

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

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J.C., Appellant )  
and ) Docket No. 16-1200  
SMALL BUSINESS ADMINISTRATION, ) Issued: June 5, 2017  
OFFICE OF DISASTER ASSISTANCE, )  
Herndon, VA, Employer )  
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*Appearances:*

*Alan J. Shapiro, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On May 19, 2016 appellant, through counsel, filed a timely appeal from an April 25, 2016 merit decision 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.

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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.*

## **ISSUE**

The issue is whether appellant met her burden of proof to establish a recurrence of disability for the period March 1 to November 4, 2012 causally related to an accepted October 7, 2011 employment injury.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts of the case as presented in the Board's prior decision are incorporated herein by reference.

On October 11, 2011 appellant, then a 52-year-old seasonal, intermittent customer service representative (CSR), filed a traumatic injury claim (Form CA-1) alleging that on October 7, 2011 she sustained injuries to her neck and back when she was involved in a motor vehicle accident while in travel duty status (TDY) in Pennsylvania.<sup>4</sup> She stopped work, but, returned to full-time limited duty on October 12, 2011. OWCP accepted appellant's claim for cervical strain and paid medical benefits. It subsequently expanded acceptance of her claim to include aggravation of lumbar degenerative disc disease, L4-5, L5-S1; aggravation of cervical degenerative disc disease, C5-6; aggravation of herniated lumbar disc, L4-5, L5-S1; aggravation of cervical herniated disc, C4-5; and aggravation of left spinal stenosis.

The employing establishment informed appellant in a letter dated October 31, 2011 that it was placing her in "nonduty/nonpay status," effective November 3, 2011. It explained that it was exercising the on-call provision of her seasonal or intermittent work schedule and ended her employment in Harrisburg, Pennsylvania. Although the employing establishment was willing to accommodate modified duty at her duty station in California, appellant did not return to work after November 2, 2011.

In statements dated March 28, 2012 and February 20, 2014, appellant related that in November 2011 when her supervisor informed her that she was being recalled to California, her elderly mother had asked that she come to Michigan to stay with her. She relocated to Michigan and worked as a substitute teacher from November 21 to 22, 2011. Appellant provided a letter, which verified that appellant worked as a substitute teacher for those two dates. She explained that she did not return to the substitute teacher position because she was experiencing excruciating back pain. Appellant noted that she sought medical treatment in Michigan due to worsening of her cervical and back pain.

Appellant provided a November 30, 2011 report from Dr. Demerius L. Ware, a chiropractor, in which he noted that appellant had been involved in a motor vehicle accident on October 7, 2011 and continued to complain of continuous headaches, shoulder pain radiating into her arms, and back and neck pain radiating into her shoulders. He reviewed appellant's history

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<sup>3</sup> Docket No. 13-1962 (issued March 25, 2014). On August 26, 2013 appellant, through counsel, filed an appeal with the Board to review an OWCP decision dated August 6, 2013. On December 19, 2013 counsel requested that the Board dismiss her appeal. By order dated March 25, 2014, the Board dismissed appellant's appeal.

<sup>4</sup> Appellant's official duty station was Vallejo, California.

of medical treatment and noted that, upon review of diagnostic reports, he saw evidence of compressed vertebrae with grade 1 anterolisthesis, loss of curvature of lordotic curve associated with foramina occlusion at level C4-5, and multiple subluxations of the vertebra involving C2-7. Upon examination of appellant's cervical and lumbar spine, Dr. Ware reported decreased range of motion and muscle spasms on palpation. He diagnosed neck trauma with resultant cervical spine facet joint sprain associated with chronic musculature strain, trauma to lumbar with resultant lumbar spine facet joint sprain and associated musculature strain, and cervicalgia radiating from the base of occiput to the forehead. Dr. Ware reported that appellant was disabled as a result of injuries sustained in the employment-related automobile collision.

On December 1, 2011 appellant underwent magnetic resonance imaging (MRI) scan examinations by Dr. Maria S. Noitakis, a Board-certified diagnostic radiologist. Dr. Noitakis noted in a lumbar MRI scan report that appellant had lateral paracentral disc extrusion bilateral neural foraminal narrowing, left greater than right, and left nerve root compression and diffuse disc protrusion at L5-S1 with bilateral neural foraminal narrowing, right greater than left, with right nerve root compression. A cervical MRI scan revealed loss of cervical lordosis, mild central bulges at C4-5 and C6-7, and left paracentral disc osteophyte protrusion at C5-6 with left neural foraminal narrowing and central canal narrowing.

Appellant continued to receive medical treatment from Dr. Ware who indicated on disability certificates dated February 28 and March 5, 2012 that she had been on work disability from February 28 to April 28, 2012.

In an April 4, 2012 narrative report, Dr. Louis N. Radden, an osteopathic orthopedic surgeon and spine specialist, accurately described the October 7, 2011 motor vehicle accident and related that appellant was diagnosed with cervical strain, cervical facet syndrome, and cervical disc herniation at C5-C6. He noted that appellant still complained of constant back, leg, neck, and left arm pain. Dr. Radden recommended that appellant "continue with the disability." He provided an April 4, 2012 disability note, which noted that appellant had been on work disability from February 28 to May 16, 2012. Dr. Radden indicated that appellant was restricted from lifting more than five pounds and no lifting, bending, twisting, and prolonged seating.

Dr. Radden again described the October 7, 2011 employment incident in an April 9, 2012 narrative report. He noted that appellant sustained injuries to her neck and back, including cervical strain, cervical facet syndrome, cervical disc herniation at C5-6, lumbar strain, lumbar facet syndrome, lumbar disc herniation at L5-S1, as well as L4-5. Dr. Radden related that appellant still complained of neck pain with radicular symptoms in the upper extremities and low back pain with radicular symptoms in the lower extremities. He noted that the December 1, 2011 MRI scans confirmed the diagnoses and supported appellant's complaints of pain. Dr. Radden opined that the October 7, 2011 motor vehicle accident caused appellant's herniated disc at C5-6, as well as L4-5 and L5-S1. He advised that appellant was temporarily disabled and could not perform light-duty work. Dr. Radden explained that appellant was "still experiencing neck pain with radicular symptoms in the upper extremities as well as low back pain with radicular symptoms in the lower extremities." He indicated that appellant was taken off work because of the herniated disc at C5-6, as well as L4-5, L5-S1, as verified in the December 1, 2011 MRI scan findings. Dr. Radden recommended cervical discectomy and fusion surgery.

Appellant continued to receive medical treatment from Dr. Ware who indicated in an April 28, 2012 disability certificate that appellant was disabled from work from April 28 to August 28, 2012.

On June 26, 2012 appellant filed a claim for intermittent periods of wage-loss compensation (Form CA-7) for wage-loss on intermittent dates during the period November 23, 2011 to June 4, 2012. She indicated that on November 21 and 22, 2011 she worked as a substitute teacher. On the time-analysis form (Form CA-7a), appellant claimed intermittent periods of wage-loss compensation on specific dates due to physical therapy and medical appointments. She claimed total disability beginning March 17, 2012.<sup>5</sup>

By letter dated July 5, 2012, OWCP advised appellant that it received her claim for compensation for intermittent periods of disability due to medical appointments and total disability. It reported that the medical evidence of record supported payment of up to four hours for attendance at medical appointments on November 23 and December 22, 2011, and January 17, February 28, and March 4, 2012. For the remaining dates, OWCP advised appellant that the evidence was insufficient to support her claim for disability compensation. It requested additional evidence to establish that she was unable to work on the claimed dates as a result of the October 7, 2011 employment injury.

In narrative reports dated July 27 and 29, 2012, Dr. Radden described the October 7, 2011 work-related motor vehicle accident and noted diagnoses of cervical strain, cervical facet syndrome, cervical disc herniation C5-6, lumbar strain/sprain, lumbar facet syndrome, lumbar disc herniation at L4-5, L5-S1, and impingement syndrome of the left upper extremity and headaches. He provided examination findings and opined that appellant's injuries were related to the automobile accident. Dr. Radden reported that appellant had not reached maximum medical improvement and recommended that she continue on disability. He related that he received OWCP documentation, which found that the medical evidence did not support appellant's inability to work, and disagreed with its determination. Dr. Radden noted his belief that OWCP failed to acknowledge that appellant's injuries were more complex than a neck strain. He noted that appellant had significant injuries which supported her being off work.

Appellant began to receive medical treatment from Dr. Marc Terebelo, a chiropractor, who related in July 20 to August 24, 2012 examination notes appellant's complaints of neck and back pain. Dr. Terebelo reported objective findings of edema in her left clavicular, right clavicular, lumbar, and cervical upon palpation. He reported limited and painful range of motion of the cervical and lumbar spine. Dr. Terebelo diagnosed subluxation of multiple cervical vertebrae, cervical strain, thoracic and lumbar subluxation, and cervical displacement without myelopathy.

On August 10, 2012 appellant underwent cervical imaging by Dr. Maysoon Al-Hihi, a Board-certified radiologist, who reported spondylotic changes and limited movement of the cervical spine. In a lumbar spine imaging report, Dr. Al-Hihi noted mild spondylotic changes.

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<sup>5</sup> On a Time-Analysis Form (Form CA-7a), appellant indicated that she had doctors' visits or physical therapy on 64 days between November 23, 2011 and February 21, 2012.

In an August 19, 2012 letter, appellant asserted that since October 7, 2011 she had continuously suffered from the stress and uncertainty of not knowing how or when she would be compensated financially for her injuries. She alleged that she was currently unable to work. Appellant requested that OWCP review her file and provide direction on how she could receive compensation for time lost from work. She resubmitted medical reports regarding previous treatment for her accepted conditions.

In a September 13, 2012 letter, Dr. Terebelo indicated that appellant was seen in his office for treatment of injuries sustained in an October 7, 2011 work injury. He reported that as a result of the accident appellant claimed to suffer from dizziness, headaches, blurred vision, ears ringing, difficulty sleeping, irritability, fatigue, tension, neck pain, stiffness, jaw problems, arm/shoulder pain, upset stomach, back pain, and leg pain.

Appellant received medical treatment in the hospital from October 23 to 24, 2012 for complaints of chest pain. In an October 23, 2012 emergency room report, Dr. Linda Okra-Boateng, Board-certified in emergency medicine, related appellant's complaints of chest pain and palpitations. She reviewed appellant's history and provided physical examination findings. Dr. Okra-Boateng noted that appellant's laboratories and electrocardiogram (ECG) were normal. She indicated that appellant's symptoms were consistent with an anxiety attack. In an October 23, 2012 chest radiograph report, Dr. Stephen Kilanowski, a Board-certified radiologist, noted no acute intrathoracic process. In an October 23, 2012 ECG report, Dr. Gerald Timmis, a Board-certified cardiologist, indicated a normal sinus rhythm and possible left atrial enlargement. In an October 24, 2012 hospital note, Dr. Daniel Walsh, a Board-certified cardiologist, conducted an examination and noted that appellant had unremarkable ECG, cardiac enzymes, and computerized tomography angiogram (CTA). He recommended that appellant be discharged.

In a letter dated October 28, 2013, a human resources assistant for the employing establishment noted that appellant was injured on October 7, 2011. She related that at the time appellant was still employed with the employing establishment, but currently had been on nonpay status since April 6, 2013.

On November 26, 2013 appellant again filed claims for wage-loss compensation (Form CA-7) for the periods November 6, 2011 to November 3, 2012 and March 25 to December 14, 2013. She indicated that the reason she was claiming compensation was because she was injured.

By letter dated January 21, 2014, OWCP advised appellant that it received her claims for disability compensation for the period November 6, 2011 to November 3, 2012 and for March 25 to December 14, 2013. It requested that appellant verify her alternate work schedule from November 21 to 22, 2012.

A similar letter was sent to the employing establishment requesting appellant's employment status for the period of March 25 to December 14, 2013. On February 21, 2014 the employing establishment responded that as of March 25, 2013 appellant had informed them that she could not work due to the pain she was experiencing and requested to go home. It confirmed that appellant worked as an intermittent, term employee.

In February 2014 appellant relocated back to California from Michigan.

In a March 20, 2014 memorandum of a telephone call (Form CA-110), OWCP contacted the employing establishment. It confirmed that for the period November 6, 2011 to November 3, 2012 there was suitable employment available, but appellant chose not to work. The employing establishment explained that CSRs were capable of working at multiple locations around the country and that appellant only needed to contact the employing establishment for an assignment. It further stated that in November 2012<sup>6</sup> appellant relocated back to Michigan with the assumption that she could remain off work, which is why she did not file a wage-loss claim for the period November 5, 2012 to March 24, 2013. The employing establishment related that in March 2013 appellant provided medical documentation with new medical restrictions. It confirmed that there was no work available within appellant's restriction during that time, which is why a wage-loss claim was initiated for the period March 25 to December 14, 2013.

Appellant provided several medical records describing continued treatment for her cervical and lumbar disc injury, as well as for complaints of anxiety attacks, dysphagia, headaches, and facial swelling. The medical reports did not discuss appellant's ability to work for the claimed period March 1 to November 4, 2012.

In a decision dated March 20, 2014, OWCP denied appellant's claim for wage-loss compensation for the period March 1 to November 4, 2012. It found that the medical evidence of record demonstrated that appellant was capable of working and that the employing establishment confirmed that limited-duty work was available. OWCP noted that appellant elected to remain off work due to extenuating circumstances regarding her move to Michigan. It also found that appellant was entitled to wage-loss compensation for the period March 25 to December 14, 2013 because no work was available within appellant's restrictions during this time period.

On March 22, 2014 appellant's term appointment ended and she was terminated from employment.

By letter dated and received by OWCP on March 26, 2014, appellant, through counsel, requested a hearing before an OWCP hearing representative.

Dr. Ware continued to treat appellant and in a letter dated May 29, 2014 related that accompanying documentation would explain appellant's disability from March 1 through November 4, 2012. He indicated that appellant was placed on medical leave from work due to injuries sustained in a motor vehicle collision on October 7, 2011. Dr. Ware noted that he was attaching his initial report which remained unchanged regarding his findings for related conditions. He resubmitted his November 30, 2011 report.

On October 9, 2014 a telephone hearing was held before an OWCP hearing representative. Appellant was represented by counsel, who alleged that an April 9, 2012 report by Dr. Radden provided a detailed analysis of appellant's conditions and supported that appellant was totally disabled. Appellant noted that she did not remember stopping work in March 2012.

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<sup>6</sup> The record indicates that appellant relocated to Michigan in November 2011.

She related that she was under her doctor's care in March 2012 and stopped working in March 2013. Counsel related that, according to the OWCP decision, the employing establishment was able to give appellant work, but she had moved to various locations and was unavailable for work. Appellant clarified that she was not available to work because she could barely even walk around that time period in 2012 and was still under the care of Dr. Radden, who advised that appellant should undergo surgery. She reported that Dr. Radden released her to return to work in November 2012.

By decision dated December 23, 2014, an OWCP hearing representative affirmed the March 20, 2014 denial decision finding that the medical evidence failed to establish that appellant was disabled from work from March 1 through November 4, 2012 as a result of her October 7, 2011 employment injury. She determined that Dr. Ware's disability certificate lacked probative value because he was a chiropractor who was not treating subluxation. The hearing representative further noted that Dr. Radden's reports failed to explain how appellant was unable to work during the claimed period as a result of her accepted injury.

On March 17, 2015 appellant, through counsel, requested reconsideration. In a February 13, 2015 letter, she discussed various discrepancies in OWCP's December 23, 2014 decision. Appellant asserted that Dr. Ware and Dr. Radden provided medical reports and disability notes which indicated that she was unable to work due to her employment-related cervical and lumbar conditions as early as November 2011. She noted that she submitted all these documents to the employing establishment. Appellant also reported that during that time period she kept in contact with the employing establishment, who helped her complete her disability compensation claim forms, and she was never informed that the employing establishment could find a job for her. She asserted that the employing establishment informed her that she should not work until she had surgery and stated that if she had been offered a job within her medical restrictions she would have accepted the job offer. Appellant explained that she wanted to work and pointed out that she worked as a part-time realtor<sup>7</sup> during that time period when she lived in Michigan.

Appellant resubmitted Dr. Radden's reports dated December 22, 2011 to April 9, 2012, Dr. Ware's disability certificates, and emergency room records. She also provided several emails between herself and the employing establishment dated from March 2013 to January 2014 regarding submission of her disability compensation claims.

By letter dated January 6, 2016, the employing establishment informed OWCP that the telephone hearing transcript indicated that appellant had refused to work when it was offered to her. However, that statement was incorrect. The employing establishment explained that a disability certificate from Dr. Radden had been located which placed appellant on total disability for the period February 28, 2012 to May 15, 2013. If this certificate had been available at the time of the hearing, the employing establishment would have agreed with the time period on appellant's disability compensation claims. The employing establishment requested that OWCP reverse its decision for that time frame and pay appellant disability compensation.

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<sup>7</sup> The record does not indicate the specific dates that appellant worked as a part-time realtor.

In a letter dated January 20, 2016 and received by OWCP on January 26, 2016, counsel informed OWCP that he was enclosing another copy of appellant's reconsideration request that was submitted in March 2015. He resubmitted Dr. Radden's medical reports dated April 4 to July 29, 2012 and Dr. Ware's disability certificates.

By decision dated April 25, 2016, OWCP denied modification of the December 23, 2014 denial decision. It found that the medical evidence provided did not demonstrate that the employing establishment was unable to accommodate her work restrictions or that she was unable to work her limited-duty restrictions during the period March 1 to November 4, 2012 as a result of her October 7, 2011 employment injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.<sup>8</sup> For each period of disability claimed, the employee has the burden of proof to establish a causal relationship between the recurrence of disability and the accepted employment injury.<sup>9</sup>

OWCP's implementing regulations define a recurrence of disability as 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.<sup>10</sup> 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.<sup>11</sup>

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of proof to establish by the weight of the reliable, probative, and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury.<sup>12</sup> This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>13</sup> For each period of disability claimed, the

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<sup>8</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>9</sup> *Dominic M. Descaled*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>10</sup> 20 C.F.R. § 10.5(x).

<sup>11</sup> *Id.*

<sup>12</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>13</sup> *Nicolea Bruso*, 33 ECAB 1138 (1982).

employee must establish that she was disabled for work as a result of the accepted employment injury.<sup>14</sup>

### **ANALYSIS**

Appellant was employed as a seasonal CSR for the employing establishment. OWCP accepted that on October 7, 2011 appellant sustained cervical strain, aggravation of lumbar degenerative disc disease, L4-5, L5-S1, aggravation of cervical degenerative disc disease, C5-6; aggravation of herniated lumbar disc, L4-5, L5-S1; aggravation of cervical herniated disc, C4-5; and aggravation of left spinal stenosis in the performance of duty. She stopped work and returned to limited duty on October 12, 2011. On November 3, 2011 the employing establishment placed appellant on nonpay status. Appellant relocated from California to Michigan and worked as a substitute teacher from November 21 to 22, 2011. On June 26, 2012 she filed a Form CA-7 for intermittent periods of wage-loss compensation for the period November 23, 2011 to June 4, 2012. Appellant filed an additional Form CA-7 for wage-loss compensation on November 26, 2013 claiming disability for intermittent periods from November 6, 2011 to November 3, 2012. She attributed her disability to back pain and an inability to walk.

By decision dated March 20, 2014, OWCP denied appellant's claim for wage-loss compensation for the period March 1 to November 4, 2012.

The Board finds that appellant has failed to establish a recurrence of disability for the period March 1 to November 4, 2012 causally related to the October 7, 2011 employment injury.

Appellant has not alleged a change in the nature and extent of her light-duty job requirements which prevented her from working, but, instead, that she was unable to work during the claimed period due to a change and worsening of her accepted conditions. Accordingly, appellant must provide sufficient medical evidence to establish that her inability to work was causally related to her employment injury.<sup>15</sup>

Appellant submitted April 4 and 9, 2012 reports by Dr. Radden. He related that he treated appellant for injuries to her neck and back, including cervical strain, cervical facet syndrome, cervical disc herniation at C5-6, lumbar strain, lumbar facet syndrome, lumbar disc herniation at L5-S1 and L4-5 resulting from an October 7, 2011 motor vehicle accident. Dr. Radden conducted an examination and noted that MRI scans supported appellant's symptoms and diagnosed conditions. He reported that appellant had not been working and advised that she remained totally disabled. Dr. Radden provided an April 4, 2012 disability note, which indicated that appellant had been on work disability from February 28 to May 16, 2012 due to diagnoses of lumbar and cervical disc herniation. Although Dr. Radden opined that appellant was not able to work during the claimed period March 1 to November 4, 2012, the Board notes that he did not provide any medical rationale explaining how her employment-related conditions had changed such that she was unable to work or how appellant's inability to

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<sup>14</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>15</sup> *Supra* note 12.

work was related to the October 7, 2011 work injury.<sup>16</sup> A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>17</sup>

In an April 9, 2012 narrative report, Dr. Radden further explained that appellant remained disabled because she was “still experiencing neck pain with radicular symptoms in the upper extremities as well as low back pain with radicular symptoms in the lower extremities.” The Board notes that Dr. Radden attributed appellant’s inability to work due to pain and radicular symptoms. Dr. Radden did not provide any objective findings to demonstrate how appellant’s accepted conditions had worsened to the point that she was unable to work light duty. When a physician’s statements regarding an employee’s ability to work consist only of repetition of the employee’s complaints that he or she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability.<sup>18</sup> Accordingly, the Board finds that Dr. Radden failed to provide a sufficiently rationalized medical opinion explaining how appellant was unable to work for the period March 1 to November 4, 2012 due to a spontaneous change or worsening of her October 7, 2011 employment injury. The remaining reports of Dr. Radden do not discuss any period of disability. As such, they are not of probative value.<sup>19</sup>

Appellant was also treated by chiropractors, Dr. Ware and Dr. Terebelo, for complaints of continuous headaches, shoulder pain radiating into her arms, and back and neck pain radiating into her shoulders after an October 7, 2011 motor vehicle accident. A chiropractor, however, is considered a physician as defined by section 8101(2) of FECA only if his services consist of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.<sup>20</sup> While Drs. Ware and Terebelo noted a diagnosis of subluxation, they did not provide any x-rays to support their diagnoses nor did their treatment consist only of manual manipulation of the spine for subluxation. Accordingly, their reports are of no probative value.<sup>21</sup>

The additional diagnostic reports from Dr. Noitakis are also insufficient to establish appellant’s recurrence of disability claim as she did not specifically address whether appellant sustained a recurrence of disability for the period March 1 to November 1, 2012 causally related to her October 7, 2011 work-related injury.<sup>22</sup> Likewise, the August 10, 2012 diagnostic imaging reports of Dr. Al-Hihi and medical reports from Drs. Okra-Boeteng, Kilanowski, and Walsh

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<sup>16</sup> See *K.W.*, 59 ECAB 271 (2008).

<sup>17</sup> *T.M.*, Docket No. 08-975 (issued February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>18</sup> *P.D.*, Docket No. 14-744 (issued August 6, 2014); *G.T.*, 59 ECAB 447 (2008).

<sup>19</sup> See *M.C.*, Docket No. 15-1762 (issued August 26, 2016).

<sup>20</sup> 5 U.S.C. § 8101(2).

<sup>21</sup> See. *C.T.*, Docket No. 11-0869 (issued February 28, 2012).

<sup>22</sup> *Supra* note 19.

dated October 23 to 24, 2012, also did not address appellant's inability to work for the period March 1 to November 4, 2012.<sup>23</sup>

Moreover, appellant has also not shown that she is entitled to disability compensation for the period March 1 to November 1, 2012 because of the withdrawal of light-duty status. The record reflects that appellant was a seasonal, on-call employee and was placed on nonduty/nonpay status as of November 3, 2011. This action, however, does not constitute a withdrawal of her light-duty assignment for purposes of establishing entitlement to disability compensation as the nonpay status had nothing to do with appellant's ability to perform the light-duty requirements.<sup>24</sup> On March 20, 2014 the employing establishment confirmed *via* telephone that suitable employment was available for appellant if she had contacted the employing establishment for an assignment. Appellant has explained, however, that she did not seek employment due to her worsening medical conditions.

The Board finds, therefore, that appellant has not established that she was totally disabled from March 1 to November 4, 2012 as a result of her October 7, 2011 employment injury.

On appeal counsel alleges that OWCP's decision was contrary to fact and law. As explained above, however, none of the medical reports submitted provided sufficient medical rationale to establish that appellant was totally disabled for the period March 1 to November 1, 2012 due to her accepted 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 16.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability for the period March 1 to November 4, 2012 causally related to an October 7, 2011 employment injury.

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<sup>23</sup> *Id.*

<sup>24</sup> *Supra* note 11; *see also* M.C., Docket No. 06-1744 (issued January 19, 2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 25, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 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