



## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a recurrence of total disability commencing May 30, 2017, causally related to her accepted August 24, 2015 employment injury.

## **FACTUAL HISTORY**

On August 25, 2015 appellant, then a 68-year-old health technician, filed a traumatic injury claim (Form CA-1) alleging that on August 24, 2015 while in the performance of duty she sustained a left knee injury when a confused patient pushed her and caused her to lose her balance. She stopped work on the date of injury.

In a report dated September 1, 2015, Dr. Ezequiel Suarez, an attending internist, restricted appellant to limited duty through September 10, 2015. In a report dated September 3, 2015, he diagnosed a left knee sprain with osteoarthritis. Dr. Suarez returned appellant to full-time, full-duty work on September 14, 2015. In his report of that date, he opined that her left knee condition had returned to baseline and released her from treatment. On October 9, 2015 OWCP accepted that appellant sustained a left knee sprain.

On May 30, 2017 appellant filed a recurrence (Form CA-2a) alleging that she was still experiencing pain in her left knee and having a difficult time walking and standing. She further alleged that she previously received injections in her knee following her initial injury, but the pain worsened after she stopped receiving injections in her left knee beginning December 2016.

In a report dated July 27, 2017, Dr. Kristine Enverga Cachola, an attending physician specializing in occupational medicine and physiatry, noted appellant's symptoms of left knee pain, swelling, popping, and locking. On examination, she found hypertrophic changes to the medial and lateral joint lines, crepitus on palpation, and degenerative osteoarthritic changes. Dr. Cachola diagnosed osteoarthritis of the left knee with joint pain. She opined that the occupational 2015 left knee injury had resolved. Dr. Cachola attributed appellant's symptoms to a worsening of left knee osteoarthritis unrelated to her federal employment. She restricted appellant to permanent modified duty.

By development letter dated August 9, 2017, OWCP notified appellant of the additional evidence needed to establish her recurrence claim, including a narrative report from her treating physician which explained how and why the accepted August 24, 2015 left knee sprain had spontaneously worsened such that she was no longer able to work. It afforded 30 days for submission of the necessary evidence. Appellant did not provide additional evidence in response to this request.

By decision dated September 14, 2017, OWCP denied appellant's claim for recurrence of disability as the medical evidence of record was insufficient to establish that the resolved August 24, 2015 left knee sprain had spontaneously worsened. It noted that Dr. Cachola attributed appellant's condition to idiopathic osteoarthritis unrelated to the accepted injury.

On September 25, 2017 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. During the hearing, held January 30, 2018, counsel asserted that

appellant was off from work due to left knee pain for approximately two weeks in July 2017, but could not recall the exact dates. The hearing representative left the record open for 30 days to allow submission of additional evidence.

Following the hearing, appellant provided additional medical evidence. In a report dated February 9, 2018, Dr. Cachola noted that a June 6, 2016 x-ray demonstrated mild worsening of degenerative osteoarthritis of the left knee. She attributed appellant's left knee pain to osteoarthritis and age-related changes which were "not work related or a recurrence" of disability.

By decision dated March 5, 2018, an OWCP hearing representative affirmed the prior decision, finding that the medical evidence of record was insufficient to establish a recurrence of disability commencing May 30, 2017 as a result of a material change/worsening of the accepted employment injury. He noted that Dr. Cachola had explained in detail that appellant's left knee condition had been caused by osteoarthritis unrelated to the accepted August 24, 2015 left knee sprain.

### **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>

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

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<sup>4</sup> 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008).

<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); *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

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 total disability commencing May 30, 2017, causally related to her accepted August 24, 2015 employment injury.<sup>9</sup>

Dr. Cachola provided two reports which discussed appellant's left knee condition on and after May 30, 2017. She opined on July 27, 2017 that the occupational 2015 left knee sprain had resolved and that any subsequent symptoms were caused by worsening of idiopathic osteoarthritis unrelated to appellant's federal employment. In a report dated February 9, 2018, Dr. Cachola again attributed appellant's left knee pain to osteoarthritis and age-related changes "not work related or a recurrence" of disability.

Dr. Cachola did not document a spontaneous worsening of appellant's left knee sprain resulting in total disability on or after May 30, 2017.<sup>10</sup> Rather, she specifically attributed appellant's condition to nonoccupational causes. As Dr. Cachola did not relate appellant's disability to the accepted left knee sprain, her reports fail to establish a work-related recurrence of disability.<sup>11</sup>

The Board finds that the medical evidence submitted does not establish total disability commencing May 30, 2017 due to residuals of the accepted August 24, 2015 injury. Thus, the Board finds that appellant has not met her burden of proof to establish by the weight of the reliable, probative, and substantial evidence, a change in the nature and extent of the injury-related condition resulting in her inability to perform her employment duties.<sup>12</sup>

On appeal, counsel contends that OWCP's hearing representative reviewed appellant's case under an incorrect standard as he considered whether the decision was "correct and appropriate" rather than conduct a *de novo* review. As explained above, appellant had the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which she claimed compensation is causally related to the accepted injury. OWCP's hearing representative correctly applied this standard and the Board affirms his finding that the evidence of record was insufficient to establish a recurrence of disability commencing May 30, 2017.

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<sup>7</sup> *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *see C.C.*, Docket No. 18-0719 (issued November 9, 2018); *see also Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>8</sup> *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

<sup>9</sup> *J.D.*, *supra* note 7; *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>10</sup> *J.D.*, *id.*; *J.H.*, Docket No. 12-1848 (issued May 15, 2013).

<sup>11</sup> *Id.*

<sup>12</sup> *K.P.*, Docket No. 15-1711 (issued January 14, 2016).

Appellant may submit new evidence 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 total disability commencing May 30, 2017, causally related to her accepted August 24, 2015 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 27, 2019  
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