

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

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**D.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Corpus Christi, TX, Employer**

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**Docket No. 16-1811  
Issued: May 17, 2017**

*Appearances:*

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 13, 2016 appellant, through counsel, filed a timely appeal from a June 24, 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.<sup>3</sup>

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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.*

<sup>3</sup> The Board notes that appellant submitted new evidence following the June 24, 2016 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

## ISSUE

The issue is whether appellant has established a recurrence of disability commencing June 1, 2015 causally related to his accepted employment injury.

## FACTUAL HISTORY

On June 14, 2013 appellant, then a 50-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that on May 6, 2012 he sustained a herniated disc as a result of driving a mail truck. He stopped work on July 26, 2012. On April 3, 2013 appellant underwent lumbar microdiscectomy, laminectomy, foraminotomy, and partial facetectomy at L5-S1 on the left. OWCP accepted his claim for herniated disc at L5-S1 without myelopathy and thoracic or lumbar neuritis or radiculitis. It paid wage-loss compensation commencing July 26, 2012.

Dr. Francisco Battle, a neurosurgeon, treated appellant. In an August 12, 2013 duty status report (Form CA-17), he noted diagnoses of lumbago and displacement of lumbar intervertebral disc without myelopathy. Dr. Battle advised that appellant could return to work with restrictions of no lifting or carrying more than 20 pounds. He also noted that driving should be limited to seven hours; simple grasping for six hours; standing, walking, climbing, and fine manipulation for three hours; sitting, twisting, and reaching above the shoulder for two hours; and bending, stooping, pushing, and pulling for one hour.

In an August 16, 2013 attending physician's report (Form CA-20), Dr. Battle noted diagnosis of lumbar radiculopathy. He related that appellant was able to return to light-duty work with restrictions of no lifting over 20 pounds, no squatting, stooping, repetitive bending, working at heights and overhead, and needing to be able to sit, stand, and walk at will.

Appellant was also treated by Dr. Frank Gonzales, a chiropractor. In an August 16, 2013 Form CA-20, Dr. Gonzales indicated that appellant had a history of back pain radiating to his legs. He noted diagnoses of somato dysfunction of the lumbar region, displacement of lumbar intervertebral disc without myelopathy, and lumbosacral neuritis.

On August 20, 2013 the employing establishment offered appellant a part-time light-duty position as a letter carrier. This position required that appellant work six hours per day with restrictions. The duties of his modified assignment included performing vehicle check, casing mail for one and a half hours, delivering mail for four and a quarter hours, pulling down and loading vehicles for 15 minutes, and performing vehicle check for 3 minutes. The physical requirements of his position were simple grasping for six hours, driving a vehicle for four to six hours, and walking and standing for three hours.

Appellant returned to modified-duty work on August 21, 2013 working six hours a day pursuant to his work restrictions. OWCP paid wage-loss compensation for the additional two hours a day that he did not work.

Dr. Thomas Martens, an osteopath specializing in family medicine, began to treat appellant on June 1, 2015. In a progress report, he noted appellant's accepted diagnoses of displacement of lumbar intervertebral disc without myelopathy and thoracic or lumbosacral

neuritis or unspecified radiculitis. Dr. Martens indicated that appellant had been working six hours daily with modifications since September 2, 2013. He related appellant's complaints of lumbar pain radiating down his left and right leg. Dr. Martens recounted that appellant believed his symptoms worsened when the new postmaster required appellant to carry and dismount his mailbag. Upon physical examination, he observed decreased range of motion, extension, and flexion of the lumbar spine. Straight leg raise testing was positive on the right and negative on the left. Dr. Martens reported decreased extension, flexion, and effusion of the right knee. Examination of the right shoulder revealed decreased shoulder movement and muscle pain. Dr. Martens diagnosed displacement of the lumbar intervertebral disc without myelopathy, thoracic or lumbosacral neuritis or radiculitis, right shoulder internal derangement, and right knee internal derangement. He recommended a functional capacity evaluation (FCE) to determine appellant's return to work status.

In a June 1, 2015 Form CA-17, Dr. Martens reported a diagnosis of displacement of lumbar intervertebral disc. He indicated that appellant could work part time for four hours a day with restrictions of lifting, carrying, simple grasping, and sitting for four hours per day, fine manipulation for two hours per day, and standing, walking, bending, stooping, twisting, pushing, pulling, and driving a vehicle for one hour per day.

Dr. Martens further indicated in a June 3, 2015 letter to OWCP that he had treated appellant for work-related conditions to his lower back due to his repetitive work-related duties as a letter carrier for the past 26 years. He noted that appellant had worked modified duty since September 2013 and reported that recently the new postmaster required that he carry and dismount his mailbag. Dr. Martens related appellant's complaints of constant lumbar pain radiating down both legs. He reported physical examination findings of decreased extension, flexion, and range of motion of the lumbar spine. Dr. Martens also noted decreased extension, flexion, and effusion of appellant's right knee and decreased shoulder movement and muscle pain of the right shoulder. He opined that as a result of appellant's continued repetitive duties and overcompensating for pain in his back, appellant's right knee and shoulder complaints had worsened and had caused right knee internal derangement and right shoulder internal derangement. Dr. Martens explained that appellant's right knee internal derangement and right shoulder internal derangement were consequential to appellant's initial lumbar conditions. He requested that OWCP accept the additional diagnoses of knee internal derangement and shoulder internal derangement as a result of appellant's repetitive work duties.

Regarding appellant's work capacity, Dr. Martens explained that the effects of appellant's work injury and disability limited him from returning to work at a full-duty capacity. He reported that appellant's current limitations were sitting and lifting for four hours day, repetitive movements of the wrist for two hours a day, walking, standing, twisting, operating a motor vehicle and repetitive movements of the elbows, pushing, and pulling for one hour per day. Dr. Martens further restricted appellant to lifting, pushing, and pulling up to 20 pounds and no reaching, reaching above the shoulders, squatting, kneeling, or climbing.

On June 9, 2015 appellant filed a claim for wage-loss compensation (Form CA-7) claiming additional wage loss for the period May 16 to 29, 2015. The time analysis form (Form CA-7a) indicated that appellant took leave on the dates claimed from May 16 through 20, 2015 and worked six hours per day from May 21 through 29, 2015.

In a June 12, 2015 magnetic resonance imaging (MRI) scan report, Dr. Anita Rich, a Board-certified diagnostic radiologist, noted radial tearing of the in the medial meniscus of the right knee, tricompartmental osteoarthritic change in the knee with areas of grade 3 to 4 chondral loss along the patella trochlea and medial femoral condyle with mild to moderate reactive or stress-related subchondral marrow edema and subchondral cystic change in the patellofemoral compartmental, and moderate suprapatellar effusion.

On June 15, 2015 appellant filed another Form CA-7 alleging wage-loss compensation for the period May 30 to June 12, 2015. The employing establishment remarked that an unauthorized doctor had reduced appellant's work hours and noted that a recurrence needed to be developed. Appellant continued to file Forms CA-7 claiming wage-loss compensation for four hours a day beginning June 12, 2015. The time analysis forms (Form CA-7a) indicated that beginning June 3, 2015 appellant worked four hours and claimed wage-loss compensation for the remaining four hours.

By letters dated June 17 and 19, 2015, OWCP informed appellant that additional evidence was needed to establish that he was entitled to disability compensation beginning May 19, 2015 as a result of his accepted back condition. It requested that he submit a comprehensive medical report, which explained how his lumbar condition had worsened to the extent that he was no longer able to perform the duties of his position when he stopped work on May 19, 2015.

Dr. Martens continued to treat appellant. In a July 1, 2015 report, he noted that appellant was removed from work and remained incapacitated at this time due to the severity of range of motion deficit. Upon examination, Dr. Martens observed decreased trapezius height of the left shoulder when compared to the right, edema to the anterior aspect at the deltoid and rotator cuff, and pain with palpation at the rotator cuff particularly supraspinatus insertion. He reported that Speed's test on the left was positive with inability to externally rotate the left shoulder. Neurological examination revealed intact deep tendon reflexes bilaterally. Dr. Martens explained that appellant was incapacitated pending medical improvement. He reported that appellant's incapacitation was fully supported by the factual clinical findings and physical examination. Dr. Martens indicated that appellant was currently unable to perform at the physical demand required for his position of rural letter carrier. He noted that appellant's incapacitation from June 15 through July 10, 2015 was medically certified.

Appellant requested, in a letter dated July 2, 2015, that Dr. Martens be authorized as his treating physician. He indicated that he filled out the paperwork authorizing Dr. Martens to be his treating physician and asked that if there was any additional paperwork to fill out to please let him know. In a letter dated September 21, 2015, OWCP denied appellant's request for a change of physicians.

In a July 9, 2015 Form CA-17, Dr. Martens noted appellant's clinical finding of displacement of lumbar intervertebral disc. He indicated that appellant was authorized to work modified duty four hours per day.

On July 13, 2015 OWCP received a handwritten letter from appellant. He explained that he had been on sick leave since February 28, 2015 due to a broken ankle and had returned to

modified-duty work on May 21, 2015. Appellant recounted that on May 22, 2015 Postmaster D.N. informed him that he needed a new Form CA-17 with updated restrictions and instructed him to deliver his entire route, including the park and loop of 2026 through 2027. When he asked Postmaster D.N. for a PS Form 3996 because his medical restrictions limited him from delivering the park and loop sections, Postmaster D.N. told him that he did not need a PS Form 3996 because of all the mail was loaded onto the truck parcels. Appellant reported that he delivered the mail as ordered, but needed help to finish the park and loop on May 22, 23, and 26, 2015. He asserted that on May 27, 2015 Postmaster D.N. informed him that he spoke with appellant's occupational nurse and they decided that appellant no longer had work restrictions. Postmaster D.N. instructed appellant to load up his mail truck and deliver the mail without any help. Appellant continued to work without restrictions and was finally able to fill out a PS Form 3996 on May 29, 2015. He related that on May 30, 2015 he began to experience pain in the right side of his back, leg, and shoulder. Appellant alleged that Postmaster D.N. pushed him past his work restrictions for three days and now his medical conditions had worsened. He submitted a PS Form 3996 dated May 28, 2016.

In a decision dated July 28, 2015, OWCP denied appellant's claim for wage-loss compensation beginning May 16, 2015. It determined that the medical evidence of record failed to establish that his accepted lumbar condition worsened to the extent that he was no longer able to perform his modified-duty work. Accordingly, OWCP found that appellant failed to establish that his disability beginning May 16, 2013 was a result of his accepted employment conditions.

On August 13, 2015 OWCP received appellant's request for reconsideration. Appellant submitted an August 12, 2015 report by Dr. Martens. Dr. Martens recounted that appellant sustained a lower back condition as a result of his repetitive, work-related duties. He noted that he reviewed OWCP's July 28, 2015 denial letter based on the lack of a well-reasoned medical opinion to support causal relationship. Dr. Martens requested that OWCP clearly review his previous narrative. He included an excerpt from his June 3, 2015 report where he explained that due to appellant overcompensating for his back pain, appellant's right knee and shoulder had worsened. Upon physical examination, Dr. Martens observed decreased range of motion of the back and back antalgic gait. He also reported decreased flexion, extension, and effusion of the right knee. Dr. Martens provided a copy of section 8102 of FECA. He requested that OWCP review the medical evidence and reconsider acceptance of appellant's disability compensation claim. Dr. Martens continued to submit Form CA-17s which indicated that appellant could work four hours per day.

On August 26, 2015 OWCP received a letter from appellant's counsel requesting a telephone hearing before an OWCP hearing representative.<sup>4</sup> A telephonic hearing was held on April 14, 2016. Appellant testified that he was working modified duty six hours per day and was receiving wage-loss compensation for the other two hours. He testified that on May 28, 29, and 30 the current postmaster pushed him and gave him direct orders to work the two hours delivering a park and loop on his route. Appellant explained that delivering mail on the park and loop required walking house to house and carrying his mailbag to deliver mail. He related that

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<sup>4</sup> In a letter dated August 27, 2015, OWCP informed appellant that it received his attorney's request for a telephone hearing and would take no further action on his request for reconsideration.

his back and bilateral knees began to hurt. Appellant reported that he sought medical treatment from Dr. Martens, who ordered a lower extremity MRI scan which showed that the tissues in his knee were injured. He noted that Dr. Martens placed him on restrictions working four hours per day. Appellant indicated that the employing establishment would not accommodate his new work restrictions so he stopped work. The hearing representative clarified that appellant was alleging that there was a change in his modified work assignment when Postmaster D.N. instructed him to work the full eight hours on May 28, 29, and 30 and to deliver mail on the park and loop routes. She noted that appellant was to claim an additional injury and disability due to these new work activities.

Appellant provided a letter from Dr. Martens dated May 6, 2016, which was similar to his June 3, 2015 letter. He reported that appellant had accepted conditions of lumbar disc displacement and lumbosacral radiculitis and noted additional diagnoses of right knee and left knee internal derangement. Dr. Martens again explained that due to appellant's continued repetitive duties and overcompensating for his back pain, his right and left knee worsened and caused the condition of bilateral knee internal derangement. He related that the effects of appellant's work injury persisted and prevented him from returning to full-duty work. Dr. Martens indicated that appellant was capable of working modified duty of four hours per day. He opined that appellant's bilateral knee internal derangement was a direct result of appellant's accepted lumbar conditions. Dr. Martens explained that since appellant's bilateral knee internal derangements were consequential to appellant's original claim, OWCP should add these conditions as compensable injuries.

In a May 31, 2016 letter, Dr. Martens indicated that appellant suffered from a low back and bilateral knee condition as a result of his repetitive work duties. He related that an electromyography (EMG) and nerve conduction velocity (NCV) study performed on May 16, 2016 revealed evidence supportive of chronic left and right L5 radiculopathy. Dr. Martens further noted that a June 12, 2015 MRI scan examination demonstrated radial tearing in the medial meniscus of the right knee. He provided examination findings similar to his previous examinations. Dr. Martens opined that due to the extent of appellant's condition he had experienced "documented measurable physical disability which resulted in incapacitation from June 1, 2015 through May 31, 2016 and continuing." He reported that appellant had functional deficits on examination, decreased muscle strength, decreased range of motion, decreased overall function, and significant increase of pain, which caused incapacitation for the dates listed. Dr. Martens explained that appellant continued to suffer from his ongoing physical disabilities related to the progressive degeneration of his lower back and bilateral knee that originated as a result of a work-related injury. He reported that, due to the residual effects of these injuries with activities of daily living, he experienced a period of incapacitation. Dr. Martens concluded that "due to the nature and severity of [appellant's] work-related injury on May 26, 2012, the patient had been totally temporarily disabled and continues to require incapacitation until further evaluation." He submitted the May 16, 2016 EMG/NCV testing report and resubmitted his previous Form CA-17s.

Dr. Martens reiterated his examination findings and medical opinion in a June 1, 2016 letter. He added that appellant also sustained right knee medial meniscus tear as consequence of his accepted low back condition. Dr. Martens recommended that appellant continue to work

modified duty four hours per day. He noted that it was unknown when appellant would return to full duty.

On June 10, 2016 OWCP paid additional wage-loss compensation for two hours per day for the period May 16 to 31, 2015.

By decision dated June 24, 2016, an OWCP hearing representative affirmed the July 28, 2015 decision, with modification. She noted that because OWCP paid additional wage-loss compensation for the period May 16 to 31, 2015, the issue regarding additional wage-loss compensation during this period was moot. The hearing representative denied appellant's claim for recurrent disability beginning June 1, 2015 because she determined that the medical evidence of record failed to establish that appellant's reduced work hours were causally related to a worsening of his work-related conditions.<sup>5</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA bears the burden of proof to establish the essential elements of his or her claim by the weight of the evidence. For each period of disability claimed, the employee must establish that he was disabled from work as a result of the accepted employment injury. Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of reliable, probative, and substantial medical opinion evidence.<sup>6</sup> Findings on examination and a physician's opinion, supported by medical rationale, are needed to show how the injury caused the employee's disability for his particular work.<sup>7</sup> For each period of disability claimed, the employee must establish that he was disabled for work as a result of the accepted employment injury. The Board will not require OWCP to pay compensation for disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>8</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 that caused the illness.<sup>9</sup> This term also means an inability to work 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 such that they exceed

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<sup>5</sup> The hearing representative further noted that, to the extent that Dr. Martens opined that appellant developed consequential right shoulder and bilateral knee conditions due to new employment exposure, she advised appellant that he could file a new occupational disease claim.

<sup>6</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

<sup>7</sup> *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>8</sup> *Amelia S. Jefferson*, *supra* note 6.

<sup>9</sup> 20 C.F.R. § 10.5(x).

the employee's physical limitations.<sup>10</sup> Appellant has the burden of proof to establish that there was no medically appropriate light duty available for the claimed period.<sup>11</sup>

When an employee who is disabled from the job he or she held 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 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 the limited-duty position. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty requirements.<sup>12</sup> 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 employment factors and supports that conclusion with sound medical reasoning.<sup>13</sup>

### ANALYSIS

OWCP accepted that appellant sustained a herniated disc at L5-S1 without myelopathy and lumbar radiculitis as a result of his duties as a city carrier. He stopped work and returned to modified duty work on August 21, 2013 working six hours per day. OWCP paid wage-loss compensation for the remaining two hours per day. Appellant filed claims for wage-loss compensation (Forms CA-7) commencing June 1, 2015 claiming disability compensation for the remaining four hours per day. OWCP denied his recurrence claim finding that he failed to provide sufficient medical evidence to establish that his reduced work hours were causally related to a worsening or change of his accepted lumbar condition. The Board finds that the medical evidence of record is insufficient to establish that appellant was unable to work his modified-duty position six hours per day beginning June 1, 2015 as a result of his accepted injury.

The only medical reports addressing appellant's claimed dates of disability are narrative letters and Forms CA-17 from Dr. Martens dated June 1, 2015 to June 1, 2016. In a June 1, 2015 report and Form CA-17, he noted appellant's accepted diagnoses of displacement of lumbar intervertebral disc without myelopathy and thoracic or lumbosacral neuritis or unspecified radiculitis. Dr. Martens recounted that beginning September 2013 appellant had worked six hours per day with modifications. He provided physical examination findings and reported additional diagnoses of right shoulder internal derangement and right knee internal derangement. Dr. Martens authorized appellant to return to part-time modified-duty work with specified restrictions for four hours per day. He did not, however, provide an opinion that appellant's

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<sup>10</sup> *Id.*

<sup>11</sup> *J.F.*, 58 ECAB 124 (2006).

<sup>12</sup> *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>13</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001); see *Nicolea Bruso*, 33 ECAB 1138 (1982). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (January 2013).

inability to work modified duty six hours per day was causally related to his accepted lumbar condition or otherwise provide medical reasoning explaining why any disability was due to the employment injury.<sup>14</sup>

In his July 1, 2015 report, Dr. Martens suggested that appellant's increased disability was due to left shoulder complaints. The Board notes that his previous medical reports had referred to appellant's right shoulder complaints. Dr. Martens' lack of explanation makes it unclear if his findings regarding appellant's right or left shoulder were the result of a preexisting nonoccupational condition, caused by a new injury from appellant's limited-duty assignment, or due to a recurrence of disability. He failed to provide the required link relating the disability to appellant's previously accepted work injuries to establish a spontaneous worsening of the accepted conditions.<sup>15</sup> Dr. Martens did not provide a rationalized medical explanation as to why appellant's shoulder complaints were caused by the accepted lumbar injury and caused increased disability after June 1, 2015.

As of his August 13, 2015 report, Dr. Martens seemingly attributed appellant's inability to work modified duty to both appellant's accepted lumbar condition and to a bilateral knee condition. In a May 6, 2016 letter to OWCP, he explained that due to appellant's continued repetitive work duties and overcompensating for his back pain, appellant's bilateral knees worsened and caused bilateral knee derangement. Dr. Martens opined that appellant's bilateral knee condition was a direct result of his accepted lumbar conditions. He reported that the effects of appellant's work injury persisted and prevented him from returning to full duty. Dr. Martens noted that appellant was capable of working modified duty for four hours per day. In a May 31, 2016 letter, he reported that appellant experienced "documented measurable physical disability which resulted in incapacitation from June 1, 2015 through May 31, 2016 and continuing." Dr. Martens explained that appellant still suffered from the progressive degeneration of his lower back and bilateral knee conditions that originated as a result of a work-related injury.

The Board finds that Dr. Martens did not provide a rationalized medical opinion substantiating that appellant's accepted lumbar conditions worsened, causing total disability. To the extent that Dr. Martens attributes appellant's bilateral knee condition to his accepted lumbar condition, it is noted that for conditions not accepted by OWCP as being employment related, it is the employee's burden of proof to provide rationalized medical evidence sufficient to establish causal relationship, not OWCP's burden to disprove such a relationship.<sup>16</sup> The Board finds, however, that Dr. Martens did not provide any explanation based on objective medical findings and rationale, demonstrating how appellant's bilateral knee condition, and any resultant disability, resulted from his accepted lumbar condition.<sup>17</sup> The Board has found that medical evidence that offers a conclusion, but does not offer any rationalized medical explanation is of

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<sup>14</sup> See *William A. Archer*, 55 ECAB 674 (2004) (the Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of claimed disability).

<sup>15</sup> See *L.N.*, Docket No. 16-566 (issued October 18, 2016).

<sup>16</sup> *G.A.*, Docket 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>17</sup> See *J.C.*, Docket No. 15-1780 (issued March 17, 2016).

limited probative value.<sup>18</sup> Accordingly, appellant has failed to meet his burden of proof to establish a bilateral knee condition as a result of his accepted lumbar condition, and therefore, was unable to work his modified-duty position.

Other medical evidence provided by appellant either predates the claimed period of disability beginning June 1, 2015 or does not specifically address how there was a spontaneous change or worsening of appellant's accepted lumbar condition which caused a recurrence of disability beginning June 1, 2015.<sup>19</sup> For these reasons, the Board finds that appellant did not meet his burden of proof to establish a recurrence of disability beginning June 1, 2015.

To the extent that appellant is alleging a worsening of his accepted conditions due to the Postmaster's assignment of additional duties on May 22, 2015, this would constitute a new injury rather than a spontaneous recurrence of disability. A recurrence of disability does not include disability resulting from exposure to new work factors. Moreover, any disability resulting from a condition aggravated by employment duties would be considered a new injury rather than a recurrence of disability.<sup>20</sup>

On appeal counsel alleges that the claim should have been more fully developed, the claimant described a classic recurrence, and the decision is contrary to fact and law. As explained above, however, the Board finds that the evidence of record failed to establish that his accepted lumbar condition changed or worsened to the extent that he was no longer able to work his modified-duty position beginning June 1, 2015. The medical evidence is insufficient to establish a causal relationship between appellant's alleged recurrence of disability and his accepted lumbar condition or to warrant any further development.

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 has not established a recurrence of disability commencing June 1, 2015 causally related to his accepted employment injury.

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<sup>18</sup> *T.M.*, Docket No. 08-975 (February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>19</sup> *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997).

<sup>20</sup> *D.D.*, Docket No. 16-0701 (issued July 18, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 24, 2016 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 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