

ISSUE

The issue is whether appellant met her burden of proof to establish a recurrence of disability commencing March 20, 2015 causally related to her accepted July 7, 1998 employment injury.

On appeal counsel asserts that a new injury constitutes a change in appellant's medical status.

FACTUAL HISTORY

On July 10, 1998 appellant, a 31-year-old food service worker, filed a traumatic injury claim (Form CA-1), alleging an injury on July 7, 1998 as a result of falling on a wet floor at work. OWCP accepted the claim for a cervical strain, post-traumatic headache, left arm contusion, and lumbar sprain and placed her on the periodic compensation rolls. Appellant returned to full duty on July 20, 1998. She filed a claim for a recurrence (Form CA-2a) in 2002 due to lifting, bending, and reaching at work, which OWCP initially adjudicated as a new injury under File No. xxxxxx132. OWCP later accepted it as a recurrence and administratively combined it with the current claim in 2004, with the current claim, File No. xxxxxx966 serving as the master claim file.

OWCP referred appellant, along with a statement of accepted facts, and the medical evidence of record to Dr. Robert Franklin Draper, Jr., a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of her employment-related conditions. In his December 7, 2012 report, Dr. Draper found that she had reached maximum medical improvement in the early 2000's and her employment-related conditions had resolved. He explained that strain injuries generally resolve in approximately two or four months after the accident and do not last years. Dr. Draper opined that appellant was capable of working full time as a food service worker with the following restrictions: lifting no more than 50 pounds occasionally and 25 pounds frequently.

OWCP subsequently referred appellant to vocational rehabilitation services and the employing establishment offered her a full-time, limited-duty position as a food service worker with the following medical restrictions, as provided by Dr. Draper: lifting no more than 50 pounds occasionally and 25 pounds frequently. Appellant accepted the position and returned to light-duty work on March 11, 2013.

By decision dated August 9, 2013, OWCP reduced appellant's wage-loss compensation benefits to zero based on its finding that her actual earnings as a food service worker, effective March 11, 2013, fairly and reasonably represented her wage-earning capacity.⁴ Appellant requested reconsideration on September 9, 2013. By decision dated December 6, 2013, OWCP denied her request for reconsideration of the merits, finding that she had not submitted relevant

⁴ Appellant also filed claims for wage-loss compensation (Forms CA-7) for the periods June 3 to July 12, 2013 and July 15 to 26, 2013. By decision dated April 11, 2014, OWCP denied the claims because she had returned to work on March 11, 2013 and the evidence she submitted was insufficient to establish disability for the periods claimed.

and pertinent new evidence or show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

On November 12, 2013 appellant filed a recurrence claim (Form CA-2a) alleging that on February 12, 2013 she sustained a recurrence of her July 7, 1998 work injury. By decision dated June 12, 2014, OWCP denied the November 12, 2013 recurrence claim finding that the claimed recurrence could not have occurred on February 12, 2013 as she was not on work status on that date. Appellant requested reconsideration on October 7, 2014. In a December 15, 2014 decision, OWCP denied modification of its prior decision.

On March 23, 2015 appellant filed a recurrence claim (Form CA-2a) alleging that on March 20, 2015 she sustained a recurrence of disability causally related to her July 7, 1998 employment injury. She asserted that her accepted conditions were exacerbated due to cooking, preparing food, lifting a fry basket with both hands, cooking on a grill, serving, getting supplies for cooking, and cleaning at work.

In an April 2, 2015 letter, OWCP advised appellant of the deficiencies of her recurrence claim. It requested additional evidence in support of the claim and afforded her 30 days to respond to its inquiries.

By decision dated May 4, 2015, OWCP denied appellant's March 23, 2015 recurrence claim as she had not submitted evidence to establish that she was disabled due to a material change or worsening of her accepted conditions.

On May 28, 2015 counsel requested an oral hearing with a representative of OWCP Branch of Hearings and Review.

Appellant subsequently submitted a position description, an x-ray of her right ankle dated April 1, 2015, and a record from Howard University Hospital dated April 1, 2015 indicating that she was admitted for lower back pain.

An April 1, 2015 x-ray of the lumbar spine demonstrated no fracture or spondylolisthesis. A July 10, 2015 magnetic resonance imaging scan of the lumbar spine revealed facet arthropathy in the mid-to-lower lumbar spine and no central canal or neuroforaminal compromise.

In a June 5, 2014 disability certificate Dr. Janaki Kalyanam, a Board-certified physiatrist, diagnosed cervical and lumbar disc herniation with neck pain, back pain, and paresthesias. She noted that appellant's symptoms were aggravated when her work restrictions were not followed strictly. Dr. Kalyanam also noted that appellant had worked without an assistant, repetitively walked from the kitchen to the steam line, and rotated in areas other than the steam line causing her condition to be exacerbated. Appellant was restricted from lifting more than five pounds at work.

On November 3, 2015 Dr. Beverly Whittenberg, a Board-certified physiatrist, diagnosed low back pain secondary to degenerative disc and joint disease and noted that prolonged standing was likely to worsen appellant's low back pain. She advised appellant to adjust her employment duties to allow for frequent transitions from sitting to standing.

In a disability certificate dated September 8, 2015 an unidentifiable healthcare provider diagnosed cervical and lumbar disc herniation with neck and back pain, carpal tunnel syndrome, and trigger finger. The provider opined that appellant was totally incapacitated, but had sufficiently recovered to be able to return to light-duty employment on September 14, 2015 with restrictions of lifting less than five pounds and reduced frequency of repetitive hand movements.

A telephonic oral hearing was held before an OWCP hearing representative on February 9, 2016. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence. No additional evidence was received.

By decision dated April 1, 2016, OWCP's hearing representative denied appellant's March 23, 2015 recurrence claim, finding that the medical evidence of record was insufficient to establish that she sustained a recurrence of her disability commencing March 20, 2015 causally related to her accepted July 7, 1998 employment injury.

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵ This term also means an inability to work that takes place 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 (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁶

When an employee who is disabled from the job he or she had 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 of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that 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.⁷ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the disabling condition is causally related to the employment injury. The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.⁸

⁵ 20 C.F.R. § 10.5(x). *See T.S.*, Docket No. 09-1256 (issued April 15, 2010).

⁶ *Id.*

⁷ *See A.M.*, Docket No. 09-1895 (issued April 23, 2010).

⁸ *See L.F.*, Docket No. 14-1817 (issued February 2, 2015); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (January 2013).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.¹⁰

ANALYSIS

OWCP accepted that appellant sustained a cervical strain, post-traumatic headache, left arm contusion, and lumbar sprain on July 7, 1998 in the performance of duty. The record establishes that appellant first returned to full duty on July 20, 1998 and OWCP later accepted a recurrence of total disability in 2002. OWCP referred her to vocational rehabilitation services and thereafter she accepted a full-time, limited-duty position as a food service worker with medical restrictions, based on the December 7, 2012 second opinion report from Dr. Draper of lifting no more than 50 pounds occasionally and 25 pounds frequently. Appellant returned to light-duty work on March 11, 2013.

On March 23, 2015 appellant filed a recurrence claim alleging that on March 20, 2015 she sustained a recurrence of her July 7, 1998 employment injury. She asserted that her accepted conditions were exacerbated due to cooking, preparing food, lifting a fry basket with both hands, cooking on a grill, serving, getting supplies for cooking, and cleaning at work. Appellant has the burden of proof to establish that she was totally disabled due to a change in her job duties such that she was unable to perform her light-duty work.

Appellant alleged that her recurrence of total disability was caused by an inability to perform her light-duty job requirements. However, she failed to submit sufficient medical evidence to establish that her assigned duties had changed such that she was not medically able to perform them. Appellant did not submit adequate medical evidence to support that her assigned duties exceeded her medical limitations or that she otherwise had a spontaneous change in her accepted condition in the present claim. On June 5, 2014 Dr. Kalyanam noted that appellant's symptoms were aggravated when her work restrictions were not strictly followed and also noted that she had worked without an assistant, repetitively walked from the kitchen to the steam line, and rotated in areas other than the steam line, which caused her condition to be exacerbated. However, she failed to provide a rationalized medical opinion explaining how appellant's assigned duties exceeded her physical limitations or caused or aggravated her accepted medical conditions. The Board therefore finds that the report of Dr. Kalyanam is insufficient to establish that appellant's light-duty job requirements changed, such that the job requirements were no longer within the restrictions provided by Dr. Draper and she was unable to perform her position.¹¹

⁹ See *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

¹⁰ See *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹¹ See *J.F.*, 58 ECAB 124 (2006); see also *Terry R. Hedman*, 38 ECAB 222 (1986).

In a November 3, 2015 report, Dr. Whittenberg diagnosed low back pain secondary to degenerative disc and joint disease, opined that prolonged standing was likely to worsen appellant's low back pain, and advised appellant to adjust her duties to allow for frequent transitions from sit to stand. The Board, however, finds that she failed to provide sufficient medical rationale explaining how appellant's symptoms beginning on March 20, 2015 were causally related to the July 7, 1998 work injury, without an intervening injury or new exposure.

Appellant submitted a disability certificate dated September 8, 2015 in support of her claim. However, this report is from a healthcare provider whose identity cannot be discerned from the record. Because it cannot be determined whether this record is from a physician as defined under 5 U.S.C. § 8101(2), it does not constitute competent medical evidence, and lacks probative value.¹²

The diagnostic medical reports of record are of limited probative medical value as they do not specifically address whether appellant's disability beginning March 20, 2015 was attributable to her accepted work injury.¹³

On appeal, counsel asserts that a new injury constitutes a change in appellant's medical status. As noted above, 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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.¹⁴ Appellant filed a claim for a recurrence and OWCP properly adjudicated the claim as a recurrence of total disability. The evidence submitted lacks adequate rationale to establish a causal connection between the alleged recurrence of her medical condition and the accepted employment injury.¹⁵

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 a recurrence of her disability commencing March 20, 2015 causally related to her accepted July 7, 1998 employment injury.

¹² *R.M.*, 59 ECAB 690, 693 (2008). See *C.B.*, Docket No. 09-2027 (issued May 12, 2010) (a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence).

¹³ See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁴ See *supra* note 5.

¹⁵ See *J.F.*, *supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2017
Washington, DC

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

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

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