



## ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability, commencing February 16, 2018, causally related to her accepted November 26, 2011 employment injury.

## FACTUAL HISTORY

On November 28, 2011 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 26, 2011 she sustained a left arm and shoulder injury lifting a mail tray from the back of her mail truck while in the performance of duty. OWCP accepted the claim for left upper arm joint pain, neck sprain, C5-6 disc herniation, and right brachial neuritis/radiculitis.<sup>3</sup> It also authorized a May 2, 2012 anterior cervical discectomy and fusion at C5-6 performed by Dr. Dalip Pelinkovic, a Board-certified orthopedic surgeon. OWCP paid appellant wage-loss compensation for temporary total disability for the period April 12 through December 24, 2012. In a January 11, 2013 work capacity evaluation (Form OWCP-5c), Dr. Pelinkovic advised that appellant was capable of performing her usual job. He recommended that appellant use a cart to avoid reinjuring her neck.

In March 2018, appellant contacted OWCP regarding the need to file a recurrence claim. She reportedly developed a bone growth at the spot of the previously approved cervical fusion.

On March 12, 2018 appellant filed a notice of recurrence (Form CA-2a) claiming disability beginning February 16, 2018. She stopped work completely as of March 7, 2018. Appellant noted that she had stopped delivering mail in January 2016, and was subsequently promoted to a supervisor. She explained that on February 16, 2018 she experienced sharp pain in her neck and across both shoulders, with numbness and tingling in her hands.

In an attached statement, appellant recounted that she returned to regular duties as a letter carrier on December 24, 2012 following her November 26, 2011 employment injury. She reported experiencing pain, weakness, and numbness in her hands months after returning to work, which became severe in January 2018. On February 16, 2018 appellant left work and sought treatment at an urgent care facility. She was referred for physical therapy with no relief in symptoms. Appellant noted that she underwent a magnetic resonance imaging (MRI) scan and her physician recommended surgery.

In a development letter dated April 26, 2018, OWCP advised appellant of the definition of a recurrence of disability and the type of evidence necessary to establish that she had sustained a recurrence of employment-related disability. It afforded her 30 days to submit additional evidence.

A March 2, 2018 cervical MRI scan revealed central spinal canal stenosis with cord deformity and compression at C3-4 secondary to sizable disc protrusion. There was also evidence

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<sup>3</sup> On January 13, 2015 appellant sustained another work-related traumatic injury, which OWCP accepted for left hip contusion under File No. xxxxxx290. She was released to resume her full-time, regular work duties effective February 14, 2015.

of a much smaller disc protrusion at C2-3. At C6-7 there was evidence of a moderate disc osteophyte complex with mild deformity of the cord without compression.

In a treatment note dated March 30, 2018, Dr. Vivek Mohan, a Board-certified orthopedic surgeon, treated appellant for severe neck pain, numbness in both hands, and weakness in her upper extremities. He noted that appellant had a cervical fusion in 2012 and she was currently off work due to pain. Appellant reported no recent trauma. Dr. Mohan related the findings of the 2018 MRI scan of the cervical spine. Findings on examination revealed paravertebral neck pain at C5-6 and decreased sensation in both hands. Dr. Mohan diagnosed cervical disc disorder with myelopathy and status post cervical spinal fusion. He recommended a C3-4 fusion, possible fusion of C4-5, possible removal of C5-6 anterior cervical hardware due to the severe stenosis with myelopathy at C3-4, and large disc herniation.

Dr. Mohan treated appellant in follow-up on May 4, 2018, 10 days status post C3-4 anterior cervical discectomy and fusion. Appellant reported improvement in neck pain, intact strength in the biceps, triceps, deltoids, mild sensory decrease in the right arm, and good neck range of motion. Dr. Mohan indicated that cervical spine x-rays showed the implant in good position at the C3-4 level. He diagnosed status post C3-4 anterior cervical discectomy and fusion and recommended a brace. Dr. Mohan advised that because she was a letter carrier she could not return to work for three months. He noted a likelihood that this was a recurrent disc herniation due to prior cervical fusions and related to a work injury.

By decision dated June 22, 2018, OWCP denied appellant's claim for a recurrence of disability. It found that the medical evidence of record was insufficient to establish that her accepted November 26, 2011 employment injury had worsened to the extent that she was disabled from her work duties.

On June 29, 2018 appellant requested an oral hearing before an OWCP hearing representative. The hearing was held on October 22, 2018.

Post-hearing, counsel submitted additional medical evidence, including a February 21, 2018 report from Dr. Pelinkovic who indicated that he had treated appellant for neck pain and right shoulder pain radiating over her deltoid and shoulder blade. Appellant completed physical therapy, which increased her pain. Dr. Pelinkovic noted that appellant had a C5-6 fusion in 2012, which resolved her left upper extremity pain. Appellant reported difficulty in maintaining gainful employment. Dr. Pelinkovic diagnosed cervical radiculopathy. X-rays revealed a fusion at C5-6 with C4-5 segment disease. Dr. Pelinkovic returned her to work with restrictions. On March 7, 2018 appellant presented with neck pain and "clumsiness" in the upper extremity. Dr. Pelinkovic reviewed the MRI scan findings and diagnosed cervical spinal stenosis with myelopathy, history of cervical spinal fusion and extension of fusion by two levels. He took appellant off work until her follow-up appointment.

OWCP subsequently received additional medical evidence, including an April 23, 2018 report from Dr. Mohan noting that he performed an anterior cervical discectomy and fusion at C3-4, interbody cage placement, and anterior spinal instrumentation. He diagnosed right cervical disc herniation and radiculomyelopathy.

In a June 8, 2018 report, Dr. Mohan noted treating appellant six weeks status post C3-4 anterior cervical discectomy and fusion. Appellant reported improved neck pain, intact strength, improved sensory in the right arm, and good neck range of motion. An x-ray of the cervical spine revealed the implant in good position at C3-4 with no sign of hardware breakage or loosening. Dr. Mohan diagnosed status post C3-4 anterior cervical discectomy and fusion and advised that appellant could not work for three months due to surgery.

In an August 17, 2018 report, Dr. Mohan noted that appellant reported improved neck pain after the C3-4 anterior cervical discectomy and fusion. He recommended physical therapy and continued her off work. Appellant again presented on September 7, 2018 with right hand pain and difficulty squeezing her hand. Dr. Mohan diagnosed status post cervical fusion and positive de Quervain's tendinitis of the right hand. He returned appellant to work and recommended a brace for her right hand and limited her lifting to 20 pounds.

X-rays of the cervical spine dated April 23 to July 17, 2018, revealed status post cervical fusion, and stable postoperative findings at C3-4 fusion without complication. Appellant attended physical therapy from May 8 to October 17, 2018.

By decision dated December 7, 2018, the hearing representative affirmed the June 22, 2018 OWCP 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 which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.<sup>4</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. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.<sup>5</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. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>6</sup>

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<sup>4</sup> 20 C.F.R. § 10.5(x); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

<sup>5</sup> *Id.*

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

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. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.<sup>7</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability, commencing February 16, 2018, causally related to her accepted November 26, 2011 employment injury.

In a report dated February 21, 2018, Dr. Pelinkovic treated appellant for neck pain and right shoulder pain radiating over her deltoid and shoulder blade. He noted that appellant had a C5-6 fusion in 2012. Dr. Pelinkovic diagnosed cervical radiculopathy and returned her to work with restrictions. However, he did not specifically address whether appellant had a recurrence of disability commencing February 16, 2018 causally related to the accepted employment conditions or otherwise provide medical reasoning explaining why any current condition or work restrictions were due to the accepted November 26, 2011 employment injury.<sup>9</sup>

On March 7, 2018 appellant presented with neck pain and clumsiness in the upper extremity. Dr. Pelinkovic diagnosed cervical spinal stenosis with myelopathy, history of cervical spinal fusion, and extension of fusion by two levels. He held appellant off work until her follow-up appointment. Without a specific opinion regarding how work factors caused a recurrence of disability, his reports are insufficient to meet her burden of proof.<sup>10</sup>

On March 30, 2018 Dr. Mohan treated appellant for severe neck pain, numbness in both hands, and weakness in her upper extremities. He noted that appellant had a cervical fusion in 2012 and was currently off work due to pain. Dr. Mohan diagnosed cervical disc disorder with myelopathy and status post cervical spinal fusion. He opined that due to severe stenosis with myelopathy at C3-4 and large disc herniation he recommended surgery at C4-5. Dr. Mohan failed to provide a rationalized opinion explaining why appellant's recurrent disability was due to the

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<sup>7</sup> *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

<sup>8</sup> *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

<sup>9</sup> *Id.*

<sup>10</sup> *See M.B.*, Docket No. 18-1455 (issued March 11, 2019).

accepted November 26, 2011 employment injury<sup>11</sup> and his report is therefore insufficient to meet her burden of proof to establish an employment-related recurrence of disability.<sup>12</sup>

On April 23, 2018 Dr. Mohan performed an anterior cervical discectomy and fusion at C3-4, interbody cage placement, and anterior spinal instrumentation and diagnosed right cervical disc herniation and radiculomyelopathy. However, he did not address appellant's work status or any periods of disability. Without a specific opinion regarding how work factors caused a recurrence of disability, Dr. Mohan's reports are insufficient to meet her burden of proof.<sup>13</sup>

Dr. Mohan treated appellant in follow-up on May 4, 2018 and diagnosed status post C3-4 anterior cervical discectomy and fusion. He advised that she was a postal carrier and could not return to work for three months. However, Dr. Mohan did not provide rationale explaining whether, how, and why appellant's recurrent disability was causally related to the accepted November 26, 2011 employment injury.<sup>14</sup> He noted a "likelihood" that this was a recurrent disc herniation. However, at best, this report provides only speculative support for causal relationship as the physician qualifies his support by noting a "likelihood" of a recurrent disc herniation due to prior cervical fusions and work injury. Dr. Mohan provided no medical reasoning to support his opinion on causal relationship. Therefore, this report is insufficient to meet appellant's burden of proof.<sup>15</sup>

In reports dated June 8 and August 17, 2018, Dr. Mohan noted that appellant was status post C3-4 anterior cervical discectomy and fusion with improved neck pain. He diagnosed status post C3-4 anterior cervical discectomy and fusion and advised that appellant could not work due to surgery. However, Dr. Mohan did not provide an opinion on whether the accepted employment injury caused a recurrence of disability. Consequently, it is of no probative value on the issue of causal relationship.<sup>16</sup>

Appellant presented on September 7, 2018 with right hand pain and Dr. Mohan diagnosed status post cervical fusion and positive de Quervain's tendinitis of the right hand. Dr. Mohan returned appellant to work limited duty. However, he did not specifically address whether she had a recurrence of disability on February 16, 2018 causally related to the accepted employment conditions or otherwise provide medical reasoning explaining why any current work restrictions were due to the accepted November 26, 2011 injury.<sup>17</sup> Without a specific opinion regarding how

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<sup>11</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>12</sup> *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

<sup>13</sup> *See supra* note 10.

<sup>14</sup> *See id.*

<sup>15</sup> Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

work factors caused a claimed recurrence of disability, his reports are insufficient to meet her burden of proof.<sup>18</sup>

Appellant attended physical therapy treatment from May 8 to October 17, 2018. The Board has held that reports signed by a physical therapist are of no probative value as physical therapists are not considered physicians as defined under FECA and they are, therefore, not competent to provide a medical opinion.<sup>19</sup>

Appellant also submitted an MRI scan of the cervical spine dated March 2, 2018 and x-rays of the cervical spine dated April 23 to July 17, 2018. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between the accepted employment factors and a diagnosed condition.<sup>20</sup>

As the medical evidence of record is insufficient to establish that appellant's accepted cervical condition had worsened to the extent that she was totally disabled commencing February 16, 2018 she has not met her burden of proof to establish a recurrence of disability causally related to her November 26, 2011 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 February 16, 2018, causally related to her accepted November 26, 2011 employment injury.

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<sup>18</sup> *Id.*

<sup>19</sup> *V.W.*, Docket No. 16-1444 (issued March 14, 2017) (where the Board found that physical therapy reports do not constitute competent medical evidence because a physical therapist is not a "physician" as defined under FECA); *see David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

<sup>20</sup> *See J.M.*, Docket No. 17-1688 (issued December 13, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 7, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board