of appellant's preexisting degenerative lumbar spinal stenosis and lumbar spondylolisthesis and that this aggravation would have ceased no later than April 14, 2010, when she reached maximum medical improvement. Dr. Doman further advised that it was his "firm and definite" opinion that the 2012 lumbar fusion surgery was not in any way related to her employment-related injuries and was for the preexisting conditions of spondylolisthesis and degenerative spinal stenosis.

Dr. Kelley, an attending orthopedic surgeon, noted MRI scan findings of spondylolisthesis and spinal stenosis from L4 to S1 and recommended surgery, which he performed on June 5, 2012. Other than noting the January 14, 2010 employment injury, he did not provide an explanation of how this caused or aggravated appellant's diagnosed lumbar condition or the need for surgery.

Dr. Shama noted that appellant had surgery for spinal stenosis and indicated that her job duties aggravated her condition after the January 14, 2010 employment injury. He did not offer an opinion as to whether the surgery was for a condition causally related to the employment injury or that it was medically warranted.

As to appellant's assertion that OWCP did not follow the hearing representative's instructions, as noted above, the case was referred to Dr. Hogshead, an OWCP medical adviser, for an opinion regarding the need for surgery. Moreover, it properly referred her for a second opinion evaluation. Section 8123(a) of FECA authorizes OWCP to require an employee who claims compensation for an employment injury to undergo such physical examinations as it deems necessary.<sup>14</sup>

The Board concludes that Dr. Doman's opinion that the lumbar spine surgery was not related to the January 14, 2010 employment injury represents the weight of the evidence. OWCP acted within its discretion in denying authorization.<sup>15</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> 5 U.S.C. § 8123(a). *See J.C.*, Docket No. 09-609 (issued January 5, 2010) (the determination of the need for an examination, the type of examination, the choice of locale and the choice of medical examiners are matters within the province and discretion of OWCP).

<sup>15</sup> *L.D.*, *supra* note 7.

## LEGAL PRECEDENT -- ISSUE 2

Under FECA, the term “disability” is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>16</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury, but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.<sup>17</sup> The test of “disability” under FECA is whether an employment-related impairment prevents the employee from engaging in the kind of work he or she was doing when injured.<sup>18</sup> Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative, and substantial medical evidence.<sup>19</sup>

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>20</sup> Causal relationship is a medical issue. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>21</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 limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.<sup>22</sup> To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence. The evidence must include a medical opinion, based on a complete and accurate factual and medical history and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.<sup>23</sup>

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<sup>16</sup> See *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>17</sup> *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>18</sup> *Corlisia Sims*, 46 ECAB 963 (1995).

<sup>19</sup> *Tammy L. Medley*, 55 ECAB 182 (2003).

<sup>20</sup> *William A. Archer*, 55 ECAB 674 (2004).

<sup>21</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>22</sup> *Albert C. Brown*, 52 ECAB 152 (2000); *Barry C. Petterson*, 52 ECAB 120 (2000).

<sup>23</sup> *Maurissa Mack*, 50 ECAB 498 (1999).

## ANALYSIS -- ISSUE 2

The accepted conditions in this case are cervical, thoracic, and lumbar strains caused by a January 14, 2010 employment injury. Appellant began working full-time modified duty after the injury and stopped work in June 2012 to have spinal fusion surgery. After October 2013, she worked intermittent part-time modified duty until she stopped on June 9, 2014. As noted above, this surgery was not found to be causally related to the January 10, 2014 employment injury, but instead to spinal stenosis and lumbar spondylolisthesis, which were not accepted conditions. Appellant filed a claim for recurrence of disability commencing November 4, 2013.

Neither Dr. Berendt, Dr. Kaplan, nor Dr. Atwater related any symptoms or diagnoses to the accepted conditions. On December 2, 2013 Dr. Berendt reported appellant's complaint of right leg pain with standing and prolonged walking. He diagnosed lumbar radiculopathy, recommended follow up with an orthopedic surgeon, and advised that she could return to regular duty. Dr. Kaplan advised on December 26, 2013 that appellant could not work due to pain. He did not further describe her symptoms or provide a diagnosis. Dr. Atwater merely advised on January 3, 2014 that appellant had been ill since December 31, 2013 and could return to unrestricted duty on January 6, 2014.

Dr. Kelley performed the June 5, 2012 surgery and thereafter submitted reports beginning on June 20, 2012. He indicated that appellant was totally disabled and related the disability to stenosis and spondylolisthesis and her recovery from the June 5, 2012 surgery for these conditions. On October 21, 2013 Dr. Kelley noted that she had returned to modified duty and had complaints of radiating lumbosacral pain. On November 25, 2013 he reviewed a November 5, 2013 lumbar MRI scan that demonstrated progression of degenerative disc disease. Dr. Kelley's last report is dated March 18, 2014, when he advised that appellant could return to light duty on March 18, 2014. At that time he diagnosed L3-4 stenosis and status post lumbar fusion. The only diagnoses Dr. Kelley reported were lumbar stenosis and spondylolisthesis. In none of his reports did he relate appellant's symptoms of disability to the accepted cervical, thoracic, and lumbar strains.

Dr. Shama began treating appellant in May 2014, after she had returned to modified duty. In a May 2, 2014 report, he described her past medical and surgical history and opined that she continued to have residuals of the January 14, 2010 employment injury. On July 1, 2014 Dr. Shama reported that appellant stopped work on June 9, 2014 due to pain and advised that she could not work eight hours daily. While he indicated that her modified work duties following the January 14, 2010 employment injury caused pain such that she could not work, he did not display knowledge of her specific regular or modified job duties or specifically explain why she was precluded from performing her modified position beginning in August 2012.

Without a detailed medical report describing how and why appellant was disabled beginning in August 2012 due to the accepted cervical, thoracic, and lumbar strains, she has not met her burden of proof to establish entitlement to disability compensation for that period.<sup>24</sup> Moreover, Dr. Kelley and Dr. Shama referred to diagnoses of spinal stenosis and lumbar

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<sup>24</sup> See *W.S.*, Docket No. 14-1022 (issued July 1, 2014).

spondylolisthesis, neither of which has been accepted as employment related. 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 employment factors and supports that conclusion with sound medical reasoning.<sup>25</sup>

Regarding the claimed disability, Dr. Doman, an OWCP referral physician, advised in his December 22, 2014 report that on physical examination appellant had no objective findings of residuals of the accepted cervical, thoracic, and lumbar strains, opining that these had resolved "long ago." He also firmly maintained that the claim should not be expanded, stating that the January 14, 2010 employment injury would have resulted in only a minor, temporary aggravation of her preexisting degenerative lumbar spinal stenosis and lumbar spondylolisthesis and that this aggravation would have ceased no later than April 14, 2010, when she reached maximum medical improvement. The Board finds that the weight of the medical opinion evidence rests with the opinion of Dr. Doman who provided a comprehensive report in which he outlined examination findings and provided a rationalized explanation for his opinion regarding appellant's ability to work. While he provided a weight restriction, Dr. Doman opined that this was not employment related.

Appellant did not submit sufficient rationalized medical opinion evidence to establish a recurrence of disability due to the accepted cervical, thoracic, and lumbar strains.<sup>26</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 her burden of proof to establish that the June 5, 2012 surgery was warranted or that she had established a recurrence of disability.

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<sup>25</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>26</sup> *N.R.*, Docket No. 14-114 (issued April 28, 2014).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 25 and January 9, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 20, 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