



## **FACTUAL HISTORY**

OWCP accepted that on November 3, 2016 appellant, then a 47-year-old clerk, sustained a lumbar sprain and lower back strain as a result of picking up a heavy package for a customer at work. It paid him wage-loss compensation for temporary total disability for the period December 19, 2016 through February 3, 2017.

Initial medical records indicate that appellant was seen in an emergency room on November 4, 2016 and discharged with a diagnosis of back pain. On November 8, 2016 Dr. Richard Morrow, a family practitioner, diagnosed acute left-sided low back pain with sciatica as well as back strain. On November 10, 2016 Dr. Osafradu Opam, an attending neurologist, noted the history of the November 3, 2016 work incident, reported findings, and diagnosed lumbosacral sprain, and possible lumbosacral radiculopathy and herniated disc. He opined that the employment incident caused appellant's condition.<sup>3</sup>

On February 6, 2017 appellant returned to full-time modified-duty work at the employing establishment. He stopped work on March 27, 2017 and returned to part-time limited-duty work on April 3, 2017. Appellant worked eight hours a day from April 3 to 5, 2017. He worked six hours or less a day commencing on April 6, 2017.

In a March 27, 2017 disability certificate, Dr. Opam noted a date of injury as November 3, 2016 and diagnoses of lumbosacral disc syndrome and left sciatica. He advised that appellant was totally incapacitated through March 31, 2017. Dr. Opam indicated that he continued to have active symptoms.

On May 2, 2017 appellant filed a recurrence of disability (Form CA-2a) beginning on March 24, 2017 due to his accepted November 3, 2016 employment injuries. He reported that after the original injury he returned to light-duty work as a window clerk, eight hours a day. Appellant contended that, following his return to work, his back stiffened more and more each day. On March 24, 2017 he felt more intense tightening in his back. On March 25, 2017 appellant's wife had to help him get out of bed. On the next day, appellant was unable to get up without assistance or walk without intense pain. He reported that he stopped work on March 27, 2017.<sup>4</sup>

In support of his claim, appellant submitted a March 28, 2017 medical report from Dr. David Marshak, Board-certified in anesthesiology and pain medicine. Dr. Marshak noted a history of the November 3, 2016 employment injury. He reported appellant's complaint of worsening low back pain, intermittent tingling and shooting pain down both legs (left greater than right), and difficulty bending. Dr. Marshak discussed examination findings and reviewed prior diagnostic test results. He assessed low back pain and lumbar disc disorder with

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<sup>3</sup> On December 19, 2016 OWCP accepted the claim for the conditions noted, *infra*. In a separate decision of the same date, it also denied the claim for the conditions of left-side sciatica, lumbosacral disc syndrome, and lumbar radiculopathy. Appellant did not appeal OWCP's December 19, 2016 denial decision.

<sup>4</sup> Appellant also submitted claims for compensation (Form CA-7) claiming intermittent wage loss from April 3 to June 9, 2017. On these forms, the employing establishment indicated that appellant worked within restrictions.

radiculopathy, sacroiliitis, and myofascial pain. Appellant also submitted evidence from physical therapists.

OWCP, in a May 3, 2017 letter, advised appellant of the deficiencies of his claim and requested that he respond to its inquiries.

In response to OWCP's May 3, 2017 development questionnaire, appellant again described the symptoms he experienced on March 24, 2017. He also described his work activities, which included sitting, standing, walking, kneeling, bending, stooping, twisting, pulling, pushing, simple grasping, fine manipulation, and reaching above the shoulder. Appellant reported that he had not participated in any hobbies or activities since his original injury/illness occurred that may have affected his accepted work-related conditions.

OWCP also received a series of form reports all dated May 20, 2017 from Dr. Opam. In a duty status report (Form CA-17), Dr. Opam provided clinical findings and an illegible diagnosis due to injury. He advised that appellant could resume work with restrictions. In a work capacity evaluation (Form OWCP-5), Dr. Opam reiterated his prior diagnosis of lumbar disc syndrome. He maintained that appellant was not capable of performing his usual job without restriction because he had active symptoms and acute exacerbations. Dr. Opam further maintained that appellant could only work six hours a day with physical restrictions due to a significant indication of the presence of disc protrusion, sprain, and nerve root impingement. He advised that appellant could work full time in four months. In an attending physician's report (Form CA-20), Dr. Opam noted a history of the November 3, 2016 employment injury. He reported findings and confirmed his diagnoses of lumbar disc syndrome and left sciatica. Dr. Opam checked a box marked "Yes" indicating that the conditions noted were caused or aggravated by the described employment activity. He advised that appellant was totally disabled from work from November 3, 2016 through February 5, 2017. Dr. Opam noted that he resumed light-duty work on February 6, 2017 and listed his physical restrictions.

Dr. Opam, in a May 22, 2017 narrative report, noted that he initially treated appellant on November 10, 2016 for injuries sustained as a result of an accident at work on that date. Appellant reported that he injured his back while picking up a box and noted the history of medical treatment. Dr. Opam noted appellant's current complaints, described findings on physical and mental examination, and reviewed diagnostic test results. He again diagnosed lumbar disc syndrome. Dr. Opam also diagnosed left L5 radiculopathy, right L5 and S1 radiculopathy, and a bulging disc at L4-5. He opined that appellant's condition was chronic, permanent, and disabling in nature. Dr. Opam advised that his prognosis was guarded. OWCP also received an additional physical therapy report.

Appellant submitted completed development questionnaires on May 13, 2017, regarding his back condition and physical limitations. On that same date, Dr. Opam reviewed the May 13, 2017 test results and completed an outcome assessment testing summary report. He indicated that appellant's lower back required further management. In a prescription note dated May 22, 2017, Dr. Opam ordered physical therapy to treat appellant's lumbosacral myofascitis and left sciatica.

By decision dated June 15, 2017, OWCP found that appellant had not established a recurrence of disability commencing March 27, 2017, causally related to his accepted November 3, 2016 work injuries. It found that the reports of Drs. Marshak and Opam failed to explain how the accepted conditions worsened and resulted in the claimed recurrence of disability. OWCP also found that the physicians failed to explain how appellant's additional lumbar conditions were causally related to the accepted work incident.

### **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 resulting from a previous injury or illness without an intervening cause or a new exposure to the work environment that caused the illness. It can also mean 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.<sup>5</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 of proof to establish, by the weight of the reliable, probative, and substantial evidence, a recurrence of total disability and an inability to perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.<sup>6</sup> To establish a change in the nature and extent of the injury-related condition, there must be a probative medical opinion, based on a complete and accurate factual and medical history as well as supported by sound medical reasoning, that the disabling condition is causally related to employment factors.<sup>7</sup> In the absence of rationale, the medical evidence is of diminished probative value.<sup>8</sup> While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, it must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>9</sup>

### **ANALYSIS**

The Board finds that appellant has failed to establish a recurrence of total disability commencing on March 27, 2017 causally related to the accepted employment injuries.

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<sup>5</sup> *J.F.*, 58 ECAB 124 (2006). A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties, or other downsizing. 20 C.F.R. § 10.5(x). See also *Richard A. Neidert*, 57 ECAB 474 (2006).

<sup>6</sup> *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>7</sup> *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

<sup>8</sup> *Id.*; *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>9</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

OWCP accepted that appellant sustained a lumbar sprain and lower back strain while lifting a heavy package at work on November 3, 2016. As of February 6, 2017 appellant was performing full-time, modified-duty work. He stopped work on March 27, 2017 and claimed disability compensation due to a worsening of his accepted employment-related back conditions. Appellant returned to part-time, limited-duty work on April 3, 2017, but worked eight hours a day from April 3 to 5, 2017. He subsequently worked six or less hours a day commencing on April 6, 2017. Appellant further claimed a recurrence of disability from April 17 through June 9, 2017 based on the worsening of his accepted conditions. There is no evidence of record that the employing establishment did not provide appropriate light-duty employment.

In support of his recurrence claim, appellant submitted a series of reports from his attending physician, Dr. Opam, diagnosing lumbosacral disc syndrome, left sciatica, left L5 and right L5 and S1 radiculopathy, a bulging disc at L4-5, and lumbosacral myofascitis and addressing disability. While additional conditions have been diagnosed, Dr. Opam's reports fail to provide medical rationale explaining how the diagnosed conditions were causally related to the original accepted November 3, 2016 employment injury. The only accepted conditions are lumbar sprain and lower back strain. It is the employee's burden of proof to provide rationalized medical evidence sufficient to establish causal relationship for conditions not accepted by OWCP as being employment related, not OWCP's burden to disprove such relationship.<sup>10</sup> Further, medical evidence offering no opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>11</sup> The Board finds that while Dr. Opam, in a March 27, 2017 disability certificate, reported that appellant was totally disabled through March 31, 2017, he failed to provide any medical rationale explaining how appellant's disability was caused by the accepted work injuries.<sup>12</sup> Likewise, Dr. Opam's May 20, 2017 Form OWCP-5 report and May 22, 2017 narrative report failed to provide medical rationale explaining the causal relationship between appellant's disability for work and the November 3, 2016 employment injuries.<sup>13</sup> In his May 20, 2017 Form CA-20 report, Dr. Opam noted that appellant was totally disabled from November 3, 2016 through February 5, 2017. The Board notes that this period of disability predates the claimed period of disability commencing on March 27, 2017. Dr. Opam did not opine that appellant was totally or partially disabled during the claimed period due to the accepted employment injuries.<sup>14</sup> The Board therefore finds that his reports are insufficient to establish appellant's claim.

Dr. Marshak's March 28, 2017 report noted a history of the November 3, 2016 employment injury, discussed examination findings, and reviewed prior diagnostic test results.

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<sup>10</sup> *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>11</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

<sup>12</sup> See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). See also *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>13</sup> *Id.*

<sup>14</sup> *Supra* note 11.

He assessed appellant as having low back pain and lumbar disc disorder with radiculopathy, sacroiliitis, and myofascial pain. However, OWCP has not accepted these conditions as work related. Dr. Marshak provided no medical rationale explaining how appellant's conditions or period of disability were causally related to the accepted employment injuries. Thus, the Board finds that Dr. Marshak's report is insufficient to establish appellant's claim.<sup>15</sup>

The record also contains reports from appellant's physical therapists. However, these reports are of no probative medical value as physical therapists are not considered physicians as defined under FECA.<sup>16</sup>

Appellant failed to submit sufficiently rationalized medical evidence establishing that his disability commencing on March 27, 2017 resulted from the residuals of his accepted injuries.<sup>17</sup> The Board therefore finds that he has not met his burden of proof.<sup>18</sup>

On appeal appellant contends that his injuries never healed and have worsened. For the reasons set forth above, the Board found that the weight of the medical evidence does not establish that appellant sustained a recurrence of disability commencing March 27, 2017, causally related to the accepted November 3, 2016 employment injuries.

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 his burden of proof to establish a recurrence of disability commencing on March 27, 2017 causally related to his accepted employment injuries.

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<sup>15</sup> *Supra* notes 10 and 11.

<sup>16</sup> 5 U.S.C. § 8101(2); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

<sup>17</sup> *Cecelia M. Corley*, 56 ECAB 662 (2005).

<sup>18</sup> *Tammy L. Medley*, 55 ECAB 182 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 15, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2018  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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