

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a recurrence of disability commencing October 27, 2014⁴ causally related to her February 8, 2013 employment injury; and, (2) whether she has established that her claim should be expanded to include additional lumbar conditions.

FACTUAL HISTORY

On February 8, 2013 appellant, then a 26-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she injured her low back that day while lifting a sack of mail. She stopped work on the date of injury and returned to full-time modified-duty work on February 25, 2013. Appellant worked for four days, again stopped work, and returned to the modified position on March 5, 2013. She stopped work again on March 27, 2013, but returned to modified-duty work on April 9, 2013. On May 9, 2013 OWCP accepted the claim for lumbar sprain.

On May 23, 2013 appellant accepted a modified position with duties of scanning placards for 4 hours daily, side dumping mail for 30 minutes every 2 hours, and rewrapping 1 hour at a time. Lifting and pushing were limited to 20 pounds, and walking, sitting, and standing to one hour at a time. Appellant continued working in this modified position until she stopped work again on October 25, 2014.

Appellant initially sought medical treatment on May 6, 2013 with Dr. Robert J. Ponzio, an osteopath, who diagnosed lumbar strain and sprain with aggravation of underlying lumbar degenerative disc disease. A May 31, 2013 magnetic resonance imaging (MRI) scan of appellant's lumbar spine demonstrated multilevel degenerative disc disease with no significant central canal stenosis.⁵ On June 3, 2013 Dr. Ponzio reviewed the MRI scan findings and also noted that an electrodiagnostic study of the lower extremities was normal.⁶ He diagnosed degenerative disc disease at L5-S1 with minimal central disc protrusion. On July 15, 2013 Dr. Ponzio additionally diagnosed multilevel lumbar degenerative disc disease, left-sided paracentral disc herniation at

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that appellant's notice of recurrence (Form CA-2a) noted that she sustained a recurrence of disability on October 20, 2014 and stopped work on October 21, 2014. The employing establishment noted on the reverse side of the claim form that appellant stopped work on October 25, 2014.

⁵ Appellant had previously undergone MRI scans of her lumbar spine. A February 20, 2012 lumbar spine MRI scan reported a history of low back pain radiating down bilateral legs, with pressure and numbness. The MRI scan demonstrated multilevel degenerative disc disease, most prominent at L5-S1 where there was a mild bulge, but no significant stenosis, and mild central stenosis at L3-4 and L4-5.

⁶ A copy of the study is found in the record.

L4-5, an annular tear at L5-S1 with central disc herniation, and left lower extremity radiculopathy. He recommended lumbar steroid injections and referral to pain management.

By report dated September 3, 2014, Dr. Ponzio noted appellant's complaint of radiating low back pain and numbness. He diagnosed lumbar degenerative disc disease at L5-S1 and recommended a pain management consultation. On a duty status report (Form CA-17) of that same date, Dr. Ponzio advised that appellant could continue restricted duty.

On February 9, 2015 OWCP received a notice of recurrence (Form CA-2a) signed by appellant on November 5, 2014 indicating that the recurrence occurred on October 20, 2014 and that she had stopped work on October 21, 2014.⁷ Appellant described her modified-duty work and indicated that her condition had not improved since the February 8, 2013 employment injury.⁸ The employing establishment, on the reverse side of the Form CA-2a, noted a date of recurrence and cessation of work of October 25, 2014.

In support of her recurrence claim, appellant submitted an October 27, 2014 report in which Dr. Garo Avetian, an osteopath, noted that appellant injured her back when lifting a sack of mail on February 8, 2013. Dr. Avetian related that his examination of her lumbar spine demonstrated acute pain, tenderness, and spasm of the paraspinal and gluteal musculature, and reduction in range of motion. He diagnosed post-traumatic lumbar sprain/strain and advised that appellant could not work. Dr. Avetian opined that, due to the low back pain, mechanism of injury, damage to surrounding soft tissue, and the severity and persistence of her symptoms, within a medical probability, appellant's low back conditions were a direct result of the work-related incident of April 7, 2010. He completed a duty status report on October 27, 2014 indicating that appellant could not work.

A January 16, 2015 MRI scan of appellant's lumbar spine demonstrated posterior disc bulges at L3-4, L4-5, and L5-S1. Also submitted was a copy of the May 31, 2013 MRI scan.

By development letter dated June 15, 2015, OWCP informed appellant of the type factual and medical evidence needed to establish her recurrence claim. It provided a questionnaire for her completion regarding the factual allegations of her claim. OWCP also noted appellant's accepted lumbar sprain and advised that additional medical evidence was needed, including a physician's opinion supported by a medical explanation regarding the relationship between her current disability and the February 8, 2013 employment injury. It afforded her 30 days to submit the necessary evidence.

In July 12, 2015 response to OWCP's questionnaire, appellant indicated that at the time of the claimed recurrence she was working in rewrap fixing damaged boxes. She described job duties of standing and sitting intermittently, lifting 20 pounds or less, with very little bending. Appellant indicated that her symptoms never improved and continued to worsen, with radiating low back

⁷ Appellant's supervisor signed and dated the Form CA-2a on February 7, 2015.

⁸ Appellant had previously filed a claim for compensation (Form CA-7) on November 24, 2014 for the period November 1 to 14, 2014. By decision dated February 10, 2015, OWCP denied that claim. The claim for compensation for this period is not presently before the Board.

pain. She noted diagnoses of lumbar disc herniation and lumbar radiculopathy, and indicated that she was presently undergoing medical treatment with trigger point injections.⁹

By decision dated July 27, 2015, OWCP denied appellant's recurrence claim, finding the medical evidence of record was insufficient to establish that the claimed recurrence of disability was causally related to the accepted employment injury.

On July 27, 2016 appellant, through counsel, requested reconsideration.

Medical evidence submitted subsequent to the July 27, 2015 decision included a pain management evaluation with illegible signatures. Also submitted were reports of trigger point injections beginning February 5, 2015, which also had illegible signatures.

In monthly reports beginning in March 2015, Dr. R. Todd Rinnier, an osteopath who is a Board-certified anesthesiologist, described appellant's pain management including epidural steroid injections. He noted her complaints of pain, stiffness, and spasm and provided examination findings.

In October 2015 OWCP referred appellant to Dr. Lawrence Barr, a Board-certified osteopath specializing in orthopedic surgery, for a second opinion evaluation.

In an October 19, 2015 report, Dr. Barr noted appellant's history of injury and her current complaints of constant radiating low back pain that limited house and yard work, bending, crawling, sitting, driving, standing, lifting, kneeling, sleeping, and getting up out of bed in the morning. He indicated that she was performing light-duty work when she quit work in October 2014. Dr. Barr noted his review of the statement of accepted facts and medical record including May 23, 2013 and August 25, 2015 electrodiagnostic studies and the MRI scan findings. He described examination findings of tenderness in the lower lumbar paraspinal musculature with no spasm. Sitting root test elicited pain. Appellant complained of decreased sensation on the right lateral leg and numbness in the dorsum of the foot. Toe and heel walking were normal. Lumbar spine and hip range of motion were diminished. Dr. Barr diagnosed low back sprain and degenerative disc disease of the lumbar spine. He advised that appellant had plateaued medically, had reached maximum medical improvement, and no further treatment was required. Dr. Barr advised that the February 8, 2013 work incident had caused a low back sprain, noting that her history of degenerative disc disease of the low back predated the work injury and was progressive as part of its natural process. He concluded that appellant was capable of sedentary work and, if there was a question of returning to full duty, recommended a functional capacity evaluation (FCE).

An FCE was completed on November 17, 2015 and indicated that appellant was capable of sedentary work. On December 11, 2015 Dr. Barr noted these findings and advised that appellant could perform sedentary work, with occasional exertion up to 10 pounds.

⁹ The record indicates that she had trigger point injections beginning on February 5, 2015.

Dr. Rinnier continued to provide pain management.¹⁰ On May 11, 2016 Dr. Vernon indicated that appellant could not resume work. He completed injections on March 16 and 30, May 25, and June 2 and 16, 2016.

In a July 20, 2016 report, Dr. Vernon noted appellant's history of injury, and previous injury in 2012 acknowledging the MRI scan performed at that time. He indicated that appellant's condition following her February 3, 2013 injury had worsened. Dr. Vernon opined that, after reviewing appellant's MRI scan studies, it was clear that the February 8, 2013 injury was different in character, intensity, and pain distribution. He noted changes at L4-5 and L5-S1 in the May 31, 2013 MRI scan, with an associated annular tear and increased changes in the January 16, 2015 MRI scan with disc protrusions. Dr. Vernon maintained that appellant's current pain was directly related to the February 8, 2013 injury which caused a superimposed lumbar herniation and lumbar annular tear. He agreed that degenerative disc disease could be progressive, but given the time frame, appellant's new injuries, the change in the character of her pain including her symptoms and distribution of pain, as well as serial imaging studies, there was a clear difference between her 2012 findings and those after February 8, 2013. Dr. Vernon concluded that, with reasonable medical certainty, appellant suffered a permanent injury to her back and would need ongoing treatment. He continued to provide treatment.

An April 18, 2017 MRI scan of the lumbar spine demonstrated disc extrusions at L5-6 and L6-S1¹¹ which had mildly increased since the January 16, 2015 study.

In an attending physician's report (Form CA-20) dated June 5, 2017, Dr. Vernon noted that appellant had injured her low back lifting a bag of mail. He diagnosed disc extrusions of the lumbar spine and checked a box marked "yes," indicating that the diagnosis was employment related. Dr. Vernon advised that appellant was totally disabled. He confirmed this opinion in a duty status report dated June 7, 2017.

By decision dated August 2, 2017, OWCP denied modification of the July 27, 2015 decision. It found that the medical evidence of record provided insufficient medical rationale explaining how her condition changed or worsened in October 2014 such that she was rendered unable to perform her modified job duties. OWCP further found that appellant had not submitted sufficient medical rationale to support additional diagnoses such as aggravation of her preexisting back condition.

LEGAL PRECEDENT -- ISSUE 1

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

¹⁰ On December 14, 2015 Dr. Rinnier performed radiofrequency neurolysis of the medial branch nerves for lumbar facet joints at L3-4, L4-5, and L5-S1. On February 8, 2016 Dr. Aimee Hachigian-Gould, a Board-certified orthopedic surgeon and OWCP medical adviser, reported that the lumbar facet joint surgery was not medically warranted. By letter dated June 27, 2016, OWCP informed appellant that the procedure was not authorized.

¹¹ The radiologist who performed the MRI scan noted that "for purposes of this dictation there are six non rib-bearing lumbar vertebral type bodies ... the last vertebral body will be designated as L6, previously designated as L5 on MRI lumbar spine [January 16, 2015]."

injury or illness without an intervening injury or new exposure to the work environment that caused the illness.¹² 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.¹³

When an employee, who is disabled from the job he or she held when injured on account of 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 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.¹⁴

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.¹⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing October 27, 2014 causally related to her February 8, 2013 employment injury.

Appellant has not alleged a change in her modified-duty job requirements. Instead, she attributed her inability to work due to a change in the nature and extent of her employment-related conditions. Appellant, therefore, has the burden of proof to provide medical evidence to establish that she was disabled due to a worsening of the accepted work-related lumbar sprain.¹⁶ As she has not submitted probative medical evidence demonstrating total disability beginning in October 2014, the Board finds that appellant has not met her burden of proof to establish her recurrence claim.¹⁷

In his monthly reports beginning in March 2015, Dr. Rinnier did not discuss a cause of appellant's diagnosed conditions. Likewise, the diagnostic studies of record did not provide a

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

¹³ *Id.*

¹⁴ *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹⁵ *S.S.*, 59 ECAB 315 (2008).

¹⁶ *D.L.*, Docket No. 13-1653 (issued November 22, 2013).

¹⁷ See *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

cause of her diagnosed conditions. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁸

Dr. Ponzio treated appellant through July 15, 2013 when he diagnosed multilevel degenerative disc disease. He next saw appellant on September 3, 2014, almost 14 months later, when he reiterated his diagnosis and advised that appellant could continue modified duty. To establish that a claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between the present condition and the accepted injury must support the physician's conclusion of a causal relationship.¹⁹ As Dr. Ponzio did not explain, with evidence of bridging symptoms why appellant was disabled as of October 25, 2014 due to her accepted injury, his opinion is of no probative value regarding the claimed October 2014 recurrence of disability.

In October 27, 2014 reports, Dr. Avetian described the February 8, 2013 employment injury and physical examination findings, diagnosed post-traumatic lumbar sprain/strain, and advised that appellant could not work. He explained that due to the low back pain, mechanism of injury, damage to surrounding soft tissue, and the severity and persistence of appellant's symptoms, within medical probability her low back conditions were a direct result of the work-related accident of April 7, 2010. The record contains no evidence of an April 2010 injury. Dr. Avetian's report is therefore factually and historically inaccurate, and the Board has long held that to be of probative value a medical opinion must be based on a complete and accurate factual and medical background. Moreover, Dr. Avetian expressed no knowledge of appellant's modified job duties. Medical opinions based on an incomplete or inaccurate history are of diminished probative value.²⁰ Dr. Avetian's opinion is of diminished probative value and insufficient to meet appellant's burden of proof.

In his July 20, 2016 report, Dr. Vernon did not report a correct history, noting that appellant stopped work in October 2013 rather than in October 2014. Moreover, in that report he noted a previous injury in 2012. Other than a February 20, 2012 lumbar MRI scan that reported a history of radiating low back pain, there is no evidence in the record before the Board concerning a 2012 injury. Dr. Vernon did not begin treating appellant until January 2015, almost two years after the February 8, 2013 employment injury. While he discussed appellant's MRI scan findings and maintained in his July 2016 report that appellant's current pain was directly related to the February 8, 2013 injury which caused a disc herniation and annular tear, he did not exhibit knowledge of appellant's modified-duty requirements or explain why she could not continue working in this position. Although Dr. Vernon generally supported that appellant's continued symptoms and disability were a result of the February 8, 2013 employment injury, he failed to adequately address why appellant's complaints and diagnosed conditions were not caused by her preexisting disc disease. A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.²¹ Moreover, Dr. Vernon did not explain why there was an

¹⁸ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁹ *Mary A. Ceglia*, 55 ECAB 626 (2004).

²⁰ *L.G.*, Docket No. 09-1692 (issued August 11, 2010).

²¹ See *T.M.*, Docket No. 08-975 (issued July 14, 2014).

absence of medical treatment between July 2013 and September 2014. Thus, Dr. Vernon's opinion is insufficient to meet appellant's burden of proof.²²

Appellant did not submit medical reports from a physician who explained with medical rationale that she sustained a spontaneous worsening of her accepted conditions on or after October 27, 2014 as a result of the accepted February 8, 2013 employment injury, sufficient to cause total disability.²³ As she has not submitted sufficient medical evidence showing that she sustained a recurrence of disability due to the accepted employment injury, the Board finds that she has not met her burden of proof.²⁴

LEGAL PRECEDENT -- ISSUE 2

An employee has the burden of proof to establish that any specific condition for which compensation is claimed is causally related to the employment injury.²⁵ Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.²⁶ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.²⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.²⁸

It is well established that where employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for periods of disability related to the aggravation. Where the medical evidence supports an aggravation or acceleration of an underlying condition precipitated by working conditions or injuries, such disability is compensable. However, the normal progression of untreated disease cannot be said to constitute aggravation of a condition merely because the performance of normal work duties reveal the underlying condition. For the conditions of employment to bring about an aggravation of preexisting disease, the employment must cause acceleration of the disease or precipitate disability.²⁹

²² See *O.A.*, Docket No. 16-1771 (issued January 23, 2018).

²³ See *K.P.*, Docket No. 15-1711 (issued January 14, 2016).

²⁴ See *supra* note 16.

²⁵ *Kenneth R. Love*, 50 ECAB 276 (1999).

²⁶ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

²⁷ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

²⁸ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

²⁹ *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

ANALYSIS -- ISSUE 2

The Board also finds that appellant has not met her burden of proof to establish that her claim should be expanded to include additional lumbar conditions.

Dr. Barr provided a second opinion evaluation for OWCP on October 19, 2015 and noted appellant's preexisting history of degenerative disc disease. The Board finds that his well-rationalized report, which was based upon a proper factual and medical background, represents the weight of the medical evidence and establishes that appellant's subsequently diagnosed lumbar conditions were not caused or aggravated by the accepted employment injury.³⁰ Dr. Barr reviewed the medical record, including appellant's MRI scans and diagnostic studies and opined that the February 8, 2013 work incident caused a low back sprain. He explained that appellant had a history of degenerative disc disease of the low back, which predated her employment injury and was progressive as part of its natural process. The Board has reviewed the opinion of Dr. Barr and finds that it has reliability, probative value, and a convincing quality with respect to its conclusions regarding the issue presented on appeal.³¹ Dr. Barr's opinion is based on a proper factual and medical history. He thoroughly reviewed that history and accurately summarized the relevant medical evidence.³² As noted, Dr. Barr properly explained that appellant's February 8 2013 injury caused a lumbar strain, that appellant had preexisting degenerative disc disease, and that her current condition was a natural progression of her preexisting disease. Thus, his opinion is entitled to the weight of the medical evidence and establishes that appellant's additional lumbar conditions were not caused or aggravated by the accepted employment injury.

Contrary to counsel's assertion on appeal, the medical evidence of record is insufficient to establish with medical rationale that additional conditions should be accepted. The opinion of a physician supporting causal relationship must be based on a complete factual and medical background, supported by affirmative evidence, must address the specific factual and medical evidence of record, and must provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.³³

As noted above, neither Dr. Rinnier, Dr. Ponzio, nor the physicians who reported the lumbar scan findings discussed a cause of any of their diagnosed conditions, and Dr. Avetian reported an inconsistent history of injury. These reports are, therefore, insufficient to establish that additionally diagnosed conditions were caused by the February 8, 2013 employment injury.³⁴

As to the May 16, 2016 report from Dr. Vernon, while he discussed appellant's MRI scan findings, including degenerative changes, and maintained in his July 2016 report that appellant's current symptoms were directly related to her February 8, 2013 injury which caused a

³⁰ See *R.T.*, Docket No. 17-2019 (issued August 24, 2018).

³¹ See *R.W.*, Docket No. 12-0375 (issued October 28, 2013).

³² See *Melvina Jackson*, 38 ECAB 443 (1987).

³³ *Robert Broome*, 55 ECAB 339 (2004).

³⁴ *Supra* note 17.

superimposed disc herniation and annular tear, the Board finds his opinion of diminished probative value. He relied only on MRI scan findings to relate new diagnoses, but he failed to explain the mechanics of how the February 8, 2013 injury caused the new lumbar conditions he diagnosed, rather than the normal progression of her preexisting disc disease.³⁵

Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.³⁶ The Board finds that appellant has not submitted sufficient rationalized medical evidence supporting a causal relationship between any additional back conditions and the February 8, 2013 employment injury.

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 not met her burden of proof to establish a recurrence of disability commencing October 27, 2014 causally related to her February 8, 2013 employment injury. The Board also finds that she has not established that her claim should be expanded to include additional lumbar conditions.

³⁵ *Supra* note 26.

³⁶ *C.O.*, Docket No. 10-189 (issued July 15, 2010).

ORDER

IT IS HEREBY ORDERED THAT the August 2, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 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