



## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a recurrence of disability commencing February 20, 2018, causally related to her accepted August 15, 2012 employment injury.

## **FACTUAL HISTORY**

On August 15, 2012 appellant, then a 52-year-old systems accountant, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she injured her knees, arms, and neck when she slipped and fell on a concrete floor covered with a clear gel while in the performance of duty. She stopped work on August 15, 2012 and returned to work on October 1, 2012. On December 20, 2012 OWCP accepted the claim for contusion of knee and lower leg, cervical strain, and lumbar strain.

On April 19, 2018 appellant filed a notice of recurrence (Form CA-2a) alleging that she sustained a recurrence of disability as of February 20, 2018, due to her accepted August 15, 2012 employment injury. She alleged that her “pain was still active and doesn’t stop” and that she has been medicated since her first accident and continued to receive physical therapy. Appellant further alleged that “since the original fall, my health is getting worse and my physical activities are getting so limited. I always have pain related to the first fall.”

In a development letter dated May 15, 2018, OWCP informed appellant of the definition of a recurrence and advised her of the type of medical evidence required to establish a recurrence of disability. It afforded her 30 days to submit the necessary evidence.

In a May 18, 2018 response, appellant described her original injury on August 15, 2012, and noted that despite being in pain and not able to walk or function normally she continued to work. She reiterated that she believed her disability was due to the original injury because she was “having problems since the injury date” and “struggled since that day.” Regarding her accepted conditions, appellant explained that her symptoms were present continuously and started to worsen almost a year prior. She indicated that the injury of August 15, 2012, was the only injury that she had experienced and that it had affected her health since that day. Appellant denied having other injuries since the original injury.

In a March 2, 2018 note, Dr. Abdul Soudan, Board-certified in pain medicine, related that appellant had complaints of chronic pain involving the left hip, which resulted from an “insidious onset” and was present for years. He diagnosed spondylosis with radiculopathy, and indicated that the “symptoms began approximately [three] months ago. There was no inciting event or history of trauma which precipitated the onset of the symptoms.” Dr. Soudan also diagnosed degenerative joint disease.

A March 14, 2018 magnetic resonance imaging (MRI) scan of appellant’s left knee read by Dr. Gregory Bender, a diagnostic radiologist, revealed a grade 2 partial tear of the anterior cruciate ligament on the left knee, a grade 1-2 partial tear of the medial patellar retinaculum, a complex tear of the medial meniscus, joint effusion, severe degenerative joint disease of the medial compartment, and mild degenerative joint disease of the patellofemoral and lateral compartments.

In an April 13, 2018 note, Dr. Soudan indicated that appellant was following up for spondylosis with radiculopathy of the lumbar spine. He advised that she had pain in the left leg and advised that her symptoms began approximately three months prior. Dr. Soudan opined that there was no inciting event or history of trauma which precipitated the onset of the symptoms. He diagnosed spondylosis with radiculopathy. Dr. Soudan noted that appellant continued with pain in the lower back and left leg which began after a fall at work on August 15, 2012. Dr. Soudan explained that since that date, appellant reported severe pain in her lower back and had ambulation difficulty secondary to the discomfort. He indicated that a March 14, 2018 MRI scan of appellant's lumbar spine revealed facet arthropathy and mild central canal stenosis at L4-5 with pain in the L5 distribution. Regarding spondylosis, Dr. Soudan opined that degeneration or wear and tear of bones and joints of the spine was increasingly common with aging.

Dr. Soudan also diagnosed degenerative joint disease of the left knee. He explained that appellant's knee pain began after her fall at work on August 15, 2012, and that since the fall, she experienced severe pain in the left knee, lower back, and left leg. Dr. Soudan saw appellant on April 23 and May 7, 2018, and provided epidural injections.

By decision dated June 29, 2018, OWCP denied appellant's claim for a recurrence of disability. It determined that she had not established that she was disabled due to a material change or worsening of her accepted work-related conditions. OWCP explained that appellant was released to full-duty work in 2012 and that the medical evidence of record did not demonstrate, with clinical findings, that the accepted condition had worsened or changed so as to cause a recurrence of disability.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.<sup>4</sup>

OWCP's implementing regulations define a recurrence of disability as 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.<sup>5</sup>

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct.<sup>6</sup> Thus, a subsequent

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *K.S.*, Docket No. 18-0954 (issued February 26, 2019).

<sup>5</sup> 20 C.F.R. § 10.5(x).

<sup>6</sup> *Mary Poller*, 55 ECAB 483 (2004).

injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>7</sup>

Whether a particular injury causes an employee to become disabled from work and the duration of that disability are medical issues that must be proven by a preponderance of reliable, probative, and substantial medical opinion evidence.<sup>8</sup> Findings on examination and a physician's opinion, supported by medical rationale, are needed to show how the injury caused the employee's disability from his or her particular work.<sup>9</sup>

For each period of disability claimed, the employee must establish that he or she was disabled from work as a result of the accepted employment injury. 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 the employee to self-certify his or her 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 disability commencing February 20, 2018, causally related to her accepted August 15, 2012 employment injury.

In a March 2, 2018 note, Dr. Soudan related that appellant had complaints of chronic pain involving the left hip for years. He diagnosed spondylosis with radiculopathy and degenerative joint disease. The Board notes that her claim was only accepted for the conditions of contusion of the knee and lower leg and a cervical and lumbar strain. Dr. Soudan also indicated that her symptoms began approximately three months prior and opined that there was no inciting event or history of trauma which precipitated the onset of the symptoms. However, appellant indicated that her recurrence began on February 20, 2018. Dr. Soudan did not provide any rationale for his opinion to explain with objective findings why appellant's accepted conditions caused a recurrence of disability as of February 20, 2018. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition or period of disability was related to the employment incident or injury.<sup>11</sup>

Dr. Soudan in an April 13, 2018 note repeated his opinion that there was no inciting event or history of trauma which precipitated the onset of the symptoms. He again diagnosed spondylosis with radiculopathy and indicated that appellant continued with pain in the lower back and left leg which began after a fall at work on August 15, 2012. Dr. Soudan explained that degeneration or wear and tear of bones and joints of the spine was increasingly common with

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<sup>7</sup> *Y.P.*, Docket No. 17-0859 (issued December 4, 2018).

<sup>8</sup> *T.L.*, Docket No. 17-1391 (issued July 3, 2018).

<sup>9</sup> *V.H.*, Docket No. 18-1282 (issued April 2, 2019).

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

<sup>11</sup> *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

aging. He also diagnosed degenerative joint disease of the left knee. However, Dr. Soudan again did not provide any rationale for his opinion to explain with objective findings how appellant's accepted conditions caused a recurrence of disability as of February 20, 2018.<sup>12</sup> Rather than causally relating appellant's current diagnosed conditions either directly or as a consequence to the accepted injury, Dr. Soudan attributed appellant's degenerative conditions to age. His reports are, therefore, of limited probative value as he has not provided an opinion based on a complete and accurate factual and medical history and supported by sound medical reasoning establishing causal relationship.<sup>13</sup>

OWCP received diagnostic reports which revealed tears and degenerative joint disease. The Board has held that diagnostic studies lack probative value as they do not address whether the employment injury caused any of the diagnosed conditions.<sup>14</sup> Therefore these reports are insufficient to establish appellant's claim.<sup>15</sup>

The medical evidence of record does not provide bridging evidence to show a spontaneous worsening of the accepted conditions, or that the newly diagnosed condition occurred over time as a result of the August 15, 2012 employment injury.<sup>16</sup> 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>17</sup>

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 20, 2018, causally related to her accepted August 15, 2012 employment injury.

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<sup>12</sup> *Id.*

<sup>13</sup> *Supra* note 9.

<sup>14</sup> *See T.S.*, Docket No. 18-0150 (issued April 12, 2019).

<sup>15</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>16</sup> *K.S.*, Docket No. 18-0954 (issued February 26, 2019).

<sup>17</sup> *See J.D.*, Docket No. 18-0616 (issued January 11, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 29, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 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