

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

C.W., Appellant	)	
	)	
and	)	<b>Docket No. 18-0002</b>
	)	<b>Issued: September 6, 2018</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Voorhees, NJ, Employer	)	
	)	

*Appearances:*  
Thomas R. Uliase, 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  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On September 29, 2017 appellant, through counsel, filed a timely appeal from a July 31, 2017 merit 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 to consider the merits of this case.<sup>3</sup>

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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.*

<sup>3</sup> The Board notes that, following the July 31, 2017 decision, OWCP received additional evidence. However, the Board's jurisdiction is limited to the evidence that was of record at the time OWCP issued its final decision. Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *See* 20 C.F.R. §§ 501.2(c)(1); *M.B.*, Docket No. 09-0176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); and *Rosemary A. Kayes*, 54 ECAB 373 (2003).

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish a recurrence of disability commencing February 2, 2015, causally related to his accepted September 7, 2013 employment injury.

## **FACTUAL HISTORY**

On September 9, 2013 appellant, then a 59-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a back sprain on September 7, 2013 when his postal vehicle was rear ended by another vehicle. OWCP accepted the claim for lumbar and neck sprains. Appellant stopped work on September 7, 2013 and returned to modified work on September 16, 2013 initially working four hours per day, and subsequently six hours per day. OWCP paid intermittent wage-loss compensation benefits on the supplemental rolls commencing September 7, 2013.

On February 11, 2015 appellant filed a notice of recurrence (Form CA-2a) claiming total disability commencing February 2, 2015.

In attending physician's reports (Form CA-20) dated February 10 and 20, and March 5 and 27, 2015, Dr. Alan Kwon, a physician specializing in pain medicine, diagnosed lumbar disc disease and lumbar sprain. He placed appellant off work until cleared by his orthopedic surgeon to return.

In duty status reports (Form CA-17) dated February 10, 20, and 24, and March 6 and 27, 2015, Dr. Vladimir S. Bozic, a Board-certified orthopedic surgeon, diagnosed lumbar strain, degenerative disc disease, stenosis, and herniated nucleus pulposus. He noted an injury date of September 7, 2013 and checked a box marked "no" in response to the question of whether appellant had been advised to return to work.

Dr. Bozic, in reports dated February 10 and 24, 2015, noted that appellant was seen for complaints related to a worsening of his lumbar condition. Physical examination findings were provided and diagnoses provided included lumbar sprain/strain, lumbar degenerative disc disease, spinal stenosis, and displacement of lumbar intervertebral disc without myelopathy. In the February 10, 2015 report, Dr. Bozic indicated that appellant was off work. In a February 24, 2015 Form CA-20, he indicated that appellant was off work until cleared to return by a physician.

In a February 27, 2015 report, Dr. Kwon noted the injury and medical histories and provided examination findings. Examination findings included limited spinal range of motion, difficulty with right straight leg raising, intact sensation, positive right side slump test, and negative left side slump test. Diagnoses included lumbago, lumbosacral radiculopathy, and lumbar intervertebral disc displacement without myelopathy. Dr. Kwon opined that appellant's symptoms were due to the accepted September 7, 2013 motor vehicle accident. He determined that appellant was capable of performing sedentary work. Dr. Kwon, in a February 27, 2015 Form CA-20 indicated that appellant could resume his usual work that day.

A February 28, 2015 magnetic resonance imaging (MRI) scan noted a history of a motor vehicle accident. It reported a significant change in the L1-2 disc herniation from the prior study. Diagnoses included new large L1-2 right side disc herniation.

On March 6, 2015 appellant was seen by Dr. Bozic for a follow-up visit and review of the recent MRI scan. Diagnoses and physical examination findings remained unchanged from prior reports. Dr. Bozic indicated that appellant continued to be disabled from work.

Dr. Kwon, in a March 6, 2015 report, reviewed a February 28, 2015 MRI scan and provided physical examination findings. A review of the MRI scan revealed L1-2 right large disc herniation producing foraminal stenosis and nerve root impingement, broad-based L3-4 and L4-5 disc protrusions, and L5-S1 central. Diagnoses were unchanged from prior reports.

A March 24, 2015 report by Dr. Kwon noted that appellant's back spasms were less severe following a lumbar epidural injection. Physical examination findings and diagnoses remained unchanged from prior reports.

In a development letter dated March 31, 2015, OWCP informed of appellant the definition of a recurrence and advised him of the type of evidence required to establish a recurrence claim. It afforded him 30 days to provide the necessary evidence.

On April 9, 2015 OWCP received a March 27, 2015 report from Dr. Bozic noting that appellant was seen for lumbar degenerative disc disease and that he was also being treated by Dr. Kwon. Diagnoses and examination findings remained unchanged. Dr. Bozic indicated that appellant was not to work at that time.

An April 6, 2015 nerve conduction velocity/electromyography (NCV/EMG) study reported a negative study and diagnosed right upper lumbar radiculopathy, acute right L1 radiculopathy.

In an April 10, 2015 report, Dr. Bozic provided examination findings and reviewed the April 6, 2015 NCV/EMG study. Diagnoses included right L5 radiculopathy, possible L1 acute radiculopathy, lumbar sprain/strain, lumbar degenerative disc disease, spinal stenosis, and displacement of lumbar intervertebral disc without myelopathy. In an April 10, 2015 Form CA-17, Dr. Bozic indicated that appellant was advised to not return to work.

In an April 14, 2015 report, Dr. Kwon provided examination findings, diagnoses, and work status, which were unchanged from his prior report.

On April 21, 2015 OWCP received an undated Form CA-20 from Dr. Kwon releasing appellant to return to work effective April 10, 2015. Diagnoses included lumbar disc displacement, lumbar degenerative disc disease, and lumbago.

By decision dated May 1, 2015, OWCP found that appellant had not established a recurrence of disability commencing February 2, 2015, causally related to the accepted September 7, 2013 work injuries. It determined that the evidence of record was insufficient to establish that the accepted September 7, 2013 injury aggravated his preexisting lumbar condition causing spinal stenosis, lumbar disc displacement, and disc degeneration.

On May 4, 2015 OWCP received a May 1, 2015 report by Dr. Bozic reiterating findings and diagnoses from prior reports.

Subsequently, OWCP received Forms CA-20 and CA-17 from Dr. Bozic. On the Form CA-20 he indicated that appellant was off work until cleared by a physician to return while on the Form CA-17 he indicated that appellant had been advised not to return to work.

In a letter dated May 8, 2015 appellant, through counsel, requested an oral hearing before an OWCP hearing representative, which was held on September 10, 2015.

On May 19, 2015 OWCP received Dr. Kwon's May 5, 2015 report diagnosing lumbago, chronic pain syndrome, lumbosacral radiculopathy lumbar intervertebral disc displacement without myelopathy, and thoracic or lumbar intervertebral disc degeneration.

In a May 19, 2015 report, Dr. Bozic reiterated diagnoses and findings from prior reports. His opinion regarding appellant's work status remained unchanged.

In a June 1, 2015 report, Dr. Bozic detailed appellant's medical treatment, examination findings, and injury history and reviewed diagnostic tests. He noted that appellant returned to part-time light-duty work following the September 7, 2013 motor vehicle accident until he sustained a recurrence of total disability on January 31, 2015. Dr. Bozic attributed the recurrence of disability due to a worsening of appellant's symptoms without a new injury and that appellant was unable to work on and after February 2, 2015. He explained that appellant's worsening of symptoms was explained by the recent MRI scan and NCV/EMG study findings and was due to the accepted September 7, 2013 work injury. Dr. Bozic noted that periodic flare-ups are common in patients with lumbar disc herniations and low back injuries.

A June 2, 2015 report from Dr. Kwon was repetitive of prior reports.

In a June 5, 2015 Form CA-17, Dr. Bozic indicated that appellant was disabled from work. He also completed a Form CA-20 on June 5, 2015 indicating that appellant was out of work until cleared by a physician to return.

On June 15, 2015 OWCP received a May 11, 2015 report by Dr. David H. Clements, a Board-certified orthopedic surgeon, diagnosing chronic low back pain due to aggravation of underlying lumbar degenerative change. Physical examination findings included antalgic gait, normal back range of motion, and negative straight leg raising. A review of a February 20, 2015 MRI scan showed some mild L3-4 and L4-5 stenosis and an EMG study showed right lumbar radiculopathy. Dr. Clements noted that appellant had a history of back problems since 2009 and that he has been off work since February 2015.

On June 16, 2015 OWCP received an April 15, 2015 report by Harry F. McCoy, a physician assistant, and an April 9, 2015 report by Dr. Clements.

Dr. Clements, in the April 9, 2015 report, noted the September 7, 2013 work injury history and that appellant had been off work since February 2015 due to his severe pain. He provided examination findings, reviewed diagnostic tests, and diagnosed chronic back pain with mild-to-moderate foraminal narrowing and no central stenosis.

OWCP continued to received reports and CA-17 and C-20 forms from Dr. Bozic indicating that appellant was disabled from work.

In reports dated June 16 and August 18, 2015, Dr. Kwon reiterated his diagnoses and examination findings.

In a September 2, 2015 report, Dr. Bozic detailed the history of the September 7, 2013 work-related motor vehicle accident and discussed findings from diagnostic tests he reviewed. He reported that appellant developed an L1-2 disc herniation based on review of a recent MRI scan without any specific new injury. Dr. Bozic attributed the worsening of appellant's symptoms and the L1-2 disc herniation to the September 7, 2013 motor vehicle accident. He opined that appellant became totally disabled from work due to his accepted September 7, 2013 work-related motor vehicle accident on February 2, 2015.

Dr. Kwon, in an October 6, 2015 report, diagnosed lumbosacral radiculopathy, spondylosis without myelopathy, and lumbar or thoracic degenerative intervertebral disc disease. Physical examination findings were unchanged. Dr. Kwon determined that appellant could perform sedentary or light-duty work.

In a November 17, 2015 Form CA-20, Dr. Bozic diagnosed radiculopathy, lumbar herniated nucleus pulposus, stenosis, and disc disease. He noted an injury date of September 7, 2013 and indicated that appellant was out of work. OWCP also received a November 17, 2015 report from Dr. Bozic containing diagnoses and findings similar to prior reports and a November 17, 2015 Form CA-17 noting that appellant had not been released to return to work and diagnoses of radiculopathy, lumbar herniated nucleus pulposus, and stenosis.

By decision dated December 7, 2015, an OWCP hearing representative affirmed the May 1, 2015 decision denying appellant's recurrence claim.

Appellant continued to submit reports and CA-17 and CA-20 forms from Dr. Bozic reiterating that appellant was disabled from work due to the accepted September 7, 2013 work injury.

Dr. Kwon, in a December 29, 2015 report, reiterated examination findings, diagnoses, and medical history.

On January 25, 2016 appellant, through counsel, requested reconsideration and submitted evidence in support thereof.

In a January 1, 2016 report, Dr. Kwon detailed the September 7, 2013 injury history and reviewed medical records. He opined that the September 7, 2013 work injury aggravated appellant's degenerative disc disease resulting in the development of the L1-2 disc herniation found in a January 2015 MRI scan. Dr. Kwon further opined that appellant had not recovered from the accepted September 7, 2013 work injury, remained symptomatic, and continued to required medical treatment for his injury.

Appellant retired from the employing establishment on disability, effective February 27, 2016.<sup>4</sup>

Dr. Kwon, in reports dated March 22 and April 21, 2016, diagnosed lumbar spinal stenosis, thoracic or lumbar intervertebral disc displacement, lumbar intervertebral disc displacement without myelopathy, and lumbosacral radiculopathy. Appellant related that he continued to have right hip and lower back pain. Examination findings were unchanged. Dr. Kwon opined that appellant continued to have symptoms from the accepted September 7, 2013 work injury. He noted that appellant was capable of performing sedentary work.

By decision dated May 16, 2016, OWCP denied modification of its December 7, 2015 decision, finding that the evidence submitted was insufficient to establish that appellant's claimed recurrence was due to the accepted September 7, 2013 injury.

Subsequent to the May 16, 2016 decision, OWCP received reports dated May 10, July 12, August 19, September 16, October 21, and December 2, 2016 from Dr. Bozic and reports dated May 17 and July 19, 2016 from Dr. Kwon, which were repetitive of their prior reports.

In a letter dated August 18, 2016, appellant through counsel, requested reconsideration. In support thereof, counsel submitted a July 22, 2016 report from Dr. Bozic in which he opined that the September 7, 2013 work injury caused appellant's lumbar disc herniations and resulting total disability beginning on February 2, 2015.

On October 13, 2016 OWCP referred appellant for a second opinion evaluation with Dr. Stanley Askin, a Board-certified orthopedic surgeon, to determine the extent of appellant's September 7, 2013 employment injury and his work capacity.

In an October 4, 2016 report, Dr. Askin, based upon a review of the statement of accepted facts, history of injury, medical reports, and physical examination, opined that the accepted lumbar and neck sprains had resolved without disability or residuals. He also opined that appellant's claim should not be expanded to include the conditions of lumbosacral radiculopathy, thoracic or lumbar intervertebral disc degeneration, lumbar radiculopathy, or lumbar stenosis/spondylosis. In support of this opinion, Dr. Askin noted that these were age appropriate conditions found in many individuals and were not due to the accepted conditions. He also concluded that appellant had no residuals from any new or accepted conditions. Moreover, Dr. Askin opined that there was no evidence that the accepted September 7, 2013 motor vehicle accident aggravated an underlying degenerative condition based on the lack of documentation and clinical manifestations following the accident. He attributed appellant's neck and back pain to appellant's arthritic joints and concluded that appellant did not sustain a recurrence of disability as of February 11, 2015 due to the accepted work injury.

By decision dated December 21, 2016, OWCP denied modification of its prior decision, finding that the evidence of record was insufficient to establish that appellant's recurrence of disability was causally related to the accepted September 7, 2013 injury.

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<sup>4</sup> On June 8, 2016 appellant elected to receive benefits from the Office of Personnel Management instead of compensation benefits under FECA.

OWCP continued to receive physical therapy records and progress reports from Dr. Bozic and Dr. Kwon. In the progress reports dated from December 2, 2016 to July 14, 2017, Dr. Bozic continued to diagnose lumbar radiculopathy spinal stenosis, and displacement of lumbar intervertebral disc without myelopathy. OWCP also received progress reports from Dr. Kwon dated February 6 through June 22, 2017 in which he diagnosed intervertebral disc disorder, lumbar stenosis, and spondylosis.

On May 8, 2017 appellant, through counsel, requested reconsideration. In support thereof, counsel submitted a March 14, 2017 report from Dr. Bozic. In that report Dr. Bozic reviewed appellant's history of injury and summarized his treatment history. He explained that at the time of the employment injury appellant did have degenerative disc disease and lumbar stenosis, however, appellant was able to perform full-duty work until the employment injury on September 7, 2013. Dr. Bozic further explained that appellant did not sustain any new specific injury, but his condition deteriorated resulting in the recurrence of disability.

By decision dated July 31, 2017, OWCP denied modification of its prior decision.

### **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. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, it must not

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<sup>5</sup> *J.F.*, 58 ECAB 124 (2006). A recurrence of disability is not established 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).

be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of total disability commencing February 2, 2016 causally related to the accepted September 7, 2013 employment injury.

OWCP accepted that appellant sustained lumbar and neck sprains due to the accepted September 7, 2013 motor vehicle accident. Appellant filed a notice of recurrence of disability commencing February 2, 2015 as a result of his accepted September 7, 2013 work injury.

In support of his recurrence claim, appellant submitted numerous reports from his attending physician, Dr. Bozic. Dr. Bozic related that appellant was disabled from work, he also continued to diagnose lumbar sprain. He, however, offered no medical explanation as to how the accepted lumbar and neck sprains worsened to cause total disability as of February 2, 2016.<sup>9</sup> To have probative value, a medical opinion must reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.<sup>10</sup> Dr. Bozic also diagnosed lumbosacral radiculopathy, multiple lumbar disc herniations, spondylosis without myelopathy, and lumbar or thoracic degenerative intervertebral disc disease. While additional conditions have been diagnosed, his multiple reports failed to provide medical rationale explaining how the diagnosed conditions were causally related to the originally accepted September 7, 2013 employment injury. An employee 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.<sup>11</sup> Dr. Bozic did not provide adequate bridging evidence to show a spontaneous worsening of the accepted conditions. Rather, he correlated in general terms that appellant's nonaccepted current conditions were caused by the work-related injury.<sup>12</sup> Moreover, Dr. Bozic acknowledged that appellant's degenerative disc disease and lumbar stenosis were preexisting and noted that appellant was able to work full duty prior to the September 7, 2013 employment injury. A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.<sup>13</sup> The Board has held that an opinion

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

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

<sup>10</sup> *Supra* note 7.

<sup>11</sup> *M.S.*, Docket No. 16-1907 (issued August 29, 2017).

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

<sup>13</sup> *See O.S.*, Docket No. 16-1771 (issued January 23, 2018).



that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.<sup>14</sup>

The only accepted conditions are lumbar and neck sprains. 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>15</sup> None of the reports or form reports from Dr. Bozic provided medical rationale addressing appellant's accepted conditions, and explaining the causal relationship between his disability for work and the accepted September 7, 2013 conditions.<sup>16</sup> The Board therefore finds Dr. Bozic's reports insufficient to establish appellant's claim.

Appellant also submitted reports from Dr. Kwon diagnosing lumbago, chronic pain syndrome, lumbar spinal stenosis, thoracic or lumbar intervertebral disc displacement without myelopathy, and lumbosacral radiculopathy. These diagnoses, like the diagnoses offered by Dr. Bozic are not work-related conditions. Dr. Kwon provided no medical rationale explaining how these conditions were causally related to the accepted condition or the accepted employment incident.<sup>17</sup> His reports are deficient for the same reasons Dr. Bozic's reports were deficient. While Dr. Kwon offered diagnoses and indicated that appellant was disabled from work, he only provided a conclusory opinion. A mere conclusion without the necessary rationale explaining how and why specific duties resulted in a diagnosed condition is insufficient to meet a claimant's burden of proof.<sup>18</sup> Furthermore, Dr. Kwon did not explain how appellant's accepted conditions worsened to cause total disability.<sup>19</sup> Thus, the Board finds that Dr. Kwon's reports are also insufficient to establish appellant's claim.

Appellant also submitted reports from Dr. Clements in support of his claim. However, these reports are of limited probative medical value as they do not specifically address whether appellant's disability beginning February 2, 2015 was attributable to his accepted September 7, 2013 work injury.<sup>20</sup>

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<sup>14</sup> See *S.H.*, Docket No. 17-1660 (issued March 27, 2018).

<sup>15</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>16</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>17</sup> *Supra* notes 6 and 11.

<sup>18</sup> *Y.R.*, Docket No. 17-1521 (issued December 28, 2017).

<sup>19</sup> *Supra* note 6.

<sup>20</sup> See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (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).

The record contains a report from Mr. McCoy, a physician assistant. Physician assistants, however, are not considered physicians as defined by section 8101(2) of FECA.<sup>21</sup> Consequently, this report has no probative value and is insufficient to establish appellant's claim.

The diagnostic medical reports of record are of limited probative medical value as they do not specifically address whether appellant's disability beginning February 2, 2015 was attributable to his accepted September 7, 2013 work injury.<sup>22</sup>

OWCP referred appellant to Dr. Askin for a second opinion examination. On October 4, 2016 Dr. Askin found that appellant's injuries from the accepted September 7, 2013 work injury had resolved, that the September 7, 2013 work injury did not aggravate an underlying degenerative condition, and that appellant's current symptoms were due to his arthritic joints and age. He determined that appellant had no further disability due to his accepted September 7, 2013 work injury. Dr. Askin noted appellant's history of injury and results from his physical examinations. He related that the diagnostic studies did not show significant findings related to the accepted injury. Therefore, Dr. Askin concluded that appellant had no disability from work due to the accepted injury. As his opinions were based on a proper factual and medical history, and were supported by medical rationale, it constitutes the weight of the medical evidence.<sup>23</sup>

On appeal counsel argues that the medical evidence submitted by appellant establishes that his total disability beginning February 2, 2015 was causally related to his accepted September 7, 2013 employment injury. As discussed above, the Board found the medical reports from Dr. Kwon and Dr. Bozic insufficient to establish that appellant's recurrence of total disability was casually related to his accepted lumbar and neck sprains as the weight was properly afforded to Dr. Askin.

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 his burden of proof to establish a recurrence of disability commencing February 2, 2015 causally related to his accepted September 7, 2013 work injury.

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<sup>21</sup> See 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551 (2002).

<sup>22</sup> See *A.C.*, Docket No. 17-1448 (issued December 19, 2017). Medical evidence of diagnostic testing is of limited probative value as it fails to provide a physician's opinion on causal relationship between appellant's work incident and the diagnosed conditions.

<sup>23</sup> See *L.G.*, Docket No. 17-1448 (issued December 19, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 31, 2017 is affirmed.

Issued: September 6, 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