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

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| **L.J., Appellant** | ) | |
| **and** | ) | **Docket No. 17-1342** |
| | ) | **Issued: April 13, 2018** |
| **DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, San Diego, CA, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.,* for the appellant[1]
*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 June 2, 2017 appellant, through counsel, filed a timely appeal from an April 5, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] 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.

[2] 5 U.S.C. § 8101 *et seq.*

## ***ISSUE***

The issue is whether appellant met her burden of proof to establish a recurrence of total disability on or after April 11, 2016 caused by the accepted employment conditions.

On appeal counsel asserts that the April 5, 2017 decision is contrary to fact and law and that the decision lacks a logical progression.

## ***FACTUAL HISTORY***

On November 5, 2015 appellant, then a 44-year-old supervisory transportation security officer, injured her back and ankle when she slipped and fell down stairs at work. She was seen in an emergency room that day where Dr. Bradley Zlotnick, Board-certified in emergency medicine, noted a history of a 1999 lumbosacral sprain and a several-day history of tenderness to her left second and third toes. Appellant related that, while walking down stairs at work, she slipped and slid on her buttocks down the last four stairs or so, injuring her left ankle. She noted that it was difficult to bear weight, and she was brought to the hospital by ambulance. Examination showed no axial spine tenderness, mild bilateral sacroiliac tenderness, and tenderness on buttock examination, right greater than left. Straight-leg raise testing was negative. The left ankle had mild tenderness over the lateral malleolus. Weight-bearing was mildly painful. Lumbar spine x-ray showed no acute fracture or malalignment and mild lumbar spondylosis. A left ankle x-ray was normal. Dr. Zlotnick diagnosed left ankle pain and sprain, right greater than left buttock contusion, and lumbosacral sprain. Appellant was placed in a Velcro splint and given crutches for comfort.

On November 12, 2015 Dr. Tiffany Shay-Alexander, Board-certified in occupational medicine, noted seeing appellant for multiple injuries including low back discomfort, left leg pain, and left ankle pain and swelling. Left tibial and fibula x-rays showed no acute fracture or malalignment of the left tibia and fibula. Appellant had mild-to-moderate diffuse lumbosacral tenderness, negative straight-leg raising, and left ankle soft tissue swelling with limited range of motion. Dr. Shay-Alexander diagnosed left ankle sprain, left leg pain, and back contusion. She advised that appellant could return to modified duty with restrictions that included limited standing and walking, primarily sedentary work, and elevation of her injured leg.

Dr. Tess Fabrick Klaristenfeld, Board-certified in emergency medicine, saw appellant on November 23, 2015. She noted a history that appellant fell down a flight of stairs and was now working seated, limited duty. Appellant reported that she had recently noticed additional pain in her right shoulder and that her left knee was bothering her. Right shoulder x-ray was negative for fracture with minor acromioclavicular osteoarthritis. Dr. Klaristenfeld diagnosed right shoulder pain and kept appellant on modified duty. A December 8, 2014 lumbar spine x-ray showed mild degenerative spondylosis and facet joint arthrosis affecting the mid-to-lower lumbar spine.

On December 17, 2015 OWCP accepted contusion of lower back and pelvis and sprain of left ankle, caused by the November 5, 2015 employment injury.

Dr. Robert D. Power, who practices occupational medicine, noted on December 31, 2015 that appellant injured her left ankle, back, and shoulder on November 5, 2015 with a continuing

complaint of right shoulder pain. Following physical examination, he diagnosed back contusion and left ankle sprain. Dr. Power advised that appellant could return to modified duty and provided physical restrictions. January 9, 2016 magnetic resonance imaging (MRI) scan of the left ankle demonstrated a moderate partial tear of the anterior talofibular ligament.

On January 28, 2016 Dr. Shay-Alexander reported that appellant had persistent low back discomfort that radiated into the lower extremities and persistent left ankle pain and swelling. She further noted that appellant reported that the chair she used at work was in a cold location and uncomfortable with no lower back support, making it difficult for her to sit at work. Left ankle examination demonstrated mild tenderness and full range of motion. Dr. Shay-Alexander returned appellant to modified duty.

On April 15, 2016 appellant filed a claim for compensation (Form CA-7) for the period April 11 to 15, 2016. By letter dated April 26, 2016, OWCP informed her of the evidence needed to support her disability claim. In a May 9, 2016 statement, appellant reported that, since her fall on November 5, 2015 she had chronic, agonizing, gnawing, achy, dull, heavy, throbbing, sharp pain in her lower back, both hips, both ankles, both knees, and right shoulder that radiated into her fingers. She indicated that sitting in a metal chair with air-conditioners blowing on her for eight hours daily while on modified duty aggravated her condition. Appellant asked that all conditions reported be accepted. She enclosed a statement she completed on the date-of-injury, November 5, 2015. Appellant indicated that after she slipped and fell, she rested a bit, then got up and continued to walk down the stairs and reported to a supervisor that she had fallen.

In support of her claim, appellant submitted a March 31, 2016 treatment note in which Dr. Shay-Alexander noted appellant's complaint of low back, left ankle, right knee, and right arm pain. Examination elicited tenderness to palpation and limited range of motion of the left ankle, cervical spine, and low back. Straight leg raise caused radiating pain down the left leg. Dr. Shay-Alexander diagnosed accidental fall, back contusion, cervical radiculitis, left lumbar radiculitis, right knee pain, and anterior talofibular ligament partial tear. She provided a walking boot to immobilize the ankle, and advised that appellant was temporarily totally disabled. An April 12, 2016 lumbar spine MRI scan revealed mild disc degeneration with diffuse disc bulging at L4-5 and mild facet joint osteoarthropathy from L2-3 through L5-S1. A cervical spine MRI scan that day demonstrated minimal C5-6 disc degeneration. On April 25, 2016 Dr. Shay-Alexander noted her review of the MRI scans. Following physical examination she additionally diagnosed fall down eight steps with resultant left lumbar radiculitis and left knee sprain. Dr. Shay-Alexander indicated that she took appellant off work because modified duty seemed to exacerbate her radicular symptoms. She advised that appellant would be on total disability for five weeks.

In correspondence dated May 9, 2016, the employing establishment indicated that appellant first returned to modified duty on November 23, 2015 after the November 5, 2015 employment injury, and was then placed off work by her physicians from December 18 through 31, 2015, returning to limited duty on January 1, 2016. Appellant received continuation of pay from November 6 through December 20, 2015.

Appellant continued to submit CA-7 forms, claims for compensation. On June 1, 2016 Dr. Shay-Alexander indicated that appellant remained totally disabled.

By decision dated June 6, 2016, OWCP denied appellant's claims for compensation for the period April 11, 2016 and continuing, finding that the evidence of record was insufficient to support that the accepted conditions objectively worsened, without intervening cause, so that she was totally disabled.

Appellant, through counsel, timely requested a hearing before an OWCP hearing representative. Additional evidence submitted included a May 24, 2016 report in which Dr. Alan K. Jones, a podiatrist, noted that she injured both knees, a shoulder, her back, and left ankle at work and did well, but after approximately four months, began having increasing left ankle symptoms. Left ankle examination revealed no significant edema, no significant instability as opposed to the right, and tenderness to palpation anterolaterally with no crepitus or pain with range of motion and good muscle strength. Dr. Jones noted the MRI scan findings and diagnosed left ankle sprain. He advised that, with regard to the left ankle, appellant could work modified duty with restrictions of no prolonged standing or walking on the left ankle and the use of a fracture walker boot as needed. On August 1, 2016 Dr. Jones placed appellant in a short leg, nonweight bearing case on the left leg due to her continued pain. He advised that she could continue seated work only.

On June 1, 2016 Dr. Shay-Alexander noted continued findings of tenderness in the cervical paraspinal and upper trapezial muscles, the right shoulder, left knee, low back, and left ankle. She ordered a left knee MRI scan and advised that appellant remained totally disabled. Dr. Shay-Alexander continued to advise that appellant was totally disabled. A July 16, 2016 MRI scan of the left knee was normal.

In June 13, 2016 correspondence, Dr. David Martin, an employing establishment physician Board-certified in occupational medicine, noted his review of the record for the employing establishment. He described the work injury and noted the accepted conditions and that appellant had been off work. Dr. Martin advised that he agreed with OWCP's assessment that the treating physicians had provided insufficient documentation that the accepted conditions had objectively worsened without intervening cause to link other diagnosed conditions to the November 5, 2015 employment injury.

On July 5, 2016 Dr. Robert E. Scott, Board-certified in physical medicine, pain medicine, and sports medicine, advised that he saw appellant for evaluation of her lumbar spine. He noted her complaints of low back, left ankle, right shoulder, and bilateral knee pain resulting from a fall at work and described the lumbosacral MRI scan findings. Back examination revealed normal lumbar motion with painful extension and diffuse paraspinal tenderness. Hip motion was symmetrical and pain free, and straight-leg raise and femoral stretch tests were negative. No motor impairment, sensory impairment, or reflex abnormality was detected in either leg. Knee examination revealed no effusion, normal range of motion, no joint line tenderness, no laxity, normal Lachman test, and no pain with patellar compression bilaterally. Ankle examination showed some tenderness just distal to the left lateral malleolus, but no instability, warmth, or focal swelling. All tendon functions were normal. Dr. Scott diagnosed lumbar strain, underlying lumbar degenerative disc disease, spondylosis, and stenosis at L4-5, radiating complaints to the lower extremity without verifiable radiculopathy, bilateral knee pain of unclear etiology. Left ankle strain and multiple pain complaints. Dr. Scott advised that there was no need for MRI scans of the knees and deferred her disability status to the primary treating physician.

In a July 25, 2016 report, Dr. Manesh Bawa, a Board-certified orthopedic surgeon, noted appellant's complaint of radiating low back pain since falling down steps at work on November 5, 2015. He reviewed the April 12, 2016 lumbar spine MRI scan and diagnosed mild L4-5 disc degeneration with mild central and bilateral foraminal stenosis and lumbar strain. Dr. Bawa recommended physical therapy and continued treatment with Dr. Shay-Alexander.

On August 7, 2016 Dr. Martin noted that appellant continued to be off work. He advised that the contusion of the lower back and pelvis should have resolved, and that the podiatrist's recommendations for restricted duty should be facilitated. Dr. Martin further noted that appellant's left knee MRI scan was normal and that any claim for an employment-related left knee condition should be challenged.

In an August 11, 2016 report, Dr. Shay-Alexander noted that on November 5, 2015 appellant suddenly twisted her ankle which caused her to fall down 10 or more steps, striking her buttocks, and back on concrete stairs. She described appellant's complaint of the left knee, right wrist, and left foot discomfort. Dr. Shay-Alexander indicated that, while appellant was initially diagnosed with a back contusion and left ankle sprain, as she tried to increase her activity her condition worsened with neck pain radiating down her right arm, bilateral knee and ankle pain, and low back pain radiating to the left leg. Appellant was in a left ankle cast which exacerbated her shoulder pain and cervical radiculitis and caused exacerbation of right ankle sprain and knee pain, also injured during her fall on the stairs. Dr. Shay-Alexander noted tenderness of the paraspinal and trapezial muscles, the anterolateral aspect of the right shoulder, the anterolateral aspect of the right ankle, the medial aspect of the right knee, and diffusely in the lumbosacral region of the back. Straight-leg raising was negative. Dr. Shay-Alexander diagnosed accidental fall, back contusion manifesting into left lumbar radiculitis; sprain, left anterior talofibular ligament; strain, left knee medial collateral ligament; right knee sprain; compensatory strain, right ankle; exacerbation of right shoulder pain resulting in right shoulder strain while using crutches; and cervical radiculitis from her neck sprain with pain radiating from the right side of her neck down to her right arm. She opined that, after seeing the flight of stairs appellant fell down, her current ankle pain, cervical radiculitis, and lumbar radiculitis were directly related to the November 5, 2015 fall, and that she had compensatory injuries to the right knee, ankle, and right shoulder as a result of having to bear weight on her right side, due to her immobility and nonweight bearing status on the left leg, and that the cervical radiculitis and lumbar radiculitis were exacerbated by her use of crutches and altered body mechanics. Dr. Shay-Alexander recommended additional MRI scans of the right ankle and knee and concluded that, due to appellant's multitude of physical issues, she remained totally disabled. In a progress report dated August 14, 2016, Dr. Shay-Alexander reiterated her findings and conclusions.

On August 22, 2016 Dr. Jones noted that appellant was also diagnosed with left plantar fasciitis. He recommended that she continue wearing the short leg, nonweight bearing cast, and advised that she could return to seated work only. On September 13, 2016 Dr. Jones advised that appellant was doing well and could remain on modified duty with use of the boot and crutches as needed. He provided progress reports dated October 4, 2016 to January 20, 2017 in which he noted her continued complaints, offered diagnoses, and advised that she could continue seated, modified duty.

A September 19, 2016 MRI scan of the right knee showed no abnormality. A right ankle MRI scan of that day demonstrated mild insertional posterior tibial and peroneal tendinosis without discrete tear and evidence of a remote sprain.

Dr. Kathy Head, Board-certified in occupational medicine, noted seeing appellant for Dr. Shay-Alexander on September 27, 2016. She indicated that, on November 5, 2015, appellant injured her cervical spine, lumbar spine, right shoulder, left and right knees, and right ankle which resulted in diagnoses of lumbar contusion, cervical radiculitis, right shoulder strain, left anterior talotibular ligament sprain, left knee sprain, right medial collateral ligament sprain, right knee sprain, and right ankle sprain. Dr. Head recorded appellant's complaints of significant discomfort throughout her body, and noted that she was being treated by Dr. Jones and wearing a controlled ankle motion boot on her left ankle. Lumbar examination demonstrated positive tenderness and negative straight leg raise. There was generalized tenderness found in the right shoulder, and no tenderness in the right elbow, wrist, and knee, or in the left knee. The right ankle was tender to palpation[3] and the left ankle had generalized hypersensitivity. Dr. Head diagnosed accidental fall, back contusion, cervical radiculitis, left lumbar radiculitis, right shoulder strain, left anterior talofibular ligament sprain, left knee sprain, right medial collateral ligament sprain, right knee sprain, and right ankle sprain. She deferred continued treatment to Dr. Shay-Alexander and advised that appellant was totally disabled.

In reports dated October 19, 2016 to January 11, 2017, Dr. Shay-Alexander noted appellant's continued complaint of radiating cervical and low back pain. She found tenderness on examination of the neck, low back, and left ankle. Dr. Shay-Alexander reiterated her diagnoses advised that appellant could return to modified duty effective October 19, 2016. She provided restrictions of no prolonged standing and walking, sitting work only, no repetitive climbing, bending, or twisting, can work in support as needed, five minutes each half-hour for neck and back stretches, a five-pound weight restriction, elevation for the left leg, an ergonomic chair that reclined, and a six-hour work shift.

The record also includes e-mails and correspondence between appellant and the employing establishment regarding her claim and absence from work. On October 20, 2016 the employing establishment notified her that the prescribed work modifications were too restrictive to offer her a limited or light-duty assignment. Specific limitations that it could not accommodate included a reclining ergonomic chair and a five-pound weight restriction. On November 22, 2016 the employing establishment proposed to remove appellant due to her inability to maintain a regular work schedule.

During the hearing, held on February 10, 2017, appellant testified that she had not returned to work, noting that her physician released her to modified duty on October 19, 2016, but the employing establishment could not accommodate her restrictions. She indicated that she stopped work due to multiple injuries including her neck, back, knees, right shoulder, and left ankle. Appellant related that, when she was working modified duty after the November 5, 2015 injury,

[3] The record indicates that appellant has a second claim, adjudicated by OWCP under File No. xxxxxx106 for right ankle plantar fasciitis. The record in this case, File No. xxxxxx695 includes additional medical reports from Dr. Daniel E. Wendt, a podiatrist, regarding File No. xxxxxx106.

the metal chair caused back symptoms with continued problems including radiating neck and back pain such that she could not return to her preinjury job.

Medical evidence submitted after the hearing included a November 16, 2016 treatment note from Dr. Shay-Alexander in which she reiterated her findings and conclusions. On March 1, 2017 she noted appellant's continued complaints of radiating neck and back pain, left ankle pain, and bilateral plantar fasciitis. Dr. Shay-Alexander noted tenderness to examination of the neck and back, and right shoulder impingement maneuver caused mild discomfort. She reiterated diagnoses of lumbar radiculitis, cervical radiculitis, back contusion, right shoulder strain, and left anterior talofibular ligament sprain. Dr. Shay-Alexander provided restrictions of no prolonged standing or walking; no repetitive climbing, bending, or twisting; weightlifting restricted to five pounds; and 5-minute breaks every 30 minutes for back stretches.

In a December 27, 2016 report, Dr. Scott noted appellant's complaints referable to the neck, low back, knees, right shoulder, left ankle, and feet following a November 5, 2015 employment injury. He described physical examination findings and diagnosed lumbar strain; lumbar disc disease and spondylosis, greatest at L4-5; nonverifiable radicular complaints, both lower extremities; bilateral L4 foraminal narrowing; bilateral knee pain; left ankle strain with ongoing pain; and history of cervical pain.

On March 6, 2017 Dr. Jones noted that conservative treatments did not significantly reduce appellant's symptoms and that she wished to discuss surgical options. Left ankle examination demonstrated very mild discomfort to palpation behind the medial malleolus. He diagnosed left ankle sprain with resulting pain. Dr. Jones provided restrictions of no prolonged standing or walking and advised appellant to consult a surgeon who did ankle arthroscopy.

In correspondence dated March 10, 2017, the employing establishment maintained that appellant's disability was not due to the accepted employment injuries.

By decision dated April 5, 2017, an OWCP hearing representative affirmed the June 6, 2016 decision, finding that the evidence of record failed to establish a recurrence of disability.

## ***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.[4] This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to the 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.[5]

[4] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

[5] *Id.*

When an employee, who is disabled from the job he or she held when injured due to employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden of proof to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part of this burden of proof, 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 light-duty requirements.[6]

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of proof to establish that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a 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.[7]

## ***ANALYSIS***

The Board finds that appellant has not established a recurrence of total disability beginning April 11, 2015 causally related to the accepted contusion of the lower back and pelvis and left ankle sprain. Appellant has not established that the nature and extent of these injury-related conditions changed so as to prevent her from continuing in her modified assignment of seated work only.

Following the November 5, 2015 work injury, appellant returned to modified duty. She performed these seated duties until she filed a claim for compensation beginning April 11, 2016. In a May 9, 2016 statement, appellant reported that, since the November 5, 2015 work injury, she had continual agonizing, sharp pain in her lower back, in both hips, both ankle, both knees, and right shoulder that radiated into her fingers. She indicated that sitting in a metal chair with air-conditioners blowing on her for eight hours daily while on modified duty aggravated her condition. Appellant asked that all conditions reported be accepted.

The medical evidence relevant to the claimed recurrence includes a number of reports from Dr. Shay-Alexander. In a March 31, 2016 treatment note, the physician noted appellant's complaint of low back, left ankle, right knee, and right arm pain. Dr. Shay-Alexander described examination findings and diagnosed accidental fall, back contusion, cervical radiculitis, left lumbar radiculitis, right knee pain, and anterior talofibular ligament partial tear. On April 25, 2016 she described findings and additionally diagnosed left knee sprain. Dr. Shay-Alexander indicated that she took appellant off work because modified duty seemed to exacerbate her radicular symptoms. On August 11, 2016 she reported that, while appellant was initially diagnosed with a back contusion and left ankle sprain, as she tried to increase appellant's activity her condition worsened with neck pain radiating down her right arm, bilateral knee and ankle pain, and low back pain radiating to the left leg. Dr. Shay-Alexander indicated that appellant's left ankle cast exacerbated her shoulder pain and cervical radiculitis and caused exacerbation of right ankle sprain and knee pain, which were also injured when she fell down the stairs. She diagnosed accidental

[6] *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

[7] *S.S.*, 59 ECAB 315 (2008).

fall, back contusion manifesting into left lumbar radiculitis; sprain, left anterior talofibular ligament; strain, left knee medial collateral ligament; right knee sprain; compensatory strain, right ankle; exacerbation of right shoulder pain resulting in right shoulder strain while using crutches; and cervical radiculitis from sprain her neck with pain radiating from the right side of her neck down to her right upper extremity and opined that all conditions were directly related to the November 5, 2015 fall including compensatory injuries to the right knee, ankle, and right shoulder as a result of having to bear weight on her right side, due to her immobility and nonweight bearing status on the left lower extremity, noting that the cervical radiculitis and lumbar radiculitis were exacerbated by her use of crutches and altered body mechanics. Dr. Shay-Alexander concluded that appellant was totally disabled from work.

Dr. Shay-Alexander cited new employment factors of a metal chair and cold air conditioner air as causing appellant's disability, not the accepted conditions. While she also implicated the use of crutches, she did not sufficiently explain how and why this kept appellant from performing her sedentary modified position. As to the additional conditions diagnosed by Dr. Shay-Alexander, none have been accepted in this case. The Board's jurisdiction is limited to reviewing final decisions of OWCP.[8] There will be no appeal with respect to any interlocutory matter decided or not decided by OWCP during pendency of a case.[9] The only issue being considered on this present appeal is whether appellant established a recurrence of disability on April 11, 2016 due to the accepted conditions.

On October 19, 2016 Dr. Shay-Alexander advised that appellant could return to modified duty. However, the restrictions she provided could not be accommodated by the employing establishment and the physician did not explain how these restrictions were related to the accepted conditions. Moreover, Dr. Shay-Alexander exhibited no knowledge of the specific duties of appellant's modified position and did not include any explanation of why the accepted conditions had changed such that appellant could no longer perform the duties of the sedentary, modified position. Her opinion is, therefore, of diminished probative value.[10]

To meet appellant's burden of proof, the medical evidence submitted should reflect a correct history, and the physician should offer a medically sound explanation of how the specific duties appellant performed in her modified position caused or aggravated the claimed condition such that she became totally disabled. The opinion must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.[11] Medical form reports and narrative statements merely asserting causal relationship cannot discharge appellant's burden of proof.[12] The medical evidence must also include rationale explaining how the physician reached the conclusion he or she is

[8] 5 U.S.C. § 501.2(c); *see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

[9] *Id*. at § 501.2(c)(2); *see J.L.*, Docket No. 15-1951 (issued May 16, 2016).

[10] *Id*.

[11] *See J.J.*, Docket No. 09-0027 (issued February 10, 2009).

[12] *Sedi L. Graham*, 57 ECAB 494 (2006).

supporting.[13] The Board concludes that Dr. Shay-Alexander's opinion is of insufficient rationale to establish that appellant was totally disabled from her modified duties beginning on April 11, 2016.

As to left ankle, Dr. Jones, appellant's podiatrist, reported in May 2016, six months after work injury and six weeks after she stopped work, that her left ankle problems had increased. Even during the period that appellant's left ankle was immobilized, he advised that she could perform modified-sedentary duty, as she was doing when she stopped work in April 2016. Thus, Dr. Jones' report does not support total disability causally related to the accepted conditions.

Dr. Bawa and Dr. Zlotnick provided no opinion regarding appellant's ability to work. Dr. Klaristenfeld and Dr. Power initially placed appellant on modified duty, which the employing establishment accommodated, but offered no additional opinion relative to a recurrence of disability. Dr. Scott merely referenced the November 5, 2015 employment injury, but provided no discussion of causal relationship of any diagnosed conditions. He deferred appellant's treatment to Dr. Shay-Alexander. Likewise, Dr. Head also deferred appellant's care and disability status to Dr. Shay-Alexander. Finally, Dr. Martin's opinion was unsupportive of appellant's overall claim for disability. Thus, these and other reports which do not attribute appellant's claimed recurrent disability to her accepted conditions are of limited probative value and insufficient to establish the claim.[14]

When an employee returns to light-duty work, he or she has the burden of proof to establish a recurrence of disability due to the employment-related conditions, and that he or she cannot perform such light duty.[15] The employee must show a change in the nature of the accepted condition or a change in the light-duty job requirements.[16] The Board finds that appellant has not met her burden of proof in this case.

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 failed to meet her burden of proof to establish a recurrence of total disability on or after April 11, 2016 caused by the accepted employment conditions.

[13] *Beverly A. Spencer*, 55 ECAB 501 (2004).

[14] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[15] *See William M. Bailey*, 51 ECAB 197 (1999).

[16] *K.C.*, Docket No. 09-1666 (issued August 25, 2010).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the April 5, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2018
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