

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability commencing February 28, 2018 causally related to her December 23, 2008 employment injury.

FACTUAL HISTORY

On January 26, 2009 appellant, then a 48-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 23, 2008 she injured her right knee, lower back, and hand, when she fell on ice while in the performance of duty. She stopped work on January 13, 2009 and returned to her regular employment on April 6, 2010. OWCP assigned OWCP File No. xxxxxx856 and accepted the claim for right knee pain, low back pain, an aggravation of lumbar degenerative arthritis, an aggravation of lumbar L5 nerve root impingement, an aggravation of left radiculopathy, a temporary aggravation of right knee chondromalacia patella, and a temporary aggravation of right knee osteoarthritis.³

On March 20, 2018 appellant filed a claim for wage-loss compensation (Form CA-7) for the period from February 17 through March 16, 2018 under OWCP File No. xxxxxx856.

In support of her claim appellant submitted a September 21, 2016 report from Dr. Louis M. Wright, a Board-certified internist. Dr. Wright found that appellant should remain off work until October 24, 2016.

In a development letter dated March 22, 2018, OWCP notified appellant of the definition of a recurrence of disability and the type of evidence necessary to establish that she had sustained a recurrence of disability causally related to the December 23, 2008 employment injury. It advised her that the September 21, 2016 report from Dr. Wright was insufficient to show that she was disabled due to her December 23, 2008 employment injury or that she required restrictions after she returned to her full-time usual employment on April 6, 2010. OWCP noted that appellant had experienced an intervening injury on July 26, 2012 and had performed modified employment due to that injury until August 9, 2012, when she resumed her regular work duties. It afforded her 30 days to submit additional evidence.

On April 2, 2018 appellant filed a notice of recurrence (Form CA-2a) causally related to her December 23, 2008 employment injury. The employing establishment indicated on the form that she had stopped work on February 28, 2018 and had not returned. It advised that appellant had performed modified employment since 2016.

³ OWCP subsequently accepted that appellant sustained a right leg open wound and chest wall contusion on July 26, 2012 and assigned OWCP File No. xxxxxx521. Following her July 26, 2012 employment injury, appellant worked limited duty until she returned to her regular employment effective August 9, 2012. By decision dated July 18, 2014, OWCP found that appellant had not established that she had sustained a recurrence of disability on April 25, 2014 causally related to her December 23, 2008 employment injury. By decision dated July 26, 2016, it granted her a schedule award for six percent permanent impairment of the left lower extremity and 14 percent permanent impairment of the right lower extremity.

By decision dated April 25, 2018, OWCP denied appellant's claim for a recurrence of disability. It found that the medical evidence failed to establish that her accepted December 23, 2008 employment injury had worsened such that she was disabled from her employment.

Thereafter, appellant submitted a February 15, 2018 disability certificate from Dr. Wright, opining that she could sit, stand, and walk for one hour a day. She also submitted a February 26, 2018 letter from the employing establishment informing her that it was unable to accommodate her request for a light-duty assignment.

On May 2, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

In a report dated June 5, 2018, Dr. Paul Ho, a Board-certified orthopedic surgeon, evaluated appellant for right knee pain that had begun in 2008 after she fell at work. He noted that she had been working with limitations until February 2018, when the employing establishment advised that it could no longer accommodate her restrictions. On examination Dr. Ho found a negative straight leg raise, no knee effusion, and mildly limited range of motion of the right knee. He diagnosed a history of degenerative disc disease of the right knee and a history on a workers' compensation form of lumbar stenosis with neurogenic claudication. Dr. Ho discussed treatment options.

A telephonic hearing was held on October 3, 2018. The hearing representative noted that the record failed to demonstrate that appellant had received medical treatment from 2014 to 2018. Counsel argued that she sustained a recurrence of disability as the employing establishment had withdrawn her limited-duty employment. The hearing representative advised appellant of the evidence needed to establish that she was working with restrictions as a result of her employment injury.

Subsequent to the hearing, appellant submitted an e-mail message from the employing establishment regarding her request for light-duty employment. It noted that she had applied for disability retirement and that there was no light-duty employment available at her facility.

In a medical information and restrictions assessment form dated August 30, 2018, Dr. Wright diagnosed cervical radiculopathy and lumbar stenosis with neurogenic claudication. He provided medical restrictions, including no sitting, standing, walking, or lifting.

By decision dated December 7, 2018, OWCP's hearing representative affirmed the April 25, 2018 decision. She found that there was no evidence showing that appellant was working with restrictions in February 2018 due to her December 23, 2008 employment injury, noting that the record was devoid of medical evidence from 2014 through 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.⁴ 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.⁵

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.⁶

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.⁷ Where no such rationale is present, the medical evidence is of diminished probative value.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability, commencing February 28, 2018 causally related to her accepted December 23, 2008 employment injury.

Appellant has alleged that she sustained a recurrence of disability as the employing establishment withdrew her limited-duty position. The withdrawal of a limited-duty assignment generally would establish disability if the evidence demonstrated continuing disability for regular employment due to the accepted employment injury.⁹ Appellant, however, has the burden of proof to establish that the employing establishment withdrew a modified-duty assignment provided due to her work injury.¹⁰ Following her December 23, 2008 employment injury, she returned to her

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

⁵ *Id.*

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

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

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

⁹ *R.C.*, Docket No. 18-1695 (issued March 12, 2019).

¹⁰ *See W.H.*, Docket No. 19-0168 (issued May 10, 2019).

regular work duties on April 6, 2010. Appellant sustained an intervening employment injury on July 26, 2012, and returned to her regular employment on August 8, 2012. She has not submitted any medical evidence supporting that the modified position in which she worked beginning 2016 was provided as a result of her December 23, 2008 employment injury, and thus has not demonstrated a recurrence of disability based on the employing establishment's withdrawal of a limited-duty position.¹¹

Appellant has failed to submit reasoned medical evidence supporting that she was disabled from work beginning February 28, 2018 due to her accepted employment injury.

In a February 15, 2018 disability certificate, Dr. Wright advised that appellant could sit, stand, and walk for one hour a day. His report, however, lacks probative value as it does not specifically attribute the work restrictions to the accepted employment injury.¹²

On June 5, 2018 Dr. Ho discussed appellant's history of knee pain beginning in 2008 after an injury at work. He advised that she had worked with restrictions until February 2018. Dr. Ho diagnosed a history of degenerative disc disease of the right knee and a history of lumbar stenosis with neurogenic claudication. He did not provide work restrictions or otherwise address whether appellant was disabled due to her accepted employment injury during the claimed periods, and thus, his opinion is of no probative value.¹³

In a form report dated August 30, 2018, Dr. Wright diagnosed cervical radiculopathy and lumbar stenosis with neurogenic claudication. He provided medical restrictions, including no sitting, standing, walking, or lifting. Again, however, Dr. Wright failed to address the cause of the employment restrictions. As he did not address the relevant issue of whether appellant was disabled from employment during the claimed period due to her accepted employment injury, his opinion is of no probative value.¹⁴

Appellant failed to submit medical reports from a physician who has explained with medical rationale that she sustained a spontaneous worsening of her accepted conditions on or after February 28, 2018 as a result of the accepted December 23, 2008 employment injury sufficient to cause disability from employment.¹⁵ Thus, the Board finds that as she has not established by the weight of the reliable, probative, and substantial evidence, a change in the nature and extent of the

¹¹ See *R.C.*, *supra* note 9.

¹² *R.G.*, Docket No. 18-0027 (issued May 13, 2019).

¹³ Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship. See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *M.C.*, Docket No. 18-1391 (issued February 1, 2019).

¹⁵ *T.S.*, Docket No. 18-0150 (issued April 12, 2019).

injury-related condition resulting in her inability to perform her employment duties,¹⁶ she has not met her burden of proof.

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 disability commencing February 28, 2018 causally related to her accepted December 23, 2008 employment injury

ORDER

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

Issued: July 22, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

¹⁶ *Id.*