

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

G.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Brooklyn, NY, Employer**

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Docket No. 16-1542
Issued: August 25, 2017

Appearances:

Thomas S. Harkins, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge

ALEC J. KOROMILAS, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 26, 2016 appellant, through counsel, filed a timely appeal from a May 6, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish a recurrence of disability beginning September 2, 2011, causally related to her February 5, 1999 employment injury.

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case was previously before the Board.³ On February 8, 1999 appellant, then a 33-year-old modified letter carrier,⁴ filed a traumatic injury claim (Form CA-1) alleging that she injured her back on February 5, 1999 while lifting a tray of mail and then turning to resume racking. OWCP accepted her claim for back (lumbar) strain. On March 23, 1999 appellant returned to full-time, limited-duty answering telephones. Effective May 22, 1999 she resumed her previous modified letter carrier duties. OWCP subsequently accepted a recurrence for medical treatment beginning November 24, 2009.⁵

On September 15, 2011 appellant filed a claim (Form CA-2a) for recurrence of disability beginning September 2, 2011.⁶ OWCP initially denied the recurrence claim by decision dated November 4, 2011. When the case was last on appeal, the Board affirmed OWCP's latest merit decision, dated June 10, 2014, finding that appellant had not established a recurrence of disability beginning September 2, 2011, causally related to her February 5, 1999 employment-related back (lumbar) strain. Although recent medical evidence indicated that appellant was disabled due to lumbar radiculopathy, the evidence failed to establish that her then-current lumbar condition was causally related to the February 5, 1999 employment injury. There was also diagnostic evidence of disc bulges at L2-3 and L5-S1, but the medical evidence of record failed to establish causal relationship between appellant's multi-level lumbar disc disease and her accepted employment injury. Accordingly, the Board found that appellant failed to establish a recurrence of disability on or after September 2, 2011, causally related to her February 5, 1999 employment injury. The facts as presented in the Board's February 13, 2015 decision are incorporated herein by reference.

On February 9, 2016 counsel requested reconsideration. A January 3, 2016 lumbar magnetic resonance imaging (MRI) scan report was received.

Medical reports from Dr. Howard I. Baum, a Board-certified orthopedic surgeon, were also received. In medical reports dated January 20, February 23, April 14, May 28, August 13, December 14 and 28, 2015 and January 11 and 18, and March 3, 2016, he provided a diagnosis of lumbar derangement/internal derangement of the lumbar spine and indicated that appellant had increased lumbar pain. Dr. Baum recommended chiropractic treatment and prescribed medication. In his December 14, 2015 medical report, he indicated that appellant complained of an increased low back pain. Dr. Baum noted that she had an injury in 1999 and had flare-ups off and on for quite some time. He reported that appellant was working full eight-hour days with restrictions. Dr. Baum reported that appellant was neurologically intact. In his January 11, 2016 report, he indicated that appellant's January 4, 2015 lumbar MRI scan revealed disc protrusion at

³ Docket No. 14-1844 (issued February 13, 2015).

⁴ Appellant had previously fractured her left ankle in the performance of duty on May 27, 1993 (File No. xxxxxx863). Her physical limitations included no walking or standing in excess of two hours per day.

⁵ Appellant did not stop work at the time.

⁶ OWCP also treated the claim as a new traumatic injury and assigned File No. xxxxxxx169. However, it later determined that the case was properly considered a recurrence under OWCP File No. xxxxxxx035. The two case records were subsequently combined under Master File No. xx-xxxx035.

L2-3 with right L2 nerve compression, foraminal stenosis, L4-5 herniation encroaching on the L4 nerve root, L5-S1 left-sided disc herniation with left foraminal stenosis, and a T11-12 disc protrusion and a bulge. Dr. Baum opined that appellant was disabled from work.

In a December 18, 2015 Staten Island University Hospital medical report, Dr. Akash Bhatnagar, an emergency medical physician, noted appellant's complaint of severe back pain which began three days prior, with intermittent back pain for about two weeks. Appellant indicated that her last MRI scan was in 2011 and that she was diagnosed with multiple lumbar disc herniations. Dr. Bhatnagar noted examination findings and found no signs of cord compression. He treated appellant symptomatically for sciatica.

In a December 23, 2015 letter, Dr. Baum⁷ indicated that appellant was originally injured at work on February 5, 1999 while lifting a tray of mail and, when she turned to go back to racking mail, she felt pain in her back and shoulders. He noted that her injuries were characterized as a back strain and that she returned to work in a limited-duty position, for eight hours a day, on February 5, 1999. Dr. Baum indicated that appellant's job required repetitive bending and lifting of mail trays, which resulted in overuse of her back muscles each workday. He further indicated that there was wear and tear on the muscles, ligaments, and joints of appellant's low back, which resulted in a chronic degenerative condition in the lumbar spine over a period of years. Dr. Baum noted that on September 2, 2011 appellant awoke with back pain upon movement, which traveled down her legs and up her back. He opined that this was a recurrence and spontaneous worsening of the February 5, 1999 employment injury that resulted in a chronic degenerative lumbar spine condition due to the repetitive stress of bending and lifting of mail trays which resulted in overuse of her low back muscles, ligaments, and spine each workday. Dr. Baum opined that appellant's recurrence of September 2, 2011 was causally related to the work injury of February 5, 1999. He also noted that her neurologist reported that the August 8, 2010 electromyography (EMG) revealed left L5-S1 radiculopathy and peroneal neuropathy and that the September 7, 2011 lumbar spine MRI scan showed multiple disc bulges at L2-3 with degenerative changes at L2-3.

By decision dated May 6, 2016, OWCP denied modification of its prior decision denying appellant's claimed recurrence of disability beginning September 2, 2011. It found that the medical evidence of record did not establish a basis for appellant's claimed recurrence of September 2, 2011. OWCP further found that there was no medical explanation which bridged the gap of time with treatment and the cause and effect relationship between her original February 5, 1999 work injury and the claimed September 2, 2011 recurrence.

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 injury or illness, without an intervening injury or new exposure to the work environment that caused the illness.⁸ Recurrence of disability also means an inability to work that takes place

⁷ Dr. Baum indicated that this letter was an addendum to his September 13, 2012 report, where he previously diagnosed L2-3 and L5-S1 disc bulges and left-sided L5-S1 radiculopathy.

⁸ 20 C.F.R. § 10.5(x).

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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁹ Generally, a withdrawal of a light-duty assignment would constitute a recurrence of disability where the evidence established continuing injury-related disability for regular duty.¹⁰ A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties, or other downsizing or where a loss of wage-earning capacity determination is in place.¹¹

Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light-duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.¹²

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish that the recurrence is causally related to the original injury.¹³ This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the condition is causally related to the employment injury.¹⁴ The physician's opinion must be based on a complete and accurate factual and medical history and it must be supported by sound medical reasoning.¹⁵

ANALYSIS

The Board has reviewed the medical evidence of record and finds no reasoned opinion to support that appellant sustained a spontaneous change in her medical condition on or about September 2, 2011 that was causally related to her February 5, 1999 work injury.

Appellant submitted multiple medical reports from Dr. Baum dated January 2015 through early 2016. Dr. Baum diagnosed lumbar derangement/internal derangement of the lumbar spine and indicated that appellant had an increase in pain in her lumbar spine. He recommended chiropractic treatment and prescribed medication. In his December 14, 2015 report, Dr. Baum indicated that appellant had a recurrence of low back pain. He noted that she had been injured in 1999 and had subsequent flare-ups off and on. While Dr. Baum mentioned a recurrence, he did not indicate whether the residuals were supported by objective data, whether the conditions had worsened, and whether they prevented appellant from working on or after September 2, 2011. He also did not provide a detailed description or medical findings of the status of her conditions

⁹ *Id.*

¹⁰ *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6a(4) (June 2013).

¹¹ 20 C.F.R. §§ 10.5(x), 10.104(c), and 10.509; *see* Federal (FECA) Procedure Manual, *id.* at Chapter 2.1500.2b.

¹² *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

¹³ 20 C.F.R. § 10.104(b); *see* Federal (FECA) Procedure Manual, *id.* at Chapter 2.1500.5 and 2.1500.6.

¹⁴ *See S.S.*, 59 ECAB 315, 318-19 (2008).

¹⁵ *Id.* at 319.

before and after such recurrence, and failed to mention or refer to the claimed recurrence of September 2, 2011. Thus, his December 14, 2015 medical report is insufficient to establish appellant's recurrence claim.¹⁶

In his December 23, 2015 letter, Dr. Baum noted appellant's original work injury of February 5, 1999 and explained that because her job required repetitive bending and lifting of mail trays, an overuse injury of the back muscles occurred, which resulted in degenerative conditions in the lumbar spine over the years. He briefly noted the September 2, 2011 event and opined that it was a recurrence causally related to the February 5, 1999 work injury. Dr. Baum explained that appellant had a spontaneous worsening due to repetitive bending and lifting of mail trays, which resulted in overuse of her low back. However, he failed to bridge the gap of time of almost 11 years from the original work injury to the claimed recurrence and provide a well-reasoned explanation as to why and how appellant's current lumbar conditions were solely the result of her February 5, 1999 work injury and not any nonindustrial pathology. Dr. Baum did not address the fact that appellant had indicated, in her September 15, 2011 Form CA-2a, that she awoke in pain on September 2, 2011 and went to the hospital the next day as the pain worsened. Furthermore, while Dr. Baum appears to attribute appellant's degenerative lumbar spine conditions to her work activities, OWCP has only accepted a back strain in this case. Appellant has the burden of proof to establish causal relationship between any additional conditions not accepted by OWCP and the February 5, 1999 employment injury.¹⁷ Accordingly, the Board finds that Dr. Baum's opinion is of diminished probative value.

Dr. Bhatnagar, in his hospital report of December 18, 2015, treated appellant for sciatica. However he provided no opinion on the cause of her condition and also failed to address the claimed recurrence of disability beginning September 2, 2011.¹⁸ The Board has found that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁹ Therefore, this report fails to establish causal relationship and appellant's recurrence claim.

In summary, the medical evidence of record is unsupported by rationalized medical evidence which demonstrates that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury or which explains the nature of the relationship between appellant's current conditions and her accepted work injury.²⁰

On appeal counsel contends that Dr. Baum's December 23, 2015 report established the factual and medical basis of her recurrence claim. However, for the reasons set forth above,

¹⁶ G.A., Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁷ *Michael S. Mina*, 57 ECAB 379 (2006); *Kimper Lee*, 45 ECAB 565 (1994); *Thomas D. Petrylak*, 39 ECAB 276 (1987).

¹⁸ See *Mary E. Marshall*, 56 ECAB 420 (2005).

¹⁹ R.E., Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

²⁰ A.M., Docket No. 09-1895 (issued April 23, 2010) (when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of FECA).

appellant has not established either the claimed recurrence or that her current lumbar conditions are due to her accepted work injury.

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 failed to establish a recurrence of disability on or after September 2, 2011, causally related to her February 5, 1999 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2017
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