

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability commencing September 2, 2011, causally related to her original February 5, 1999 employment injury.

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.⁴ The relevant facts are as follows.

On February 8, 1999 appellant, then a 33-year-old modified letter carrier,⁵ filed a traumatic injury claim (Form CA-1) alleging that she injured her back on February 5, 1999 while lifting a tray of mail and turning to resume racking while in the performance of duty. OWCP accepted her claim for a lumbar back strain. On March 23, 1999 appellant returned to full-time, limited-duty work answering telephones. Effective May 22, 1999 she resumed her previous modified letter carrier duties. OWCP subsequently accepted a recurrence for medical treatment beginning November 24, 2009.⁶

On September 15, 2011 appellant filed a notice of recurrence (Form CA-2a) claiming disability beginning September 2, 2011.⁷ OWCP initially denied the recurrence claim by decision dated November 4, 2011.

Appellant, through counsel, thereafter filed a number of requests for reconsideration, which were denied by OWCP. On August 20, 2014 appellant, through counsel, filed an appeal with the Board.⁸ By decision dated February 13, 2015, the Board affirmed OWCP's June 10, 2014 decision, finding that appellant had not met her burden of proof to establish a recurrence of disability beginning September 2, 2011, causally related to her original February 5, 1999 employment-related lumbar strain.⁹ The Board specifically found that she had not alleged a change in her light-duty assignment on or about September 2, 2011. Although recent medical evidence indicated that appellant was disabled due to lumbar radiculopathy, the evidence then of record failed to establish that her lumbar condition, at that time, was causally related to the February 5, 1999 employment injury. There was diagnostic evidence of disc bulges at L2-3 and L5-S1,

⁴ Docket No. 16-1542 (issued August 25 2017); Docket No. 14-1844 (issued February 13, 2015).

⁵ Appellant had previously fractured her left ankle in the performance of duty on May 27, 1993 (File No. xxxxxx863). Her physical limitations included no walking or standing in excess of two hours per day.

⁶ Appellant did not stop work at the time.

⁷ OWCP also treated the claim as a new traumatic injury and assigned OWCP File No. xxxxxx169. However, it later determined that the case was properly considered a recurrence under OWCP File No. xxxxxx035. The two case records were subsequently combined under Master OWCP File No. xxxxxx035.

⁸ The Board's decision dated February 13, 2015 presented the procedural development of this case.

⁹ Docket No. 14-1844 (issued February 13, 2015).

however, the medical evidence of record failed to establish causal relationship between her multi-level lumbar disc disease and her accepted February 5, 1999 employment injury.

On February 9, 2016 appellant, through counsel, again requested that OWCP reconsider her claim. By decision dated May 6, 2016, OWCP denied appellant's request for reconsideration.

On July 26, 2016 appellant, through counsel, filed another appeal with the Board. By decision dated August 25, 2017, the Board affirmed OWCP's May 6, 2016 decision finding that appellant had not met her burden of proof to establish a recurrence of disability beginning September 2, 2011, causally related to her February 5, 1999 employment-related lumbar strain.¹⁰

On August 16, 2018 counsel requested reconsideration of OWCP's May 6, 2016 decision.

In progress reports dated December 21, 2017 and June 11, July 19, and October 8, 2018, Dr. Howard I. Baum, a Board-certified orthopedic surgeon, indicated that appellant had received follow-up orthopedic evaluation of her lumbar spine derangement. He related that she had low back pain, which at times radiated to her lower extremities. In his December 21, 2017 report, Dr. Baum opined that she was totally disabled and he referred her for chiropractic treatment. In his June 11, 2018 report, he noted that appellant was working and indicated that she was temporarily partially disabled. In his July 19, 2018 report, Dr. Baum found that examination of her lumbar spine revealed a positive straight leg raise test and he opined that she was totally disabled. In his October 8, 2018 report, he found appellant capable of working her full-time, modified-duty assignment.

In a February 27, 2018 narrative report, Dr. Baum documented his understanding of the progression of appellant's lumbar conditions. He indicated that appellant had self-treated for a period of 10 to 11 years following her 1999 employment injury. Dr. Baum also noted that she had then undergone an August 10, 2010 electromyography (EMG) which revealed a left L5-S1 radiculopathy, superimposed on a left neuropathy. He indicated that appellant currently had bulging, as well as protruded discs, and he diagnosed lumbar derangement. Dr. Baum explained that she had a progressive repetitive overuse event following the 1999 precipitating event and that the recurrent cycling and loading of her injured back progressed to radiculopathy in 2010, as well as to the bulging and protrude discs as seen in her 2016 magnetic resonance imaging (MRI) scan. He opined that appellant's lumbar conditions related to the 1999 employment event "with the resultant effects due to cyclic loading over time as it relates to [appellant's] job of repetitive lifting heavy trays and over the course of many years this was the precipitating cause to a damaged and injured back from the 1999 event."

By decision dated November 13, 2018, OWCP denied modification of its prior decision denying appellant's claimed recurrence of disability beginning September 2, 2011.

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 injury or illness, without an intervening injury or new exposure to the work environment that

¹⁰ Docket No. 16-1542 (issued August 25, 2017).

caused the illness.¹¹ Recurrence of disability also means 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.¹² Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.¹³

When an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish that the recurrence is causally related to the original injury.¹⁴ This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the condition is causally related to the employment injury.¹⁵ The physician's opinion must be based on a complete and accurate factual and medical history and it must be supported by sound medical reasoning.¹⁶ Where no such rationale is present, the medical evidence is of diminished probative value.¹⁷

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹⁸ The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify their disability and entitlement to compensation.¹⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability beginning on September 2, 2011 causally related to her original February 5, 1999 employment injury.

On prior appeal the Board reviewed the evidence before OWCP at the time it issued its decision dated August 25, 2017 and found that it was insufficient to establish a recurrence of disability beginning September 2, 2011. The Board's review of the previously submitted medical

¹¹ 20 C.F.R. § 10.5(x).

¹² *Id.*

¹³ *G.L.*, Docket No. 16-1542 (issued August 25, 2017); *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

¹⁴ 20 C.F.R. § 10.104(b); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 and 2.1500.6 (June 2013).

¹⁵ *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *S.S.*, 59 ECAB 315, 318-19 (2008).

¹⁶ *Id.*

¹⁷ *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

¹⁸ *See B.D.*, Docket No. 18-0426 (issued July 17, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁹ *Id.*; *Fereidoon Kharabi*, 52 ECAB 291 (2001).

evidence of record is *res judicata* absent further review by OWCP under section 8128 of FECA and therefore the prior evidence need not be addressed again in this decision.²⁰

OWCP received a number of reports from Dr. Baum. In his most extensive report dated February 27, 2018, he documented his understanding of the progression of appellant's medical condition. Dr. Baum related that her 1999 employment injury had progressed to radiculopathy in 2010 and bulging and protruding discs in 2016, as seen on the MRI scan. While he explained that this was due to the recurrent cycling and loading of an injured back over time as it related to appellant's job of repetitive lifting of heavy trays, he did not provide an explanation as to why her accepted conditions had suddenly worsened to the extent that she could no longer perform the duties of her modified letter carrier position.²¹ Dr. Baum also failed to provide sufficient medical explanation or bridging evidence between that period of time to show a spontaneous worsening of her accepted back strain. He did not address why and how appellant's current lumbar conditions were the result of her original February 5, 1999 employment injury. Dr. Baum's analysis regarding additional employment factors causing a worsening of her condition would be appropriate for a new occupational injury claim, but was not appropriate to establish a recurrence of disability.²² Appellant has the burden of proof to establish causal relationship between additional conditions not accepted by OWCP and the February 5, 1999 employment injury.²³ Accordingly, the Board finds that Dr. Baum's opinion is insufficient to establish her recurrence claim.

OWCP also received a series of progress reports from Dr. Baum dated from December 21, 2017 through October 8, 2018. In these reports Dr. Baum diagnosed lumbar spine derangement and addressed appellant's current ability to work. While he noted her continued complaints of lumbar spine pain which, at times, radiated to the lower extremities, he did not indicate the cause of such complaints or indicate whether her total or partial disability was causally related to her February 5, 1999 employment injury.²⁴ Dr. Baum also did not mention or refer to the claimed recurrence of September 2, 2011.²⁵ The Board has found that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.²⁶ Accordingly, the Board finds that these reports are insufficient to establish appellant's claimed recurrence.

On appeal counsel contends that Dr. Baum's February 27, 2018 report supplemented his previously submitted medical evidence and bridged the gap by explanation of the time between the original 1999 employment injury and the recurrence of disability beginning September 2, 2011.

²⁰ *S.C.*, Docket No. 19-0920 (issued September 25, 2019); *W.C.*, Docket No. 18-1386 (issued January 22, 2019).

²¹ *See V.H.*, Docket No. 18-0456 (issued August 9, 2019); *J.L.*, Docket No. 15-1951 (issued May 16, 2016).

²² OWCP's procedures provide that a recurrence of disability does not include a work stoppage caused by a new injury, even if it involves the same part of the body previously injured, or by renewed exposure to the causative agent of a previously suffered occupational disease. *See supra* note 14 at Chapter 2.1500.3 (June 2013). *See J.S.*, Docket No. 18-0726 (issued November 5, 2018).

²³ *V.H.*, *supra* note 21; *Michael S. Mina*, 57 ECAB 379 (2006).

²⁴ *See Mary E. Marshall*, 56 ECAB 420 (2005).

²⁵ *Id.*

²⁶ *R.E.*, Docket No. 10-0679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

However, for the reasons set forth above, appellant has not met her burden of proof to establish either the claimed recurrence or that her current lumbar conditions are due to her accepted 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 on or after September 2, 2011, causally related to her original February 5, 1999 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 13, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board