



## **FACTUAL HISTORY**

On July 30, 2012 appellant, then a 29-year-old air traffic control specialist, filed a traumatic injury claim (Form CA-1) alleging that on July 29, 2012 he injured his low back and buttocks when he fell to the floor after attempting to sit in a chair that had been moved. He obtained medical treatment on July 29 and 30, 2012 and returned to his usual employment without restrictions on August 3, 2012.

Appellant, on October 20, 2014, filed a claim for a recurrence (Form CA-2a) alleging that he experienced a recurrence of the need for medical treatment on October 19, 2014 due to his July 29, 2012 work injury. He did not stop work.

By letter dated November 13, 2014, OWCP advised appellant that it had paid a limited amount of medical expenses without formally adjudicating his claim as his injury appeared minor and resulted in little or no time lost from work. It had now adjudicated his claim and accepted that he sustained a back contusion.

In another letter dated November 13, 2014, OWCP informed appellant of the definition of a recurrence of disability and a recurrence of a medical condition and requested that he submit additional factual and medical information, including a detailed report from his attending physician explaining why appellant's current condition resulted from his accepted work injury.

In a report dated November 17, 2014, Dr. Koshy Oommen, a Board-certified internist, evaluated appellant for pain in his middle and lower back radiating into the right thigh. He noted that appellant had a history of a fall at work two years earlier. Dr. Oommen diagnosed back pain and radiculopathy and referred appellant for diagnostic studies.

A magnetic resonance imaging (MRI) scan of the lumbar spine dated December 1, 2014 revealed degenerative disc disease with mild disc bulges at L2-3, L3-4, and L5-S1 with bilateral neural foraminal narrowing at L2-3 and L3-4 and facet hypertrophy and foraminal narrowing at L5-S1.

Appellant, on December 12, 2014, related that he had experienced pain in his lower and upper back over the past year that had progressively worsened. He performed his usual employment after his July 29, 2012 work injury. Appellant advised that he had experienced no other injuries.

Dr. Oommen, in a report dated December 12, 2014, indicated that he began treating appellant on November 17, 2014 for low back pain. He related, "At the visit, [appellant] reported to me that he sustained an injury caused by a coworker pulling a chair out from underneath him approximately two years ago." Dr. Oommen diagnosed back pain with radiculopathy and noted that a lumbar spine MRI scan showed a disc bulge and facet arthropathy at L5-S1. He advised that appellant had a temporary disability that resulted from "his original injury."

By decision dated January 21, 2015, OWCP found that appellant had not established a recurrence of a medical condition beginning October 2014 causally related to his accepted work injury. It determined that his factual statement was not sufficiently detailed and that he had not

submitted rationalized medical evidence supporting that his current condition of degenerative disc disease resulted from the July 29, 2012 employment injury.

In progress reports dated December 12, 2014 and January 13, 2015, Dr. Oommen provided examination findings and diagnosed low back pain and back pain.

On April 7, 2015 Dr. Oommen discussed appellant's complaints of pain in the thoracic and lumbar spine at the time of his December 12, 2014 and January 13, 2015 evaluations. He noted that a prior MRI scan showed degenerative disc disease, but that appellant was "asymptomatic until the point of injury at work (according to [appellant]). The pain is consistent from the date of injury to present."

On April 23, 2015 appellant requested reconsideration.

By decision dated July 7, 2015, OWCP denied modification of its January 21, 2015 decision. It found that the medical evidence of record was insufficient to show either that appellant required medical care as a result of his work injury or that his current condition was due to his accepted employment injury.

In a report dated October 20, 2015, Dr. Vince S. Hume, an osteopath, diagnosed low back pain, left-sided low back pain without sciatica, and lumbar radiculopathy. He related, "[Appellant's] mechanism of injury from having his chair pulled out from under him and him falling on his buttock region is consistent with his pain and symptoms. He was completely asymptomatic before the fall. [Appellant] does not have a pinched nerve[;] however, the injury could have aggravated it." Dr. Hume referred appellant for physical therapy.

On November 9, 2015 appellant requested reconsideration.

By decision dated January 27, 2016, OWCP denied modification of the July 7, 2015 decision. It found that the medical evidence did not explain why appellant had symptoms two years after the work injury.

Dr. Hume, in a report dated March 18, 2016, noted that he initially evaluated appellant in October 2015 for symptoms of pain in his lower back beginning a year earlier when he had a chair pulled out from under him at work and he fell on his buttocks. He discussed appellant's complaints of pain and intermittent paresthesias in his left buttocks and bilateral lower extremities. Dr. Hume advised that diagnostic studies showed L4-5 and L5-S1 degenerative disc disease. He related, "There is no nerve root impingement; however, the disc itself was very likely inflamed by [appellant's] injury that would result in pain and paresthesias in the lower extremities." Dr. Hume noted that a computerized tomography scan showed slight L5-S1 spondylolisthesis which could contribute to appellant's bulging discs and pain. He advised, "[Appellant's] symptoms are very typical of this type of injury. Intermittent paresthesias and pain are very common in a lumbar radiculopathy. The mechanism of injury is consistent with image findings." Dr. Hume opined that it was rare for an individual of appellant's age to have "degenerative changes like this without a precipitating trauma."

In a decision dated June 17, 2016, OWCP denied modification of its January 27, 2016 decision. It found that Dr. Hume relied upon an inaccurate date of injury and did not support his opinion with sufficient rationale.

On appeal appellant contends that each of his physicians found that his condition was related to his work injury and asserts that OWCP was trying to disprove his claim.

### **LEGAL PRECEDENT**

Recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment.<sup>3</sup>

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal relationship between the employee's current condition and the original injury in order to meet his burden.<sup>4</sup>

An employee has the burden of proof to establish that he sustained a recurrence of a medical condition that is causally related to his accepted employment injury. To meet this burden, the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports the conclusion with sound medical rationale.<sup>5</sup>

### **ANALYSIS**

OWCP accepted that appellant sustained a back contusion on July 29, 2012 in the performance of duty. Appellant returned to work without limitations on August 3, 2012. The issue is whether he has established a recurrence of a medical condition on or after October 19, 2014 due to his accepted employment injury.

Appellant last sought treatment for his back contusion on July 30, 2012. As more than 90 days has elapsed from his last medical treatment, he has the burden to submit a reasoned medical opinion establishing that the additional medical treatment was causally related to an objective worsening of the accepted condition without intervening cause.<sup>6</sup>

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<sup>3</sup> 20 C.F.R. § 10.5(y).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013); *see also J.M.*, Docket No. 09-2041 (issued May 6, 2010).

<sup>5</sup> *See K.T.*, Docket No. 15-1758 (issued May 24, 2016).

<sup>6</sup> *See supra* note 4; *see also id.*

On April 7, 2015 Dr. Oommen discussed his evaluations of appellant for thoracic and lumbar back pain on December 12, 2014 and January 13, 2015. He advised that the MRI scan study revealed degenerative disc disease. Dr. Oommen noted that appellant was asymptomatic prior to work injury and had consistent pain subsequent to the injury. On December 12, 2014 he indicated that appellant experienced an injury around two years ago when a coworker pulled a chair from under him. Dr. Oommen diagnosed back pain with radiculopathy. He noted that a lumbar MRI scan showed a disc bulge and facet arthropathy at L5-S1. Dr. Oommen opined that appellant had disability due to the original injury. OWCP, however, has not accepted degenerative disc disease, radiculopathy, a disc bulge, or L5-S1 facet arthropathy as employment related. 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>7</sup> Furthermore, a medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.<sup>8</sup> Dr. Oommen did not provide any rationale for appellant's opinion that the work injury caused any of the diagnosed condition. Medical conclusions unsupported by rationale are of little probative value.<sup>9</sup>

Dr. Oommen, on November 17, 2014, discussed appellant's complaints of middle and low back pain radiating into his right thigh. He obtained a history of a fall at work two years earlier and he noted diagnoses. Dr. Oommen, however, did not specifically address the cause of the diagnosed condition. Likewise, his progress reports on December 12, 2014 and January 13, 2015 did not address causation. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>10</sup>

On March 18, 2016 Dr. Hume discussed appellant's history of low back pain beginning one year earlier when he fell on his buttocks after a chair was pulled out from underneath him at work. He found that appellant also had symptoms of intermittent pain and paresthesias in his left buttocks and both legs. Dr. Hume offered diagnoses that included L4-5 and L5-S1 degenerative disc disease and opined that the disc was "very likely inflamed by [appellant's] injury" causing lower extremity pain and paresthesias. He advised that the mechanism of injury was consistent with diagnostic studies, noting that it was unusual at appellant's age to have degeneration without an inciting traumatic event. On October 20, 2015 Dr. Hume diagnosed low back pain, left-sided low back pain without sciatica, and lumbar radiculopathy. He determined that the mechanism of injury, that of a chair being pulled out from under appellant resulting in his falling on his buttocks, was consistent with his symptoms, noting that he was "asymptomatic before the fall." As noted, OWCP has not accepted any condition other than a back contusion as employment related. Also, as explained, an opinion that a condition is causally related because

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<sup>7</sup> *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>8</sup> *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

<sup>9</sup> *Willa M. Frazier*, 55 ECAB 379 (2004); *Jimmy H. Duckett*, 52 ECAB 332 (2001).

<sup>10</sup> *See S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.<sup>11</sup> While Dr. Hume advised that, the mechanism of injury was consistent with diagnostic studies, he did not explain the lengthy gap in time between appellant's last medical treatment of record on July 30, 2012 and the time he again sought treatment on November 17, 2014. The Board also notes that Dr. Hume relied upon an inaccurate history of injury, that of appellant experiencing work injury a year prior to the October 2015 evaluation instead of in July 2012. Medical opinions based on an incomplete or inaccurate history are of little probative value.<sup>12</sup> Dr. Hume's also couched his opinion in speculative terms, finding that the workplace fall could have aggravated a condition, which further diminishes the probative value.<sup>13</sup> For these reasons, his opinion is insufficient to establish a spontaneous recurrence of the low back contusion.

On appeal appellant contends that his physicians found that his condition resulted from his work injury and that OWCP was trying to disprove his claim. As discussed, however, he failed to submit a medical report from a physician who, on the basis of a complete and accurate factual and medical history, concluded that he required additional medical treatment due to the accepted work injury.<sup>14</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 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained a recurrence of a medical condition on October 19, 2014 causally related to his July 29, 2012 employment injury.

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<sup>11</sup> *Supra* note 8; *see also T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>12</sup> *See Douglas M. McQuaid*, 52 ECAB 382 (2001).

<sup>13</sup> *See L.R., (E.R.)*, 58 ECAB 369 (2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>14</sup> *See supra* note 5.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 17, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 2017  
Washington, DC

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

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board