



## ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of intermittent disability commencing March 3, 2018.

## FACTUAL HISTORY

On January 4, 2018 appellant, then a 52-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a left-sided back injury on January 3, 2018 when she was struck by another vehicle when driving a postal truck while in the performance of duty. By decision dated March 1, 2018, OWCP accepted the claim for sprain of ligaments of the lumbar spine and sprain of ligaments of the thoracic spine. Appellant was off work intermittently following the date of injury. Treating physician, Dr. Michael E. Beane, a Board-certified family practitioner, released appellant to full-duty work, without restrictions, on January 21, 2018. Appellant returned to full-duty work on January 22, 2018.

Appellant filed claims for wage-loss compensation (Form CA-7) for intermittent disability, commencing March 3, 2018. She accepted a modified assignment as a city carrier technician effective March 19, 2018. The job duties included bending, stooping, pulling, and pushing for 3 to 5 hours per day, walking for 1 to 3 hours per day, kneeling, reaching, standing, and sitting for 3 to 5 hours per day, and fine manipulation and overhead reaching for 1.3 hours per day. The physical requirements included pickup letter/flats/parcels at/above shoulder level to sort for 1 to 1.5 hours per day, operating motor vehicle for 6 to 7 hours per day, walking on varied terrain to deliver mail to customer mailboxes for 1 to 3 hours per day, and placing mail in boxes from vehicle and while also walking for 3 to 7 hours per day.

On April 11, 2018 Dr. Scott Carlos, a Board-certified family and geriatric medicine specialist, diagnosed sprain of ligaments of lumbar spine and sprain of ligaments of thoracic spine and reported that appellant still had pain from her January 3, 2018 work injury. In a form report also dated April 11, 2018, he placed appellant on modified duty with the following restrictions: bending and stooping for three to five hours per day, pulling and pushing for three to five hours per day, walking for one to three hours per day, lifting/carrying up to 10 pounds per day, and no operating heavy machinery.

In an April 19, 2018 form report, Dr. Golna placed appellant on modified duty with the following restrictions: bending and stooping for one to three hours per day, kneeling for one to three hours per day, no walking, lifting/carrying up to five pounds per day, and no operating heavy machinery.

In a development letter dated April 30, 2018, OWCP appellant that the evidence of record was insufficient to support her claims for compensation and afforded her 30 days to submit additional evidence in support of the claim.

In a May 8, 2018 prescription note, Dr. Golna indicated that he had reviewed the medical records dating back to the date of injury and opined that appellant had been released to full duty prematurely, and should have been on modified duty from date of injury.

On May 11, 2018 Dr. Carlos reported that appellant continued to have pain and advised that she could not dance or walk more than two hours without pain.

By decision dated June 1, 2018, OWCP denied appellant's claims for intermittent disability commencing March 3, 2018, finding that the medical evidence of record was insufficient to establish that appellant was disabled from work during the claimed period due to the accepted employment injuries.

On June 21, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on October 18, 2018. The hearing representative held the case record open for 30 days for the submission of additional evidence.

In a prescription note dated October 25, 2018, Dr. Golna reiterated that he had reviewed appellant's visits from March through May 2018 and found that her work restrictions included lifting restrictions of 5 to 10 pounds maximum. The lifting restrictions were applicable to any type of carrying/lifting objects, which included a mailbag.

By decision dated November 20, 2018, OWCP's hearing representative affirmed the June 1, 2018 decision because appellant's need for work restrictions and resulting wage loss beginning March 3, 2018, which occurred within 90 days of her first return to full duty, and the medical evidence of record failed to describe the duties which she was not able to perform during the period claimed and failed to demonstrate objective findings to establish a basis for renewed disability for work. The hearing representative reiterated that an increase in pain alone was insufficient to establish a recurrence of disability and; therefore, appellant was not entitled to compensation for disability commencing March 3, 2018.

### **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>3</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>4</sup>

OWCP's 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

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<sup>3</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>4</sup> *Id.*

a condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>5</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.<sup>6</sup>

OWCP's procedures discuss the evidence necessary if recurrent disability for work is alleged within 90 days of the first return to duty. The focus is on disability rather than causal relationship of the accepted condition to the work injury.<sup>7</sup> The Board has held that, if recurrent disability from work is claimed within 90 days or less from the first return to duty, the attending physician should describe the duties which the employee cannot perform and demonstrate objective medical findings that form the basis for the renewed disability from work.<sup>8</sup> When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>9</sup>

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of intermittent disability commencing March 3, 2018.

Appellant was off work intermittently following the date of injury. On January 21, 2018 Treating Physician Dr. Beane released appellant to full-duty work, without restrictions. Appellant returned to full-duty work on January 22, 2018. She filed claims for wage-loss compensation (Form CA-7) for intermittent disability commencing March 3, 2018. Appellant accepted a modified assignment as a city carrier technician effective March 19, 2018.

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<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013). *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

<sup>6</sup> *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>7</sup> *Supra* note 5 at Chapter 2.1500.5 (June 2013).

<sup>8</sup> *See G.P.*, Docket No. 14-1150 (issued September 15, 2014); *R.C.*, Docket No. 14-0201 (issued May 8, 2014); *J.F.*, 58 ECAB 124 (2006).

<sup>9</sup> *See S.E.*, Docket No. 14-1125 (issued October 1, 2014).

<sup>10</sup> *Id.*

As noted above, when the claim for recurrence is within 90 days of a return to work, the focus is on disability, rather than causal relationship. Regarding disability, the medical evidence must provide a description of the job duties appellant cannot perform and objective evidence supporting a finding of disability.

On May 8, 2018 Dr. Golna reviewed appellant's medical records and opined that appellant had been released to full duty prematurely, and should have been on modified duty from the date of injury. On October 25, 2018 he reiterated that appellant's work restrictions included lifting restrictions of 5 to 10 pounds maximum, which was applicable to any type of object, including a mailbag. However, Dr. Golna failed to demonstrate objective findings to establish a basis for appellant's renewed disability from work. He did not document a spontaneous worsening of appellant's accepted lumbar and thoracic ligament sprains resulting in total disability on or about March 3, 2018.<sup>11</sup> As Dr. Golna did not relate appellant's disability to the accepted conditions, his reports fail to establish a work-related recurrence of disability.<sup>12</sup>

Dr. Carlos diagnosed sprain of ligaments of lumbar spine and sprain of ligaments of thoracic spine and reported that appellant was still having pain from her January 3, 2018 work injury. He placed appellant on modified duty on April 11, 2018, but failed to describe the duties which appellant was unable to perform during the period claimed. Dr. Carlos also failed to demonstrate objective findings to establish a basis for renewed disability from work. Moreover, the medical evidence from Dr. Carlos failed to provide a medical opinion on whether appellant was disabled on the dates at issue. Therefore, his reports are insufficient to establish appellant's claim.

The Board therefore finds that the medical evidence of record is insufficient to establish a recurrence of disability commencing March 3, 2018. As such appellant has not met her 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 has not met her burden of proof to establish a recurrence of intermittent disability commencing March 3, 2018.

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<sup>11</sup> *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

<sup>12</sup> *See id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy 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