

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of total disability commencing July 28, 2018 causally related to his accepted employment injuries.

FACTUAL HISTORY

On July 20, 2018 appellant, then a 24-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained mild multi-level spondylosis, worst seen from L3-S1, posterior herniation at L5-S1 impinging on the ventral thecal sac, and levoscoliosis as a result of carrying a satchel on his shoulder and bending to pick up parcels while in the performance of duty. He noted that he first became aware of his conditions and their relationship to his federal employment on June 27, 2018. On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on June 29, 2018.

In a July 20, 2018 narrative statement, appellant noted that he had been experiencing lower back pain for about one year and that he took Aleve to ease his pain. He reiterated his history of injury on June 27, 2018. Appellant asked his supervisor if he could leave work early following his injury. He was immediately evaluated by a chiropractor who diagnosed the conditions listed on his Form CA-2 and also right L4-5 radiculopathy with denervation based on a magnetic resonance imaging (MRI) scan. Appellant noted that he felt better while receiving chiropractic treatment three times a week, but experienced pain when he returned to work.

Appellant submitted medical evidence which addressed his lumbar conditions and work capacity. In a July 10, 2018 duty status report (Form CA-17), Dr. Phillip F. Burrer, an attending Board-certified family practitioner, noted that appellant could return to work with restrictions.

OWCP, on August 15, 2018, accepted appellant's claim for intervertebral disc disorders with radiculopathy, lumbar region, and other spondylosis with radiculopathy, lumbar region.

On September 14, 2018 appellant filed claims for compensation (Form CA-7) requesting leave without pay (LWOP) for the period July 28 through August 14, 2018 and August 18 through 31, 2018. On the reverse side of the claim forms, the employing establishment indicated that he stopped work on June 27, 2017 and returned on July 11, 2018, but not to his predate-of-injury position.

In support of his claim, appellant submitted additional medical evidence from Dr. Burrer. In return to work recommendations dated August 8, 2018, Dr. Burrer noted that, on that date, appellant had received a series of lumbar spine steroid injections. He advised that appellant was unable to work until his reevaluation on August 22, 2018. In an August 23, 2018 letter, Dr. Burrer related that appellant was currently under his care regarding a work injury sustained on June 27, 2018. He had taken him off work beginning June 28, 2018. Dr. Burrer indicated that he had released appellant to return to work on July 11, 2018. He noted that, while at work on July 12, 2018, appellant realized that he was not capable of performing any of his required duties and left work early due to pain. Dr. Burrer noted that he evaluated him on July 13, 2018 and placed him off work until his health improved. In August 23, 2018 return to work recommendations, he continued to hold appellant off work until his reevaluation on October 4, 2018.

OWCP, in an October 3, 2018 development letter, advised appellant of the deficiencies of his claim. It requested additional factual and medical evidence and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant filed additional CA-7 forms requesting LWOP for the period September 15 through October 26, 2018.

In an undated initial consultation report, Dr. Burrer provided examination findings and diagnosed other intervertebral disc displacement, lumbar region, radiculopathy, lumbar region, and myositis, unspecified. In return to work recommendations dated September 25, 2018, he indicated that appellant was unable to work until his reevaluation on October 6, 2018. Dr. Burrer continued to advise that appellant was unable to work in October 5, 2018 return to work recommendations. He related that this work restriction was in effect until October 22, 2018. In a letter dated October 30, 2018, Dr. Burrer restated appellant's history of injury and that he had placed him off work on July 13, 2018. He advised that appellant would continue to be off work until his next reevaluation or a functional capacity evaluation (FCE) indicated that he could return to full-duty work.

Dr. Allan Kirchner-Gomez, a chiropractor, in a November 2, 2018 FCE report, noted that appellant's mail carrier position was in the medium strength category. He found that appellant may return to work as a mail carrier with restrictions.

By decision dated November 20, 2018, OWCP denied appellant's claims for disability commencing July 28, 2018 finding that he had not submitted rationalized medical evidence sufficient to establish that his accepted employment-related conditions had materially worsened since he had been placed on light-duty work restrictions by Dr. Burrer on July 10, 2018.

On December 7, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received diagnostic test results and reports dated January 7 and 25, 2019 from Dr. Steven E. Mather, a Board-certified orthopedic surgeon. Dr. Mather provided assessments of low back pain, possible ankylosing spondylitis, and lumbar degenerative disc disease. He indicated that appellant could work with restrictions no more than eight hours a day. In progress notes dated March 11 and April 15, 2019, Dr. Mather noted that appellant still had back pain since his May 2018 injury. He discussed examination findings, provided an assessment of degenerative disc disease at L5-S1, and imposed a permanent lifting restriction.

Dr. Edwin V. Espinosa, a Board-certified internist, in a January 23, 2019 progress note, related a history of appellant's employment injury and provided assessments of levoscoliosis (primary encounter diagnosis), chronic bilateral low back pain with left-sided sciatica, and spasm of lumbar paraspinous muscle.

By decision dated June 12, 2019, an OWCP hearing representative affirmed the November 20, 2018 decision finding that the medical evidence of record was insufficient to establish total disability commencing July 28, 2018 causally related to the accepted work injury.

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 resulting from a previous injury or illness without an intervening cause or a new exposure to the work environment that caused the illness. It can also mean 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.³

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish, by the weight of the reliable, probative, and substantial evidence, a recurrence of total disability and an inability to perform such limited-duty work. As part of this burden of proof, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.⁴ To establish a change in the nature and extent of the injury-related condition, there must be a probative medical opinion, based on a complete and accurate factual and medical history as well as supported by sound medical reasoning, that the claimed disability is causally related to the accepted employment injury.⁵ In the absence of rationale, the medical evidence is of diminished probative value.⁶ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, it must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of total disability commencing July 28, 2018 causally related to his accepted employment injury.

OWCP accepted appellant's occupational disease claim for intervertebral disc disorders with radiculopathy, lumbar region, and other spondylosis with radiculopathy, lumbar region. On July 10, 2018 Dr. Burrer released him to light-duty work. Appellant stopped work on July 28, 2018 and filed Form CA-7 claims for LWOP for the period July 28 through October 26, 2018. He has not alleged a change in his light-duty job requirements. Instead, appellant attributed his inability to work to a change in the nature and extent of his accepted intervertebral disc disorders with radiculopathy and other spondylosis with radiculopathy of the lumbar region. He therefore

³ *L.S.*, Docket No. 18-1494 (issued April 12, 2019); *F.C.*, Docket No. 18-0334 (issued December 4, 2018); *J.F.*, 58 ECAB 124 (2006). 20 C.F.R. § 10.5(x). *See also Richard A. Neidert*, 57 ECAB 474 (2006).

⁴ *L.S.*, *id.*; *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ *L.S.*, *supra* note 3; *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁶ *Id.*; *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁷ *L.S.*, *supra* note 3; *Ricky S. Storms*, 52 ECAB 349 (2001).

has the burden of proof to provide medical evidence to establish that he was disabled from work due to a worsening of his accepted work-related conditions.⁸

Appellant submitted an undated report and return to work recommendations and reports dated August 8 through October 30, 2018 from his attending physician, Dr. Burrer. Dr. Burrer diagnosed other intervertebral disc displacement and radiculopathy in the lumbar region and myositis, unspecified. He opined that appellant was totally disabled from work commencing July 13, 2018. In an August 23, 2018 report, Dr. Burrer noted that appellant returned to work on July 11, 2018, he experienced pain at work on July 12, 2018 and stopped work. The Board finds that Dr. Burrer did not provide sufficient medical reasoning explaining how the accepted employment injuries caused appellant's disability commencing July 13, 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 the claimed disability was causally related to an employment injury.⁹ For these reasons, the Board finds that Dr. Burrer's return to work recommendations and reports are insufficient to establish appellant's recurrence claim.¹⁰

Appellant also submitted a November 2, 2018 FCE report signed by his chiropractor, Dr. Kirchner-Gomez. Although Dr. Kirchner-Gomez supported that appellant was disabled for a period, he did not diagnose spinal subluxations as demonstrated by x-ray to exist and, thus, he is not considered a physician under FECA and his reports are of no probative value.¹¹

The January 7 and 25, 2019 diagnostic test results and reports, and March 11 and April 15, 2019 progress notes of Dr. Mather addressed appellant's lumbar conditions, work capacity, and work restrictions, but failed to offer an opinion as to whether his total disability commencing July 28, 2018 was causally related to the accepted employment injuries. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's disability is of no probative value on the issue of causal relationship.¹² Therefore, this evidence is insufficient to establish appellant's recurrence claim.

Likewise, Dr. Espinosa's January 23, 2019 progress note is also insufficient to establish appellant's recurrence claim as he did not provide an opinion on causal relationship between appellant's claimed total disability and accepted employment injuries.¹³

⁸ *L.S.*, *supra* note 3; *D.H.*, Docket No. 18-0129 (issued July 23, 2018); *D.L.*, Docket No. 13-1653 (issued November 22, 2013); *Cecelia M. Corley*, 56 ECAB 662 (2005).

⁹ *See S.D.*, Docket No. 19-1245 (issued January 3, 2020); *A.P.*, Docket No. 19-0446 (issued July 10, 2019); *G.G.*, Docket No. 18-1788 (issued March 26, 2019); *E.W.*, Docket No. 17-1988 (issued January 29, 2019).

¹⁰ *S.D.*, *id.*; *A.P.*, *id.*; *G.G.*, *id.*; *K.G.*, Docket No. 15-0669 (issued April 8, 2016).

¹¹ 5 U.S.C. § 8101(2); *see also D.P.*, Docket No. 13-1721 (issued February 21, 2014); *P.D.*, Docket No. 13-2034 (issued May 8, 2014); *Paul Foster*, 56 ECAB 208 (2004).

¹² *S.D.*, *supra* note 9; *M.G.*, Docket No. 19-0610 (issued September 23, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *Id.*

On appeal counsel contends that the evidence of record establishes that appellant sustained a recurrence of total disability when he tried to return to work. However, as explained above, appellant has not submitted rationalized medical evidence to establish causal relationship between his claimed recurrence of total disability commencing July 28, 2018 and the accepted employment injuries. As such, he has not met his burden of proof.

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 his burden of proof to establish a recurrence of total disability commencing July 28, 2018 causally related to his accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the June 12, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 26, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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