

Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability for the period October 20 to November 17, 2017 causally related to the accepted May 12, 2016 employment injury.

FACTUAL HISTORY

On May 26, 2016 appellant, then a 40-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on May 12, 2016 she sustained a left knee injury while in the performance of duty. At the time of the alleged incident she related that she was participating in an evacuation drill in the employing establishment stairway. While being lowered down the stairway in an evacuation sled, appellant's left knee stuck the stairway wall. She stopped work and received continuation of pay through July 9, 2016. OWCP accepted appellant's traumatic injury claim for lumbosacral radiculopathy and left knee cystic meniscus.⁴ Beginning July 10, 2016, it paid her wage-loss compensation on the supplemental rolls, and effective December 10, 2016, placed her on the periodic compensation rolls. On September 5, 2017 appellant returned to full-time, limited-duty work.⁵

Appellant continued to receive medical treatment. In a September 28, 2017 report, Dr. Daniel B. Brubaker, an orthopedist, reviewed her history, including the May 12, 2016 employment injury, and recounted her complaints of continued severe left knee and low back pain. Upon examination of appellant's left knee, he observed mild swelling and moderately severe pain with palpation. Dr. Brubaker diagnosed left knee internal derangement, left knee pain, lumbar spine strain, lumbar radiculopathy, lumbar muscle spasm, and annular disc tears at L4-5 and L5-S1. He noted that appellant was currently working in a sedentary position at the employing establishment.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the November 20, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

⁴ Appellant previously filed a claim for an October 30, 2014 right wrist injury. OWCP assigned her claim OWCP File No. xxxxxx947.

⁵ In an April 24, 2017 report, Dr. Mohinder Nijjar, a Board-certified orthopedic surgeon and second-opinion examiner, opined that appellant could work full-time modified duty with limitations to sitting, standing, walking, pulling, pushing, and lifting.

OWCP received an October 20, 2017 note by a physical therapist. It reported that appellant fell (left knee buckled) while walking and the treatment was cancelled. The note indicated that there was a history of multiple recent falls.

In an October 23, 2017 letter, a workers' compensation liason from Dr. Brubaker's office explained that their office had been treating appellant for injuries sustained in a workers' compensation claim. She related that appellant had been falling down a lot and their office was not sure why this was happening. The liason explained that, since their office did not yet know why appellant's susceptibility of falling had increased, she may need to have more modifications or accommodations at work.

On October 26, 2017 appellant filed a claim for wage-loss compensation (Form CA-7) for the period October 20 to 30, 2017. On the reverse side of the claim form, the employing establishment confirmed that she was in a leave without pay status from October 20 to 27, 2017. Appellant filed an additional Form CA-7 claiming wage-loss compensation due to continuing total disability from October 31 to November 17, 2017.

In October 26 and November 17, 2017 development letters, OWCP acknowledged receipt of appellant's claims for wage-loss compensation beginning October 20, 2017 and informed her of the evidence needed to support her recurrence of disability claim.⁶ It afforded her 30 days in each letter to provide supporting evidence.

OWCP received an October 30, 2017 report by Dr. Brubaker, who recounted appellant's complaints of severe back and left knee pain and related that she had experienced multiple recent falls. Upon examination of appellant's left knee, he observed moderately severe pain upon palpation in the lateral compartment and mild swelling. Examination of her lumbar spine revealed muscle spasms in the lumbar region, greater on the left than right with no swelling or scoliosis. Dr. Brubaker diagnosed left knee internal derangement and pain, lumbar strain/sprain, annular disc tears at L4-5 and L5-S1, lumbosacral radiculopathy, low back pain and muscle spasm, left ankle sprain, and adjustment disorder with mixed anxiety and depression. He reported that appellant was on temporary total disability status and noted that she should be off work until December 31, 2017. Dr. Brubaker explained: "It appears the patient is becoming more of a liability that could create more injuries." He indicated that the knee brace was apparently not preventing her left knee from giving out. Dr. Brubaker completed a work status note which indicated that appellant was temporarily totally disabled from October 31 to December 31, 2017.

In a November 18, 2017 progress report, Dr. Justin D. Paquette, a Board-certified neurosurgeon, recounted that appellant continued to have severe dysfunctional back pain and leg radiculopathies, particularly in the left. He related that she had been falling frequently and recently injured her knee because of a substantial fall while she was ambulating with her cane. Dr. Paquette reported that a new lumbar spine magnetic resonance imaging (MRI) scan showed significant discogenic changes with grade 2 modic changes at L4-5 and L5-S1 and disc herniations with

⁶ In the November 17, 2017 letter, OWCP explained that because appellant had returned to modified duty on September 5, 2017 following the May 12, 2016 employment injury and thereafter stopped work on October 20, 2017 it considered her claim as a recurrence of disability.

annular tears at both L4-5 and L5-S1 with foraminal stenosis. He provided examination findings and diagnosed L4 to S1 disc herniations, bilateral foraminal stenosis and nerve compression, left greater than right at L4 to S1, and advanced discogenic changes and disc deterioration at L4 to S1.

On December 1, 2017 appellant submitted a completed questionnaire form. She described that the recurrence happened when she returned to work and began to fall various times in the street while walking to her workplace and in physical therapy. Appellant explained that she believed her disability was related to the original May 12, 2016 employment injury because she did not have treatment before she went back to work, except for knee injections that had not worked.

In a December 13, 2017 work status note, Dr. Brubaker indicated that appellant was totally disabled from December 13, 2017 through January 9, 2018. He reported diagnoses of left knee pain, internal derangement, and annular disc tears in the lumbosacral region.

By decision December 19, 2017, OWCP denied appellant's claim for compensation for disability beginning October 20, 2017 finding that the evidence of record was insufficient to establish that her accepted conditions had objectively worsened, without intervening cause, so that she was no longer able to work limited duty. It noted that she had attributed her inability to work to falling various times while walking to her workplace.

On January 4, 2018 appellant through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on May 23, 2018. Appellant testified that she had returned to part-time sedentary work in January 2018.

Appellant submitted additional reports by Dr. Brubaker dated November 17, 2017 to May 21, 2018. Dr. Brubaker recounted appellant's complaints of left knee and low back pain aggravated with walking, squatting, or kneeling and numbness and tingling in her left knee. Upon examination of her left knee, he observed moderately severe pain, especially in the lateral compartment and pain posteriorly. McMurray's and Apley's tests were positive. Examination of appellant's thoracolumbar spine revealed muscle spasm in the lumbar region, greater on the left. Supine straight leg raise testing was positive at 50 degrees. Dr. Brubaker diagnosed left knee derangement, left knee pain, left ankle sprain, lumbar spine strain/sprain, annular disc tears at L4-5 and L5-S1, lumbosacral radiculopathy, low back pain, lumbar muscle spasm, and repeated falling and at risk of future falls. He indicated that he took appellant off work from October 31 to December 31, 2017.

In an April 18, 2018 work status note, Dr. Brubaker indicated that appellant was totally disabled from April 1 through July 1, 2018.

In a June 11, 2018 letter, Dr. Brubaker described the May 12, 2016 employment injury. He noted that appellant had been forced back to work before she was ready and that she was under a lot of stress. Dr. Brubaker reported that, while appellant was waiting authorization to get medical treatment, she had fallen several times. He diagnosed a torn meniscus in the left knee, along with left radiculopathy. Dr. Brubaker explained that appellant was in significant pain, whether she was

sitting or standing, and noted that her job required both. He noted: “As a result [appellant] misses work quite frequently.”

On June 15, 2018 appellant slipped and fell at work. She filed another traumatic injury claim (Form CA-1) which OWCP assigned OWCP File No. xxxxxx131 and subsequently accepted for cervical and thoracic sprains, and other muscle spasms.⁷

In a June 19, 2018 progress report, Dr. Brubaker recounted that appellant had another fall at work, which was generating another claim. He indicated that there was, otherwise, no change in her complaints of severe pain.

By decision dated July 3, 2018, an OWCP hearing representative affirmed the December 19, 2017 decision finding that the evidence of record was insufficient to establish appellant’s claim for recurrence of disability.

On August 29, 2018 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In reports dated July 9 and 30, 2018, Dr. Brubaker recounted appellant’s complaints of cervical and thoracic pain after a June 15, 2018 employment incident when she slipped and fell while attempting to wipe up a spill. He reviewed her history and provided physical examination findings. Dr. Brubaker diagnosed cervical spine strain/sprain, cervical muscle spasm, cervalgia, possible annular disc tears, thoracic spine strain, spasm, and pain, and possible annular disc tear of the thoracic spine. He recommended a spinal MRI scan to confirm whether appellant had annular disc tears in her cervical and thoracic region. Dr. Brubaker indicated that she could continue working in her sedentary job.

In reports and work status notes dated August 23 to October 4, 2018, Dr. Brubaker reviewed appellant’s history and conducted an examination. He recounted that she continued to report significant pain in her lumbar spine and left knee and that her left knee continued to give out. Dr. Brubaker diagnosed work injury, left knee internal derangement, left knee pain, lumbar spine strain, annular disc tears/herniations at L4-5 and L5-S1, lumbosacral radiculopathy, low back pain, lumbar muscle spasm, and left ankle sprain. He returned appellant to a total disability status on August 23, 2018.

By decision dated November 20, 2018, OWCP denied modification of the July 3, 2018 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

⁷ OWCP administratively combined the current claim (OWCP File No. xxxxxx726) with appellant’s prior right wrist claim (OWCP File No. xxxxxx947) and her June 15, 2018 traumatic injury claim (OWCP File No. xxxxxx131). It designated OWCP File No. xxxxxx726 as the master file.

compensable injury or illness and without an intervening injury or new exposure in the work environment.⁸ 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.⁹

OWCP 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. The change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. OWCP does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.¹⁰

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 employment injury and supports that conclusion with medical reasoning.¹¹ Where no such rationale is present, the medical evidence is of diminished probative value.¹²

OWCP's procedures require that, in cases where recurrent disability from work is claimed within 90 days or less from the first return to duty, the focus is on disability rather than causal relationship.¹³ The attending physician should describe the duties which the employee cannot perform and the demonstrated objective medical findings that form the basis for the renewed disability for work.¹⁴ When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.¹⁵

⁸ 20 C.F.R. § 10.5(x); *see K.R.*, Docket No. 19-0413 (issued August 7, 2019); *S.F.*, 59 ECAB 525 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

⁹ *Id.*

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013). *K.R.*, *supra* note 8; *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

¹¹ *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

¹² *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

¹³ *B.R.*, Docket No. 18-0339 (issued January 24, 2019).

¹⁴ *Supra* note 10 at Chapter 2.1500.5 (June 2013); *B.R.*, *id.*; *G.P.*, Docket No. 14-1150 (issued September 15, 2014).

¹⁵ *K.R.*, *supra* note 8; *S.E.*, Docket No. 14-1125 (issued October 1, 2014).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability for the period October 20 to November 17, 2017 causally related to the accepted May 12, 2016 employment injury.

OWCP accepted appellant's traumatic injury claim for left knee cystic meniscus and lumbar radiculopathy causally related to the May 12, 2016 employment injury. As appellant has not alleged a change in the nature and extent of her light-duty job requirements or that the position was withdrawn, she must, therefore, provide medical evidence establishing that she was disabled due to a worsening of her accepted May 12, 2016 employment injury.¹⁶

The medical evidence relevant to the claimed recurrence includes a series of reports and work status notes from Dr. Brubaker dated October 30, 2017 to October 4, 2018. In an October 30, 2017 report, Dr. Brubaker described the May 12, 2016 employment injury and recounted appellant's complaints of continued severe back and left knee pain. He noted that she had recently experienced multiple falls. Dr. Brubaker reported left knee and lumbar spine examination findings and diagnosed left knee internal derangement and pain, lumbar strain/sprain, annular disc tears at L4-5 and L5-S1, lumbosacral radiculopathy, and low back pain and muscle spasm. He reported that appellant was on temporary total disability status and noted that she should be off work until December 31, 2017. Dr. Brubaker explained: "It appears [appellant] is becoming more of a liability that could create more injuries." In subsequent reports and work status notes, he continued to place appellant on total disability status until January 2018. Dr. Brubaker reported that she continued to report frequent falling and complained of severe lumbar pain.

Although Dr. Brubaker took appellant off work as of October 30, 2017, he did not provide a rationalized medical opinion on the cause of appellant's disability nor a fully-rationalized explanation as to why appellant was unable to work as a result of her May 12, 2016 employment injury.¹⁷ Moreover, the Board notes that Dr. Brubaker attributed appellant's disability to a fear of continued falling and the possibility of more injuries. The Board has held that the fear of a possible future injury constitutes no basis for the payment of compensation.¹⁸ Dr. Brubaker did not provide objective findings to demonstrate how appellant's accepted left knee and lumbar spine injuries had worsened to the point that she was no longer able to work limited duty.¹⁹ For these reasons, his reports are insufficient to establish her compensation claim.

Appellant also received medical treatment from Dr. Paquette. In a November 18, 2017 progress report, he indicated that appellant had been falling frequently and recently injured her

¹⁶ *Supra* note 8.

¹⁷ *R.C.*, Docket No. 18-1695 (issued March 12, 2019); *W.H.*, Docket No. 16-0634 (issued June 17, 2016); *D.D.*, 57 ECAB 734, 738 (2006).

¹⁸ 20 C.F.R. § 10.501(a)(2); *see also C.J.*, Docket No. 18-1181 (issued May 20, 2019); *Gaeten F. Valenza*, 39 ECAB 1349, 1356 (1988).

¹⁹ *See L.S.*, Docket No. 18-1494 (issued April 12, 2019); *D.H.*, Docket No. 18-0129 (issued July 23, 2018).

knee because of a substantial fall while she was ambulating with her cane. Dr. Paquette provided examination findings and diagnoses. He did not, however, provide an opinion on disability or otherwise provide medical rationale relating appellant's accepted employment injury to any periods of disability.²⁰ 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.²¹ As such, Dr. Paquette's opinion is insufficient to establish appellant's claim.

On appeal counsel asserts that OWCP failed to adjudicate the claim in accordance with the proper standard of causation and failed to give due deference to the findings of the attending physician. He has not, however, provided evidence to support his arguments

None of the medical evidence of record provided a discussion of how her accepted employment conditions caused total disability during the claimed period of disability.²² Appellant, therefore, has not met her burden of proof to establish her claim.²³

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 total disability for the period October 20 to November 17, 2017 causally related to the accepted May 12, 2016 employment injury.

²⁰ See *D.T.*, Docket No. 19-0399 (issued August 2, 2019); *F.U.*, Docket No. 18-0078 (issued June 6, 2018); *D.R.*, Docket No. 16-0528 (issued August 24, 2016)

²¹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

²² See *N.M.*, Docket No. 18-1584 (issued March 15, 2019).

²³ See *W.H.*, Docket No. 17-1390 (issued April 23, 2018).

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 7, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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