

FACTUAL HISTORY

On August 6, 2014 appellant, then a 56-year-old housekeeping aid, filed a traumatic injury claim (Form CA-1) alleging that on July 19, 2014 while at work he sustained right hip, knee, and thigh contusions, a lumbar sprain, a lower back muscle strain, and a right hamstring muscle tear due to slipping and falling while cleaning a floor. He stopped work on July 23, 2014 and returned to full-time limited-duty work on July 24, 2014. On October 7, 2015 OWCP accepted the claim for lumbar sprain, lumbar muscle strain, and right hip, thigh, and knee contusions.

On April 27, 2015 OWCP received medical records from the employing establishment hospital regarding treatment provided and tests performed during the period March 30 to April 23, 2015. Appellant received treatment for complaints of numbness and severe back pain radiating into both legs.

A March 30, 2015 computerized tomography scan (CT) showed no evidence of lumbar fracture or dislocation, but mild disc space narrowing at L2-3, L3-4, and L4-5 levels.

On April 2, 3, and 9, 2015 appellant was seen for complaints of worsening back pain, lower back numbness, incontinence, and pain radiating into his legs and calves. Physical examination findings were provided along with a history of injury, which noted that he had pain since falling at Building 3 on the Lyons campus and that his pain had recently worsened. Diagnoses included chronic low back pain, sciatica, lumbar radiculopathy, cord compression, and anxiety disc prolapse. The April 2, 2015 progress notes were signed by Dr. Zubeda Sheikh, an examining neurology resident, and Dr. Agrahar Ganeshamurthy, an attending physician specializing in internal medicine, signed the April 3, 2015 progress notes. Dr. Daiva Brazaitis, an examining physician specializing in internal medicine, signed the April 9, 2015 progress notes.

An April 2, 2015 magnetic resonance imaging (MRI) scan revealed moderate L4-5 disc herniation and mild dilated multilevel degenerative spondylosis.

In an April 14, 2015 work capacity evaluation for OWCP's claimants form, Dr. Bin Yang, a treating physician specializing in occupational medicine, diagnosed left hamstring and proximal biceps tendon tears. He indicated that appellant was disabled from work on April 14, 2015 and could return to modified work on April 16, 2015.

On April 14, 2015 appellant was seen by Dr. Walter G. Husar, an attending physician specializing in neurology, who noted a history of lower back pain and diagnosed lumbar stenosis.

In progress notes dated April 18, 2015, Dr. Bhrugav Raval, an examining physician specializing in neurology, provided appellant's examination findings and noted a history of worsening back pain. He diagnosed spinal osteoarthritis.

On April 18, 2015 progress notes, Dr. Marcin C. Kociuba, an examining osteopath specializing in emergency medicine, diagnosed low back pain, and lumbar radiculopathy/spinal stenosis.

On April 23, 2015 appellant was seen by Dr. Peter C. Dowling, a Board-certified neurologist, for chronic back pain.

An April 23, 2015 lumbar CT scan showed multilevel degenerative changes without significant progression from prior study, lumbar kyphosis, multilevel neural foraminal narrowing, and lumbar L4-5 disc narrowing.

On September 24, 2015 appellant filed a notice of recurrence (Form CA-2a) claiming disability beginning April 1, 2015 and ending when he returned to work on June 4, 2015. He explained that his conditions were the same or worse, his right foot was numb, and that his right foot restrictions did not change following his April 27, 2015 surgery. Appellant also related that he now had left foot problems, which were not part of his original claim.

In a development letter dated October 21, 2015, OWCP informed appellant that the evidence of record was insufficient to establish his recurrence claim. It noted that he returned to full-time work on July 24, 2014, continued to work until stopping on April 1, 2015,² and that he had returned to work on June 4, 2015. OWCP advised that no evidence had been submitted with his recurrence claim to establish disability during the claimed time period. It provided appellant with the definition of a recurrence and the evidence required. OWCP afforded appellant 30 days to provide the requested evidence. No evidence was submitted within the allotted time period.

By decision dated November 30, 2015, OWCP denied appellant's claim for a recurrence of disability. It found that the record contained no medical evidence explaining how her alleged total disability for the period in question was due to the accepted July 19, 2014 employment injury.

Subsequent to the denial of appellant's claim, OWCP received additional evidence.

An April 27, 2015 operative report and April 29, 2015 discharge instructions following L4 laminectomy and L4-5 microdiscectomy surgery performed on April 27, 2015 listed a diagnosis of lumbar disc herniation.

In work capacity evaluation forms dated June 4 and 14, and November 2, 2015, Dr. Yang diagnosed right leg hamstring tendon tear and proximal biceps tendon, lumbar strain, and L4 herniated disc with radiculopathy. Examination findings and permanent work restrictions were detailed.

By report dated October 1, 2015, Dr. Renuka Kumar, a treating Board-certified internist, diagnosed a variety of conditions including lumbar spondylosis, hamstring sprain, degenerative joint disease, shoulder pain, ankle and foot pain, ankle sprain, cervical canal stenosis, cervical radiculopathy, ankle arthralgia and spinal osteoarthritis, and neck and low back pain. He noted that on April 27, 2015 appellant underwent lumbar laminectomy and L3-4 discectomy. Dr. Kumar reported that appellant complained of right foot numbness and weak right great toe. He opined that appellant had progressive and debilitating chronic back pain and that appellant was disabled from full-time regular duty as well as his light-duty work with adjusted hours. Dr. Kumar concluded that appellant would be unable to work at all in the future.

In an October 7, 2015 form, appellant noted that he was injured on July 19, 2014 and his most recent hospitalization was April 27 to 29, 2015. He described his condition as right leg and

² OWCP noted the date as April 5, 2015.

lower back tenderness, L4-5 edema, right left hamstring tear, and right foot numbness. As a result of these conditions, appellant was restricted to no lifting, carry or pulling, no prolonged walking or standing, and no twisting or bending.

On November 30, 2015 appellant responded to the questionnaire sent by OWCP. He stated that the recurrence occurred due to sitting too long on a bumpy, crowded shuttle bus, and after walking more than 10 minutes. Appellant expressed his belief that his disability was due to his accepted work injury based on the worsening lower back weakness and limited right leg range of motion, and numbness in his right hamstring, foot, and toes.

Appellant requested reconsideration on December 29, 2015.

By decision dated April 27, 2016, OWCP denied modification. It found the evidence appellant submitted was insufficient to establish a recurrence of disability for the period April 1 to June 4, 2015 due to the accepted employment injury. OWCP explained that none of the medical evidence discussed his condition, provided objective medical findings, or explained how his condition became totally disabling on April 1, 2015.

Subsequent to the April 27, 2016 decision OWCP continued to receive medical evidence detailing appellant's medical treatment in 2016.

Appellant, requested reconsideration on November 28, 2016.

By decision dated May 12, 2017, OWCP denied modification. It found that the record lacked a well-rationalized medical opinion supporting appellant's claim for recurrence of total disability from April 1 to June 3, 2015 causally related to the accepted July 19, 2014 work injury.

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.³

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 of proof the employee must show a change in the nature and extent of the injury-related condition or

³ *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).

a change in the nature and extent of the limited-duty job requirements.⁴ 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.⁵ In the absence of rationale, the medical evidence is of diminished probative value.⁶ 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.⁷

ANALYSIS

The Board finds that appellant has failed to establish a recurrence of total disability from April 1 through June 3, 2015 causally related to his accepted July 19, 2014 employment injury.

OWCP accepted that appellant sustained lumbar sprain, lumbar muscle strain and right hip, thigh, and knee contusions due to the accepted July 19, 2014 employment injury. Appellant stopped work on July 23, 2014 and returned to full-time limited-duty work on July 24, 2014. He continued working the light-duty job until stopping on April 1, 2015.

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.⁸ However, he has not submitted probative medical evidence demonstrating total disability for this period of time due to his accepted conditions. The evidence of record establishes that appellant underwent L4 laminectomy and L4-5 discectomy on April 27, 2015 for lumbar disc herniation, a condition that has not been accepted as causally related to appellant's July 19, 2014 employment injury. Where an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.⁹ For each period of disability claimed, an employee must establish that he was disabled from work as a result of the accepted employment injury. The Board will not require OWCP to pay compensation for disability without sufficient medical evidence to support

⁴ *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁶ *Id.*; *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁷ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁸ *D.L.*, Docket No. 13-1653 (issued November 22, 2013); *Cecelia M. Corley*, 56 ECAB 662 (2005).

⁹ *See O.S.*, Docket No. 16-1771 (issued January 23, 2018).

the claim. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁰

In support of his recurrence claim appellant submitted reports from Dr. Yang and Dr. Kumar. Dr. Yang, in an April 14, 2015 form report opined that appellant was disabled from work on April 14, 2015 and could resume light-duty work on April 16, 2015. He diagnosed left hamstring and proximal biceps tendon tears and right leg without offering any opinion as to the cause of disability. The remaining form reports from Dr. Yang contain permanent work restrictions. The Board notes that none of his reports provide support for total disability commencing April 1, 2015 as a result of the July 19, 2014 accepted work injury.¹¹ In addition, OWCP has not accepted the conditions of left hamstring and proximal biceps tears. As Dr. Yang failed to attribute any disability to appellant's work injury, or explain how his employment-related condition changed such that he was unable to work, Dr. Yang's reports are insufficient to meet his burden of proof.¹²

The record also contains an October 1, 2015 report from Dr. Kumar in which he noted that appellant underwent lumbar laminectomy and L3-4 discectomy on April 27, 2015. He concluded that appellant was totally disabled and noted a number of diagnoses, including lumbar spondylosis, hamstring sprain, degenerative joint disease, shoulder pain, ankle and foot pain, ankle sprain, cervical canal stenosis, cervical radiculopathy, and spinal osteoarthritis. However, Dr. Kumar did not specifically explain whether appellant sustained a recurrence of disability causally related to the accepted employment conditions or otherwise provide medical reasoning explaining why any current condition or disability beginning April 1, 2015 was due to the accepted July 19, 2014 employment injury.¹³ The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹⁴

The remaining medical evidence of record is also insufficient to establish appellant's claim. Reports from other physicians of record from the employing establishment hospital offer physical examination findings and diagnoses, but do not specifically support that he sustained a recurrence of disability beginning April 1, 2015 causally related to the accepted conditions. Reports were received from Drs. Sheikh, Ganeshamurthy, Brazaitis, Husar, Kociuba, Dowling, and Raval. These reports do not address how appellant had a spontaneous change in his accepted conditions beginning April 1, 2015 causing appellant's alleged period of disability.¹⁵

¹⁰ See *C.Y.*, Docket No. 17-0605 (issued January 11, 2018); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹¹ *Id.*

¹² See *K.W.*, 59 ECAB 271 (2008).

¹³ *Supra* note 5.

¹⁴ *A.C.*, Docket No. 17-0521 (issued April 24, 2018); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

¹⁵ *Supra* note 3.

Appellant also submitted CT and MRI scans, however, these reports did not provide a cause of any diagnosed conditions. The Board has long held that diagnostic reports which offer no opinion regarding causal relationship are of limited probative value.¹⁶ Thus, this evidence is insufficient to establish appellant's claim.

As noted, appellant must submit rationalized medical evidence supporting causal relationship between the disabling condition and the accepted injury. Furthermore, the medical evidence must directly address the dates of disability for work for which compensation is claimed.¹⁷ None of the medical evidence of record provided a discussion of how appellant's accepted conditions caused total disability during the period in question, or supported a finding that his newly diagnosed conditions were causally related to the accepted injury.¹⁸ Appellant therefore did not meet his 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 did not meet his burden of proof to establish a recurrence of total disability from April 1 to June 3, 2015 causally related to his accepted July 19, 2014 employment injury.

¹⁶ See *G.H.*, Docket No. 17-1387 (issued October 24, 2017).

¹⁷ *C.S.*, Docket No. 08-2218 (issued August 7, 2009); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁸ *Supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 12, 2017 is affirmed.

Issued: July 23, 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