

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

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**H.T., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Harrisburg, PA, Employer**

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**Docket No. 17-0209  
Issued: February 8, 2018**

*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  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 9, 2016 appellant, through counsel, filed a timely appeal from a June 24, 2016 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 claim.

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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 has established a recurrence of total disability commencing March 27, 2015 causally related to his accepted August 19, 2007 employment injury.

## FACTUAL HISTORY

On August 26, 2007 appellant, then a 53-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed a lumbar injury due to loading and unloading heavy containers filled with mail weighing between 500 and 1,500 pounds. He stopped work on August 19, 2007 and returned to light duty on October 22, 2007.

By decision dated January 22, 2008, OWCP accepted the claim for back strain, lumbar region. On August 8, 2008 appellant returned to full-duty work. He received wage-loss compensation and medical benefits on the periodic rolls from August 21 until October 22, 2007.

On September 28, 2012 appellant filed a recurrence claim (Form CA-2a) alleging a return/increase of disability beginning on September 8, 2012. On December 14, 2012 he underwent a right partial lumbar laminectomy and discectomy at L4-5 on December 14, 2012.<sup>3</sup> OWCP expanded acceptance of the claim to include L4-5 lumbar disc herniation. Appellant again received compensation on the supplemental rolls as of September 14, 2012.

On March 21, 2013 OWCP referred appellant to Dr. Robert Smith, a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. Smith opined that appellant could return to work with restrictions. On August 13, 2013 appellant accepted an offer of modified assignment as a mail handler based on Dr. Smith's limited-duty work restrictions. He returned to work in a limited-duty full-time capacity on August 17, 2013.<sup>4</sup>

In a March 26, 2015 emergency department report, Dr. Courtney Devlin, Board-certified in emergency medicine, reported that appellant presented to the emergency room (ER) *via* ambulance due to chronic low back pain. Appellant reported a longstanding history of low back pain secondary to herniated discs with prior surgery in 2012. Dr. Devlin diagnosed herniated disc and discharged appellant from the ER. She noted that he could return to work on March 30, 2015 with restrictions.

In an April 1, 2015 medical report, Dr. Ravi Yalamanchili, a Board-certified neurosurgeon, reported that appellant complained of low back and bilateral leg pain. He ordered a lumbar spine MRI scan due to urinary dribbling and increased leg and back symptoms. Dr. Yalamanchili related that appellant could return to work on April 13, 2015 without restrictions.

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<sup>3</sup> Appellant has a history of prior laminectomy at L5-S1 in 1989.

<sup>4</sup> By letter dated December 23, 2013, Dr. Yalamanchili concurred with Dr. Smith regarding appellant's work restrictions.

In an April 4, 2015 diagnostic report, Dr. Alex Wurm, a Board-certified radiologist, reported that lumbosacral spine views with flexion-extension revealed mild scoliotic and degenerative changes.

In another April 4, 2015 diagnostic report, Dr. Robert Mazzei, a Board-certified diagnostic radiologist, reported that the lumbar spine MRI scan revealed no significant change when compared to the previous lumbar MRI scan dated September 16, 2013. Dr. Mazzei reported degenerative disc and facet disease throughout the lumbar spine, no central stenosis or disc herniation, foraminal stenosis on the left at L4-5 and L5-S1, and foraminal stenosis on the right at L3-4 and L5-S1.

In an April 15, 2015 report, Dr. Yalamanchili reported that appellant's diagnostic reports did not show any instability. He noted that his MRI scan was essentially unchanged from the one he had 14 months prior with foraminal narrowing, but no central canal narrowing. Dr. Yalamanchili reported that he did not have an explanation for the urinary dribbling and did not see any reason for the MRI scan to account for these symptoms. As such, he discharged appellant from treatment and reported that he could return to work without restrictions on June 15, 2015.

On May 7, 2015 appellant filed a Form CA-2a alleging a recurrence of total disability beginning on March 27, 2015. He reported that, since his recurrence in 2012, his condition continued to worsen resulting in difficulty walking and constant back pain. Appellant stopped work on March 27, 2015 and did not return.

On May 7, 2015 appellant filed claim for compensation forms (Form CA-7) for leave without pay beginning March 27, 2015 and continuing.

In a May 13, 2015 return to work slip, Dr. Yalamanchili reported that appellant was off work from April 1 through May 15, 2015 at which point he could return to full-time work with permanent restrictions. He noted no lifting, pushing, or pulling over 10 pounds and to avoid walking and standing for more than 15 minutes at a time.

By letter dated June 22, 2015, OWCP informed appellant that the evidence of record was insufficient to support his recurrence claim. Appellant was advised of the medical and factual evidence needed to establish his claim and provided a development questionnaire for completion. He was afforded 30 days to submit the necessary evidence. No response was received within the time allotted.

By decision dated August 19, 2015, OWCP denied appellant's recurrence claim finding that the medical evidence of record failed to establish a recurrence of disability on or after March 27, 2015 due to a material change/worsening of his accepted work-related condition.

On August 24, 2015 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative. Appellant continued to submit medical evidence to the record including a September 16, 2013 diagnostic report by Dr. George Saba, a Board-certified radiologist, which reported that lumbosacral spine views with flexion-extension revealed multilevel degenerative arthritis and disc disease.

On a September 25, 2013 report Dr. Yalamanchili reported that appellant's lumbar spine MRI scan revealed laminectomies on the right at L4-5 and L5-S1. He noted significant bilateral foraminal stenosis at both L4-5 and L5-S1. Dr. Yalamanchili diagnosed lumbar spondylosis without myelopathy and lumbar post laminectomy. His remaining medical reports documented treatment for appellant's lower back complaints.

In a September 26, 2013 diagnostic report, Dr. John Filigenzi, a Board-certified radiologist, compared appellant's current lumbar MRI scan with that from September 17, 2012. He noted postsurgical changes at L4-5 and L5-S1 and the previously observed right paracentral disc extrusion at L4-5 had been resected. Dr. Filigenzi reported no recurrent disc herniation and unchanged small left paracentral disc protrusion at L4-5 indenting the left ventral lateral thecal sac. He further noted that disc bulges at the remaining levels were also unchanged. Dr. Filigenzi reported degenerative changes resulting in foraminal stenosis from L2-3 through L5-S1, most prominent on the right at L5-S1, with no significant change since the prior report. He further indicated that L5-S1 revealed encroachment upon the descending right S1 nerve root as it exited thecal sac by disc bulge, facet joint, and ligamentum flavum hypertrophy.

Appellant also submitted medical reports dated October 11, 2007 through November 5, 2014 from Dr. Yalamanchili. In an October 11, 2007 report, Dr. Yalamanchili reported that a lumbar MRI scan revealed L4-5 stenosis and left-sided disc bulge. In an August 30, 2013 report, he recommended a repeat MRI scan of the lumbar spine due to the persistence of symptoms.

In a November 12, 2014 consultation report, Dr. Sana Shaikh, Board-certified in pain medicine, reported that appellant complained of low back pain with lower extremity radiation. The onset of this pain was gradual and began in August 2012 with his original injury occurring in August 2007. Dr. Shaikh noted a lumbar laminectomy with discectomy in 1989, as well as in December 2012. She provided findings on physician examination and reviewed diagnostic testing. Dr. Shaikh noted that a lumbar spine MRI scan revealed diffuse degenerative disc disease with spondylosis, most notable at L4-5 and L5-S1 with postsurgical changes. She diagnosed lumbosacral radiculopathy, lumbosacral spondylosis, degeneration of lumbar intervertebral disc, chronic pain syndrome, and lumbar postlaminectomy syndrome.

A hearing was held on April 13, 2016. Appellant testified that he stopped work on March 27, 2015 due to pain and difficulty walking and standing. He explained that he had been working a limited-duty assignment since August 2013 until he stopped work on March 27, 2015. Appellant testified that nothing had changed with his job, but that he had to stop work due to worsening of his pain.

Following the hearing, appellant submitted a May 11, 2016 report from Dr. Yalamanchili. Dr. Yalamanchili diagnosed low back pain and lumbosacral spondylosis without myelopathy. He requested that appellant undergo a functional capacity evaluation (FCE) to determine specific limitations on various activities. Once completed, Dr. Yalamanchili would provide him work restrictions.

Appellant also submitted a May 25, 2016 FCE.

By decision dated June 24, 2016, an OWCP hearing representative affirmed the August 19, 2015 decision, finding that appellant failed to establish recurrent disability beginning March 27, 2015 due to a material change/worsening of his accepted August 19, 2007 work-related injuries.

### **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 resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.<sup>5</sup> This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations and which is necessary because of a work-related injury or illness is withdrawn or altered so that the assignment exceeds the employee's physical limitations.<sup>6</sup>

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 a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. OWCP does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>7</sup>

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 that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.<sup>8</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>9</sup>

### **ANALYSIS**

The issue is whether appellant has established a recurrence of disability beginning March 27, 2015 and continuing causally related to his accepted August 19, 2007 employment injuries. OWCP accepted appellant's claim for lumbar strain and L4-5 lumbar disc herniation as a result of the August 19, 2007 work injury. On December 14, 2012 appellant underwent a right

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<sup>5</sup> 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

<sup>6</sup> *Id.*

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013). *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

<sup>8</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>9</sup> *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

partial lumbar laminectomy and discectomy at L4-5. He stopped work and returned to full duty with restrictions on August 17, 2013. OWCP accepted a recurrence of disability from September 14, 2012 until appellant returned to work on August 17, 2013.

The Board finds that appellant has not established a recurrence of disability commencing March 27, 2015 causally related to his accepted August 19, 2007 employment injury.

Appellant has not alleged a change in his light-duty job requirements. Instead, he attributed his inability to work due to a change in the nature and extent of his employment-related conditions. Appellant, therefore, has the burden of proof to provide medical evidence to establish that he was disabled due to a worsening of his accepted work-related conditions.<sup>10</sup> However, he has not submitted probative medical evidence demonstrating total disability for this period of time due to his accepted conditions. The Board finds that appellant has not met his burden of proof to establish his claim.

In support of his claim, appellant submitted a March 26, 2015 report from Dr. Devlin which reported that he presented to the emergency department for lower back complaints. Dr. Devlin diagnosed herniated disc and reported that appellant could return to work with restrictions on March 30, 2015. While she diagnosed disc herniation and found him disabled for a period of four days, Dr. Devlin failed to provide the causal relationship relating the disability to his previously accepted work injuries to establish a spontaneous worsening of the accepted condition.<sup>11</sup> As such, this report is insufficient to establish appellant's recurrence claim.

Appellant also submitted a series of medical reports from Dr. Yalamanchili, his treating physician. The Board notes that the reports of Dr. Yalamanchili failed to provide sufficient medical rationale to establish recurrent total disability. In an April 1, 2015 report, Dr. Yalamanchili evaluated appellant and ordered a lumbar spine MRI scan. On April 15, 2015 he reviewed the findings of the April 4, 2015 lumbar MRI scan, noting that the reports showed no instability and were essentially unchanged from the prior study with foraminal narrowing, but no central canal narrowing. Dr. Yalamanchili reported that appellant was restricted from work through June 15, 2015, but he failed to find him totally disabled as a result of his accepted lumbar strain and L4-5 lumbar disc herniation, nor did he provide adequate bridging evidence to show a spontaneous worsening of the accepted conditions.<sup>12</sup> Rather, he reported that he could not explain appellant's symptoms as there were no changes in his April 4, 2015 lumbar MRI scan. The Board notes that an increase in pain alone does not constitute objective evidence of disability.<sup>13</sup> As Dr. Yalamanchili could not determine the cause of appellant's symptoms, he failed to establish a work-related recurrence of disability.

In a May 13, 2015 return to work slip, Dr. Yalamanchili reported that appellant was off work from April 1 through May 15, 2015, at which point he could return to full-time work with

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<sup>10</sup> *D.L.*, Docket No. 13-1653 (issued November 22, 2013).

<sup>11</sup> *T.M.*, Docket No. 06-0440 (issued August 7, 2006).

<sup>12</sup> *J.H.*, Docket No. 14-0775 (issues July 14, 2014).

<sup>13</sup> See Federal (FECA) Procedure Manual, *supra* note 7 at Chapter 2.1500.6.a(2) (June 2013).

permanent restrictions. He noted no lifting, pushing, or pulling over 10 pounds and to avoid walking and standing for more than 15 minutes at a time. While Dr. Yalamanchili provided work restrictions, he failed to discuss why appellant was unable to work due to his original August 19, 2007 employment injury,<sup>14</sup> nor did he discuss appellant's limited-duty assignment to profess some knowledge as to why he could not work for the claimed periods. The Board has held that a medical opinion that is not fortified by rationale is of diminished probative value.<sup>15</sup> As such, Dr. Yalamanchili's opinion is insufficient to support that appellant sustained a spontaneous worsening of his work-related condition sufficient to cause total disability.<sup>16</sup>

The remaining medical evidence of record is also insufficient to establish appellant's recurrence claim. These additional records include reports of Drs. Wurm, Mazzie, Saba, and Filigenzi.

Dr. Shaikh's November 12, 2014 report and Dr. Yalamanchili's medical reports dated October 11, 2007 through November 5, 2014 are irrelevant to establishing appellant's claim as they predate the March 27, 2015 date of disability.<sup>17</sup>

The April 4, 2015 diagnostic reports of record are also insufficient to establish appellant's claim as the physicians interpreted diagnostic imaging studies and provided no opinion on disability or the cause of appellant's injury.<sup>18</sup>

The May 25, 2016 FCE is also insufficient to establish appellant's claim as there was no accompanying report by a physician explaining any work restrictions or determining that appellant was totally disabled as a result of the August 19, 2007 employment injury.<sup>19</sup>

Appellant did not submit any medical reports from a physician who explained with medical rationale that he sustained a spontaneous worsening of his accepted conditions on or after March 27, 2015 as a result of his accepted August 19, 2007 employment injury, sufficient to cause total disability.<sup>20</sup> He has failed to establish by the weight of the reliable, probative, and substantial evidence, a change in the nature and extent of the injury-related condition resulting in his inability to perform his employment duties or need for continued medical treatment. As appellant has not submitted any medical evidence showing that he sustained a recurrence of

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<sup>14</sup> *R.A.*, Docket No. 14-1327 (issued October 10, 2014).

<sup>15</sup> *Cecilia M. Corley*, 56 ECAB 662 (2005).

<sup>16</sup> See *Sedi L. Graham*, 57 ECAB 494 (2006) (medical form reports and narrative statements merely asserting causal relationship generally do not discharge a claimant's burden of proof).

<sup>17</sup> See *M.C.*, Docket No. 15-1762 (issued August 16, 2016).

<sup>18</sup> *J.P.*, Docket No. 14-0087 (issued March 14, 2014).

<sup>19</sup> *B.J.*, Docket No. 15-1576 (issued October 21, 2015). See 5 U.S.C. § 8101(2), which 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.

<sup>20</sup> *K.P.*, Docket No. 15-1711 (issued January 14, 2016).

disability due to his accepted employment injury, the Board finds that he has not met his burden of proof.<sup>21</sup>

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 did not meet his burden of proof to establish a recurrence of total disability on or after March 27, 2015, causally related to his accepted August 19, 2007 employment injury.

**ORDER**

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

Issued: February 8, 2018  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>21</sup> *L.L.*, Docket No. 13-2146 (issued March 12, 2014). See also *William A. Archer* 55 ECAB 674, 679 (2004).