

FACTUAL HISTORY

On March 3, 2008 appellant, then a 50-year-old medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that on February 27, 2008 she injured her left hip and low back when she turned to answer a telephone. OWCP accepted the claim for lumbar sprain, a sprain of the hip and thigh, and a subluxation of a lumbar vertebra.³ Appellant worked limited duty following her injury.

An electromyogram obtained on March 17, 2014 showed radiculopathy at L4-S1 on the left side. A magnetic resonance imaging (MRI) scan dated March 17, 2014, revealed degenerative disc and joint disease at multiple levels “superimposed on somewhat congenitally short pedicles resulting in mild-to-moderate central canal stenosis at L3-4 and L4-5 levels as well as internal recess and neural foraminal narrowing that is moderate to moderately severe at L3-4, L4-5 and L5-S1. There is nerve root abutment at these levels....”

In a disability certificate dated April 24, 2014, Dr. Borina Dramov, a neurologist, advised that appellant was unable to work from April 25 to August 31, 2014 due to back pain. In a report dated April 24, 2014, she discussed appellant’s complaints of back pain extending into the legs bilaterally with leg weakness. Dr. Dramov noted that the pain was severe and, after reviewing the results of the March 17, 2014 diagnostic studies, referred appellant to a neurosurgeon for evaluation.

Appellant, on May 6, 2014, filed claims for compensation (Form CA-7) for disability beginning April 25, 2014 due to her employment injury.

OWCP, by letter dated May 20, 2014, advised appellant of the definition of a recurrence of disability. It noted that she returned to modified employment after her February 27, 2008 injury on February 29, 2008 and continued working until April 25, 2014. OWCP requested that appellant submit a report from Dr. Dramov addressing how the February 27, 2008 work incident of turning to answer a telephone at work caused the diagnosed conditions.

Appellant, in a May 28, 2014 response, described work injuries beginning in 1992. She attributed her chronic pain to numerous injuries sustained while working at the employing establishment. Appellant requested that OWCP review her other claim files and noted that it had previously advised that her case records were combined into a single file.⁴

In a progress report dated May 29, 2014, Dr. Dramov diagnosed sciatica, displacement of a lumbar intervertebral disc without myelopathy, and degeneration of a lumbar intervertebral

³ By decision dated November 22, 2013, OWCP found that appellant had not established a recurrence of disability from May 21 to June 28, 2013 or the need for medical treatment on July 1, August 22 and 26, 2013 causally related to her accepted work injury. It noted that she identified a new work factor as causing her condition.

⁴ There are two other claims combined with the present claim. File No. xxxxxx756, with a May 2, 1993 date of injury, was accepted for right shoulder strain. File No. xxxxxx805, with a June 9, 1994 date of injury, was accepted for cervicalgia, right rotator cuff syndrome, and lumbosacral sprain. On June 22, 2016 appellant received a schedule award for 10 percent left leg permanent impairment under File No. xxxxxx805.

disc. On July 10, 2014 she found that appellant was disabled from work until December 31, 2014 due to a herniated lumbar disc.

By decision dated July 23, 2014, OWCP found that appellant had not established a recurrence of disability from April 25 to July 26, 2014. It determined that the medical evidence of record was insufficient to establish that she sustained disability from work due to her February 27, 2008 employment injury.

On August 12, 2014 Dr. Christopher Carver, a Board-certified neurosurgeon, evaluated appellant for pain in her lumbar spine. He related “these symptoms have been present since 1993, are constant, and originally occurred in the context of a work[-]related injury. Appellant was lifting something heavy and heard a pop.” Dr. Carver diagnosed degenerative disc disease of the cervical spine with myelopathy, lumbar radiculopathy, spinal stenosis, and degenerative disc disease. He related that appellant required surgery on the lumbar spine after determining the stability of the cervical spine.

In a progress report dated August 14, 2014, Dr. Dramov related:

“You have failed to understand that the injury sustained by [appellant], the original injury of 1993 in which she was lifting breakfast items and she lifted a heavy milk and grapefruit tray and she felt a pop in her lower back [that] was the onset of her present problems. This continued and was aggravated by an injury of 1994 by some nurse practitioners and physical therapists, and then she had another injury when she was at her desk as she was unplugging her computer and she had pain in her left buttock and back. By the way someone mentions the left hip, it is not the hip, it is [the] left buttock, and then finally the injury of February 27, 2008, which was not [a] left hip injury as you claimed.”⁵

Dr. Dramov advised that appellant’s injury to her left buttock and lower back on February 27, 2008 aggravated the 1998 injury. She noted that appellant had radiculopathy in both legs, particularly on the left side, due to a disc injury at L5-S1 with foraminal stenosis. Dr. Dramov opined, “This was not a direct cause by the last injury; it was caused by the couple of injuries starting from 1993 forward.”

Counsel, on August 18, 2014, requested a telephone hearing.

Dr. Charles L. Walker, an attending osteopath, diagnosed myofascial pain syndrome, lumbar radiculopathy, and lumbar disc degeneration in a December 10, 2014 form report. He found that appellant could resume modified employment on that date.

In an undated report received December 22, 2014, Dr. Dramov diagnosed a herniated disc at L5-S1 with “severe left foraminal stenosis.” She recommended consultation with a neurosurgeon.

⁵ In a progress report dated July 10, 2014, Dr. Dramov requested surgical authorization as recommended by Dr. Carver. On February 11, 2015 she recommended additional diagnostic studies.

At the telephone hearing, held on March 23, 2015, appellant discussed her history of work injuries beginning in 1992. She advised that she also had an injury in 1993 when she lifted items while working in food service and in 1994 when a physical therapist aggravated her injury while she was at work. Appellant also experienced two injuries in 2006. She attributed her disc condition, foraminal stenosis, and work stoppage to a worsening of her accumulated injuries overtime.

Appellant submitted medical evidence from the 1990s and 2000s provided under other file numbers as well as evidence submitted relevant to her February 27, 2008 work injury.

In a report dated April 16, 2015, Dr. Dramov discussed appellant's history of multiple work injuries from 1992 to 2008, with appellant's condition worsening in 2013 and 2014.⁶ She reviewed the results of diagnostic studies and appellant's complaints of radiculopathy. Dr. Dramov opined that appellant was totally disabled and required surgery. She attributed appellant's condition to her employment injuries.

By decision dated June 15, 2015, OWCP's hearing representative affirmed the July 23, 2014 decision. He found that Dr. Dramov attributed appellant's condition to a series of work injuries without providing any rationale for her opinion.

Appellant submitted progress reports from Dr. Dramov dated May 20 to October 2015.⁷ On September 8, 2015 OWCP received an undated report from Dr. Dramov. Dr. Dramov described appellant's history of work injuries to her back beginning July 24, 1992. She attributed appellant's radicular pain particularly on the left side to a lumbar disc problem as confirmed by diagnostic studies. Dr. Dramov advised that appellant "injured a disc in her back, which caused pain going down into her leg in a nerve root distribution consistent with a sciatic involvement, which is an L5-S1 causing L5-S1 radiculopathy." She noted that appellant had weakness due to pressure on the nerve root. Dr. Dramov opined that appellant was totally disabled due to her employment injuries.

Appellant, through counsel, requested reconsideration on October 27, 2015.

In a decision dated November 18, 2015, OWCP denied modification of its June 15, 2015 decision, finding that the reports of Dr. Dramov did not address when appellant had continued disability due to a sprain and subluxation from the accepted work injury.

In a progress report dated August 6, 2015, received by OWCP on December 18, 2015, Dr. Dramov informed OWCP that she had provided a comprehensive report describing appellant's multiple work injuries and her resulting herniated disc and left sciatica. She requested authorization for further diagnostic tests.

⁶ In a progress report dated February 11, 2015, Dr. Dramov diagnosed sciatica, a herniated disc, and disc degeneration.

⁷ In a form report dated June 25, 2015, Dr. Walker diagnosed myofascial pain syndrome, lumbar radiculopathy, and lumbar disc degeneration and provided work restrictions.

On December 3, 2015 Dr. Dramov advised OWCP that appellant sustained a spontaneous change in her condition due to her February 27, 2008 employment injury.⁸ She maintained that the “repeated injuries that [appellant] has had have caused a cumulative damage to her lower back...” Dr. Dramov described appellant’s symptoms and questioned the diagnosis made after the February 27, 2008 injury of a sprain rather than a disc condition. She diagnosed a herniated disc at L5-S1 with foraminal stenosis on the left beginning with the February 27, 2008 injury that subsequently worsened. In progress reports dated December 2015 through June 2016, Dr. Dramov discussed her continued treatment of appellant. In a progress report dated April 20, 2016, she diagnosed a herniated lumbar disc due to the February 27, 2008 work injury.

On March 14, 2016 appellant, through counsel, requested reconsideration.

By decision dated June 27, 2016, OWCP denied modification of its November 18, 2015 decision. It found that Dr. Dramov did not provide sufficient rationale supporting her opinion that the February 27, 2008 work injury resulted in additional accepted conditions.

LEGAL PRECEDENT

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-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 light duty. 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 light-duty job requirements.⁹

OWCP regulations provide that 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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.¹⁰ 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 her established physical limitations.¹¹

⁸ In progress reports dated December 2015 through June 2016, Dr. Dramov discussed her continued treatment of appellant. In a progress report dated April 20, 2016, she diagnosed a herniated lumbar disc due to the February 27, 2008 work injury.

⁹ *Richard A. Neidert*, 57 ECAB 474 (2006); *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹⁰ 20 C.F.R. § 10.5(x).

¹¹ *Id.*

ANALYSIS

OWCP accepted that appellant sustained lumbar sprain, a sprain of the hip and thigh, and a subluxation of a lumbar vertebra due to a February 27, 2008 employment injury. She worked limited duty after her injury. Appellant stopped work and filed a claim for disability compensation beginning April 25, 2014.

Appellant has not alleged a change in the nature and extent of her light-duty job requirements. Instead, she attributed her recurrence of disability to a change in the nature and extent of her employment-related conditions. It is appellant's burden to provide medical evidence to establish that she was disabled due to a worsening of her accepted work-related conditions of lumbar sprain, a hip and thigh sprain, and subluxation of a lumbar vertebra.¹²

In a report dated August 14, 2014, Dr. Dramov related that appellant injured her back in 1993 performing heavy lifting. Appellant subsequently experienced injuries in 1994 and again on February 27, 2008. Dr. Dramov noted that in 2008 appellant sustained an injury to her back and left buttock, rather than her left hip. She opined that the February 27, 2008 injury aggravated appellant's prior injuries and resulted in a disc condition as evidenced by diagnostic studies showing significant stenosis. OWCP, however, did not accept the February 27, 2008 employment injury for a disc condition with stenosis.¹³ Where appellant claims that a condition not accepted or approved by OWCP was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.¹⁴ Dr. Dramov has failed to explain the mechanism by which the February 27, 2008 work injury caused or aggravated a disc condition with stenosis. Medical conclusions unsupported by rationale are of little probative value.¹⁵ Dr. Dramov, on April 16, 2015, discussed appellant's history of multiple work injuries beginning in July 1992. She reviewed the results of MRI scans and opined that appellant was totally disabled. On August 6, 2015 Dr. Dramov advised that appellant sustained a herniated disc and left sciatica due to numerous work injuries. In a report received September 8, 2015, she described appellant's history of injuries and diagnosed a disc condition at L5-S1 causing radiculopathy. Dr. Dramov found that appellant was totally disabled. Her opinion, however, does not support a spontaneous recurrence of the February 27, 2008 work injury, accepted for hip and back sprain and a lumbar subluxation, as she attributes the current condition to a series of work injuries overtime.

On December 3, 2015 Dr. Dramov indicated that appellant's condition spontaneously changed as a result of her February 27, 2008 work injury. She further indicated, however, that appellant sustained increased damage to her lower back as a result of multiple injuries that caused a worsening of her lower back condition. Dr. Dramov diagnosed a herniated disc at L5-S1 with foraminal stenosis on the left beginning with the February 27, 2008 injury. In a progress report dated April 20, 2016, she diagnosed a herniated lumbar disc due to the February 27, 2008

¹² See *Jackie D. West*, *supra* note 9.

¹³ Appellant's other combined claims were also not accepted for this condition. See *supra* note 4.

¹⁴ *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

¹⁵ *Willa M. Frazier*, 55 ECAB 379 (2004); *Jimmy H. Duckett*, 52 ECAB 332 (2001).

work injury. Again, OWCP did not accept appellant's claim for a herniated disc at L5-S1 due to the identified employment factor of turning to answer a telephone on February 27, 2008. Dr. Dramov has failed to explain how the incident of turning to answer a telephone on February 27, 2008 led to a recurrence of disability beginning in April 2014 and thus her opinion is of little probative value.¹⁶ Her other reports are also of limited probative value as they failed to specifically address the cause of the diagnosed conditions and resulting disability.¹⁷

Dr. Carver evaluated appellant on August 12, 2014 for lumbar spine pain that began in 1993 due to an employment injury. He diagnosed degenerative disc disease of the cervical spine with myelopathy, lumbar radiculopathy, spinal stenosis, and degenerative disc disease. Dr. Carver advised that appellant required surgery on her lumbar spine. He did not, however, attribute any condition to her February 27, 2008 employment injury and thus his opinion is insufficient to meet her burden of proof.

Likewise, in a form report dated December 10, 2014, Dr. Walker diagnosed myofascial pain syndrome, lumbar radiculopathy, and lumbar disc degeneration. He found that appellant could resume modified employment on that date. As Dr. Walker did not address the pertinent issue of whether she was totally disabled beginning April 25, 2014 due to her February 27, 2008 work injury, his report is of diminished probative value.

The Board finds that the evidence submitted by appellant is insufficient to meet her burden of proof to establish that she sustained a recurrence of disability beginning April 25, 2014 due to her February 27, 2008 work injury. Appellant may file an occupational disease claim if she believes that her condition arose due to work factors occurring over the course of more than one work shift.¹⁸

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 a recurrence of disability beginning April 25, 2014 causally related to her February 27, 2008 employment injury.

¹⁶ See *Sedi L. Graham*, 57 ECAB 494 (2006) (medical reports merely asserting causal relationship generally do not discharge a claimant's burden of proof).

¹⁷ See *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003) (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).

¹⁸ An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q).

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2017
Washington, DC

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

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

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