

ISSUE

The issue is whether appellant met her burden of proof to establish a recurrence of disability from work commencing June 1, 2018 causally related to her accepted April 8, 2016 employment injury.

FACTUAL HISTORY

On April 12, 2016 appellant, then a 48-year-old program support specialist, filed a traumatic injury claim (Form CA-1) alleging that on April 8, 2016 she sustained severe lower and upper back and shoulder pain that resulted in difficulty sitting, standing, and sleeping when she moved approximately 10 boxes and a file cabinet while in the performance of duty. She stopped work on April 12, 2016.

Following an initial denial on August 19, 2016, OWCP later accepted appellant's claim for sprain of the ligaments of the lumbar spine on March 7, 2017. Appellant had returned to full duty on April 26, 2016 with intermittent time loss beginning May 26, 2016. OWCP paid intermittent wage-loss compensation on the supplemental rolls for medical and therapy visits from October 18, 2017 to April 11, 2018.

A May 21, 2016 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated spondylotic changes and facet joint arthropathy at L5-S1 with bilateral mild foraminal narrowing, right greater than left, and no central canal stenosis. A June 6, 2016 MRI scan of the lumbar spine demonstrated that degenerative changes still predominated at L5-S1, that the minimal S1 lateral recess stenosis on the right was unchanged, that the asymmetric neural foraminal stenosis, right more so than left, was unchanged. Minimal right neural foraminal stenosis at L4-5 was new, minimal left neural foraminal stenosis was unchanged, and minimal bilateral neural foraminal stenosis at L3-4, right more so than left, was unchanged. A repeat lumbar MRI scan on March 11, 2017 demonstrated a small right paracentral disc protrusion L5-S1 encroaching on the medial aspect of the right neural foramen, somewhat progressive since the May 21, 2016 study, with moderate right and mild left foraminal stenosis.

On November 21, 2017 Dr. Aneesh Singla, Board-certified in anesthesia and pain medicine noted complaints of chronic, radiating low back pain, and described examination findings. He diagnosed herniated lumbar disc and intervertebral disc disorders with radiculopathy, lumbar region.

A January 6, 2018 lumbar MRI scan indicated that degenerative changes were once again centered at L5-S1 with minimal progression from the March 2017 examination.

An emergency patient instruction note dated June 1, 2018, indicated that appellant was seen by Dr. Bilal A. Qureshi, a Board-certified surgeon, and was discharged with diagnoses of sciatica, radiculopathy. On a separate disability slip, Dr. Qureshi recommended five days of bed rest.

On June 4, 2018 Dr. Singla, noted that he had referred appellant for an orthopedic evaluation and to a neurologist for electrodiagnostic studies.

In a development letter dated June 6, 2018, OWCP notified appellant that although it had not received a notice of recurrence (Form CA-2a) claim, it appeared that she was claiming disability from work due to a material change/worsening of her accepted sprain of ligaments of the lumbar spine. It requested that she submit factual and medical evidence addressing the relationship of her claimed recurrent condition and her original injury and requested that she respond to an attached questionnaire to substantiate the factual elements of her claim. OWCP afforded her 30 days to submit the necessary evidence.

On June 7, 2018 appellant filed a notice of recurrence (Form CA-2a) alleging a recurrence of disability from work commencing June 1, 2018. She indicated that after returning to work following her original injury, she was limited in performing her usual duties, such that she was unable to lift file folders and boxes or to walk to the hospital. Appellant noted that she had been provided with a stand-alone desk so she did not have to sit for a full eight-hour workday. She had stopped work on June 1, 2018 and returned on June 12, 2018.

In a separate statement dated June 6, 2018 appellant indicated that she was injured at work on April 8, 2016 and underwent conservative treatment, but that her symptoms progressed to include numbness and tingling down her right ankle. She noted that on May 31, 2018 she was driving to work when she experienced a sharp pain in her lower back that radiated down the right side of her leg with continued low back and leg pain, numbness in the legs, and tingling in the toes. Appellant indicated that she took prescribed medication without relief of symptoms that evening, and that when she awoke on June 1, 2018 experiencing lower back and leg pain and numbness and sought treatment in an emergency room. She indicated that she saw her treating physician on June 4, 2018 who took her off duty until June 11, 2018.

Appellant submitted an emergency department treatment note dated June 1, 2018 in which Dr. Qureshi described examination findings of diffuse cervical and thoracic spine tenderness and low back tenderness. He considered the diagnosis of sciatica, acute lumbar radiculopathy, strain of the lumbar region, and chronic bilateral back pain.

Appellant also submitted a June 4, 2018 treatment note in which Dr. Singla noted her complaint of severe low back pain radiating to both lower extremities with accompanying weakness and changes in bowel and bladder function that limited her functionality. Dr. Singla ordered a repeat MRI scan.

On June 8, 2018 appellant was seen by John R. Volatile, Jr., a physician assistant. He noted appellant's complaint of chronic low back pain, and found moderate-to-severe tenderness of the lumbar spine and severe tenderness over the trochanteric bursa on examination.

On June 12, 2018 Masooda Naim, a nurse practitioner, advised that appellant should not work from June 4 through 11, 2018.

A June 15, 2018 x-ray of the lumbar spine noted a concern for pars defects at L5. It demonstrated mild-to-moderate degenerative changes at L5-S1; grade 1 retrolisthesis of L3 on L4 in the neutral position, not significantly changed in flexion or extension; and levoscoliosis of the thoracolumbar spine.

Appellant filed claims for compensation (Form CA-7) for leave without pay for disability from work on June 1, June 4 to 8, and June 11, 2018. The accompanying time analysis forms

(Form CA-7a) revealed that appellant used eight hours of sick leave on June 1, 5, 6, 7, 8, and 11, 2018.

In correspondence dated June 22, 2018, Dr. Singla noted treating appellant for lumbar sprain. He indicated that, based on her physical examination, symptoms, history of failed steroid injections, physical therapy, and medications, she was advised to avoid bending, lifting, and twisting until June 11, 2018. Dr. Singla noted that according to appellant, she had not reinjured her back since April 2016 and that her current symptoms were a continuation of her original April 2016 injury. He continued to treat appellant and diagnosed herniated lumbar disc and neck pain.

On September 11, 2018 Dr. Akhil J. Khanna, a Board-certified orthopedic surgeon, reported a history that on April 8, 2016 appellant was injured when she attempted to lift a steel cabinet that fell off a dolly. He described physical examination findings and noted the June 6, 2018 lumbar MRI scan and June 8, 2018 lumbar x-ray. Dr. Khanna advised that appellant's history, physical examination, and radiographic findings were compatible with chronic low back pain, right greater than left posterior lateral thigh and distal lower extremity radicular pain in the setting of mild lumbar degenerative changes, mild L5-S1 degenerative disc disease, and mild-to-moderate bilateral L5-S1 foraminal narrowing.

Appellant submitted additional wage-loss compensation claims (Form CA-7) for intermittent periods for medical treatment.

By decision dated September 18, 2018, OWCP denied appellant's claim for recurrence of disability finding that the evidence of record was insufficient to meet her burden of proof to establish the claimed period of recurrent disability. It noted that she had not responded to the development questionnaire sent to her on June 6, 2018.

LEGAL PRECEDENT

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.⁴

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

⁴ 20 C.F.R. § 10.5(x).

injury, and supports that conclusion with medical reasoning.⁵ Where no such rationale is present, the medical evidence is of diminished probative value.⁶

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.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability from work commencing June 1, 2018 causally related to her accepted April 8, 2016 employment injury.

In support of her recurrence claim, appellant submitted June 1, 2018 emergency department reports from Dr. Qureshi who noted appellant's complaint of severe back pain and described examination findings including low back tenderness. Dr. Qureshi diagnosed sciatica, acute lumbar radiculopathy, strain of the lumbar region, and chronic bilateral back pain and recommended five days of bed rest. He did not, however, provide an opinion as to how or why appellant's disability had recurred such that she was disabled from work. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value.⁸ As Dr. Qureshi did not address employment-related disability resulting from the accepted April 8, 2016 employment injury, his opinion is of no probative value and is insufficient to meet appellant's burden of proof.

Appellant submitted a series of reports from her attending physician, Dr. Singla. In a November 21, 2017 report, Dr. Singla diagnosed a herniated disc and lower back sprain, but did not address recurrent disability. On June 4, 2018 he noted his recent evaluation, current examination findings, and made a medical referral. In correspondence dated June 22, 2018, Dr. Singla diagnosed lumbar sprain and lower back pain radiating to the lower extremity and indicated that appellant was advised to avoid bending, lifting, and twisting until June 11, 2018. He noted that according to appellant, she had not reinjured her back since April 2016 and that her current symptoms were a continuation of her original April 2016 injury. Dr. Singla continued to treat appellant and in his July 2, 2018 report diagnosed additional conditions including a herniated lumbar disc and neck pain, conditions not accepted by OWCP in her claim. As he attributed appellant's disability to medical diagnoses not accepted by OWCP, his opinion on recurrent disability is insufficient to establish the claim.⁹ With regard to the additional conditions, appellant

⁵ See *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

⁶ *Id.*

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *D.T.*, Docket No. 19-1064 (issued February 20, 2020).

⁸ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

⁹ See *V.H.*, Docket No. 18-0456 (issued August 9, 2019); *J.L.*, Docket No. 15-1951 (issued May 16, 2016).

has the burden of proof to submit evidence to establish additional conditions not accepted or approved by OWCP resulted from the employment injury through the submission of reasoned medical evidence.¹⁰

In his September 11, 2018 report Dr. Khanna did not explain how the April 18, 2016 employment injury caused appellant's disability. Moreover, Dr. Khanna did not address the period of claimed recurrence or indicate that appellant was totally disabled for any period. The Board has held that medical evidence that does not provide an opinion as to whether a period of disability is due to an accepted employment-related condition is insufficient to meet a claimant's burden of proof.¹¹ 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 an employee to self-certify their disability and entitlement to compensation.¹² Thus, his report is of no probative value on the issue of disability.¹³

Mr. Volatile, a physician assistant, and Ms. Naim, a nurse practitioner submitted reports dated June 8 and 12, 2018 respectively. Neither a physician assistant nor a nurse practitioner is considered a "physician" as defined under FECA. Thus, their reports are of no probative value.¹⁴

The record also contains x-rays and MRI scan reports of appellant's lumbar spine. The Board has held that diagnostic studies, standing alone, are of limited probative value on the issue of causal relationship as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁵

As noted, a claimant must submit rationalized medical evidence supporting causal relationship between the disabling condition and the accepted employment injury. Furthermore, the medical evidence must directly address the dates of disability for work for which compensation is claimed. None of the medical evidence of record provided a sufficient rationalized discussion of how appellant's accepted April 8, 2016 employment injury caused total disability from work for the claimed period. As appellant did not submit medical evidence establishing a recurrence of disability commencing June 1, 2018 causally related to her accepted employment injury, the Board finds that she has not met his burden of proof.

¹⁰ See *O.S.*, Docket No. 19-1149 (issued February 21, 2020); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹¹ *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019).

¹² *D.P.*, Docket No. 18-1439 (issued April 20, 2020); *William A. Archer*, 55 ECAB 674 (2004).

¹³ See *supra* note 8.

¹⁴ See *A.H.*, Docket No. 19-1731 (issued March 23, 2020); section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

¹⁵ *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

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 June 1, 2018 causally related to her accepted April 8, 2016 employment injury.¹⁶

ORDER

IT IS HEREBY ORDERED THAT the September 18, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 26, 2020
Washington, DC

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

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

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

¹⁶ Upon return of the case record, OWCP should consider whether appellant is entitled to wage-loss compensation for medical visits and treatment.