

FACTUAL HISTORY

This case has previously been before the Board.²

The facts set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows. On October 29, 2007 appellant, then a 41-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging a lower back condition when assisting a patient into a chair on October 24, 2007. Dr. Mark A. Goldstein, an osteopath, diagnosed lumbar strain and somatic dysfunction of the sacroiliac joint on December 4 and 5, 2007 and January 16, 2008. He noted that appellant's back pain was not radiating, but that she experienced occasional right leg weakness.

Appellant filed a notice of recurrence of disability (Form CA-2a) on March 11, 2008 alleging that on March 7, 2008 her pain increased after transferring a patient and that lifting a heavy item increased her pain. On May 5, 2008 OWCP accepted her claims for lumbar sprain/strain.

Appellant filed a claim for a schedule award (Form CA-7) on August 5, 2008. In a letter dated February 21, 2013, OWCP noted that she had requested a schedule award, but had not submitted medical evidence of a permanent impairment due to her accepted lumbar sprain. It thereafter requested additional medical evidence supporting a permanent impairment.

By decision dated November 18, 2013, OWCP denied appellant's claim for a schedule award finding that she had not submitted medical evidence of a permanent impairment of a scheduled member under FECA.³ Appellant appealed this decision to the Board. In its September 17, 2014 decision, the Board found that she had not met her burden of proof to establish permanent impairment, warranting a schedule award.

On March 13 and 17, 2017 appellant filed a recurrence claim (Form CA-2a) alleging that on March 9, 2017 she sustained a recurrence of disability causally related to her October 24, 2007 employment injury. She indicated that following her 2007 work injury she returned to work at the employing establishment with permanent restrictions on bending, pushing, pulling, kneeling, squatting, and lifting over 25 pounds. Appellant reported problems with low back pain and noted that her last position was working at an employing establishment nursing home. She sat down in an office chair and experienced pain from her lower to middle back. Appellant provided a list of her employing establishment positions including nursing assistance, laboratory, women's clinic, nursing home, and material management.

In a letter dated March 17, 2017, OWCP requested additional medical evidence in support of appellant's recurrence of disability claim. It noted that she had not provided medical evidence that her October 24, 2007 traumatic lumbar strain caused her current need for medical treatment or disability for work. OWCP afforded appellant 30 days to respond.

² Docket No. 14-1199 (issued September 17, 2014).

³ *Supra* note 1.

Appellant responded on March 17, 2017 and asserted that her supervisor was refusing to cooperate with completion of claim forms. A nurse practitioner⁴ completed a note at the employing establishment clinic on March 9, 2017 and listed her restrictions due to her work-related condition. She indicated that appellant could return to work on March 9, 2017. In an employing establishment clinic note dated March 13, 2017, Dr. Jeffrey R. Spina, an internist, indicated by checking a box marked “yes” that appellant’s unidentified injury was work related. He provided work restrictions on standing, lifting, pushing, pulling, and climbing stairs. Dr. Spina indicated that appellant could return to work on March 13, 2017.

In a letter dated March 24, 2017, appellant asserted that her initial Form CA-2a was incorrect and that her supervisor was not cooperating by completing an incident report from March 17, 2017.

By decision dated May 8, 2017, OWCP denied appellant’s recurrence claim finding that the evidence of record did not establish an increase of disability do to a change in her accepted work-related condition.

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁵

OWCP procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous, material change in the medical condition demonstrated by objective findings. That change must result from the previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁶

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence, causal relationship between her recurrence of disability and the accepted employment injury.⁷ This burden of proof includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history,

⁴ The Board notes that the nurse practitioner’s signature is illegible.

⁵ 20 C.F.R. § 10.5(x).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013). *D.G.*, Docket No.16-0216 (issued July 7, 2016); *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

⁷ *D.G., id.*; *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁸ Where no such rationale is present, the medical evidence is of diminished probative value.⁹

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof to establish a recurrence of disability on March 9, 2017 causally related to her October 24, 2007 employment injury.

OWCP accepted that appellant's October 24, 2007 injury resulted in lumbar sprain and strain. Appellant returned to work in a series of modified-duty positions. She filed a claim for a recurrence of disability, effective March 9, 2017. Appellant has the burden of proof to establish a recurrence of disability due to either a change in her injury-related condition, without intervening injury, or to withdrawal of limited-duty employment on or after March 9, 2017.

The record does not contain any medical opinion evidence, based upon a complete and accurate history, to support that appellant sustained a spontaneous material change in her accepted injury that would prevent her from performing the modified-duty position she held on March 9, 2017, the date she claimed total disability. The record also contains no evidence establishing that her light-duty job was withdrawn or changed on or after March 9, 2017.

On March 13, 2017 Dr. Spina indicated by checking a box marked "yes" that appellant's injury was work related. The Board has held that an opinion on causal relationship which consists only of a physician checking a box marked "yes" to a medical form report question on whether the claimant's condition or disability was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.¹⁰ Dr. Spina did not provide a diagnosis or any medical reasoning in support of his opinion on causal relationship. Furthermore, he did not opine that appellant was totally disabled beginning March 9, 2017. Additionally, there is no evidence of any spontaneous material worsening, demonstrated by objective findings, without intervening injury, to support that appellant's work injury made her incapable of performing the modified-duty position effective March 9, 2017 as alleged. For these reasons, Dr. Spina's report is insufficient to meet appellant's burden of proof to establish her recurrence of disability claim.

A nurse practitioner completed a note at the employing establishment clinic on March 9, 2017. FECA provides that the term physician includes: surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law.¹¹ Healthcare providers such as licensed clinical social

⁸ See *Ronald A. Eldridge, id.*; *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982); *D.G.*, *supra* note 6.

⁹ *D.G.*, *supra* note 6; *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

¹⁰ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

¹¹ 5 U.S.C. § 8101(2); *T.R.*, Docket No. 17-0239 (issued April 12, 2017); *V.C.*, Docket No. 16-0642 (issued April 19, 2016); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawckuk*, 57 ECAB 316, 320 n.11 (2006); *Allen C. Hundley*, 53 ECAB 551 (2002).

workers, nurses, nurse practitioners, acupuncturists, physician assistants, and physical therapists are not considered physicians under FECA and their reports and opinions do not constitute competent medical evidence to establish a medical condition, disability, or causal relationship.¹² As this report was not signed by a physician, it does not support appellant's recurrence of disability claim.¹³

The Board thus finds that appellant failed to meet her burden of proof.

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 failed to meet her burden of proof to establish a recurrence of disability on March 9, 2017 causally related to her October 24, 2007 employment injury.

¹² Federal (FECA) Procedure Manual, *supra* note 6 at *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).

¹³ *Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 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