

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability commencing March 12, 2020, causally related to her accepted March 31, 2010 employment injury.

FACTUAL HISTORY

On April 9, 2010 appellant, then a 51-year-old medical technologist, filed a traumatic injury claim (Form CA-1) alleging that on March 31, 2010 she injured her head, neck, the right side of her ribs, and both wrists when she tripped over a threshold between her office and an outer office and fell face down onto a concrete floor while in the performance of duty. She stopped work on April 1, 2010.³

After initial denial, followed by further development of the claim, on August 17, 2010 OWCP accepted appellant's claim for cortex contusion without open wound, unspecified state of consciousness, and concussion with brief loss of consciousness. Thereafter, in decisions dated July 29, 2011 and January 13, 2015, it expanded the acceptance of appellant's claim to include unspecified epilepsy, unspecified migraine, displacement of cervical intervertebral disc without myelopathy, lumbago, medial meniscal tear of the right and left knees, sprain of the back, lumbar region, sprain of unspecified sites of left knee and leg, and sprain of right shoulder and upper arm. By decision dated February 18, 2016, OWCP terminated appellant's wage-loss compensation and medical benefits, effective February 16, 2016, as she no longer had disability or residuals causally related to her accepted March 31, 2010 employment injury. The record indicates that on March 17, 2016 appellant returned to work. In a May 26, 2016 decision, OWCP denied appellant's claim for compensation for disability from work commencing March 17, 2016. On November 1, 2016 it issued a decision denying modification of its February 18, 2016 termination decision. By decision dated December 7, 2016, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), regarding the termination of her wage-loss compensation and medical benefits. On March 8, 2017 it issued a decision denying modification of its denial decision of appellant's claim for disability, commencing March 17, 2016, and continuing. In a January 25, 2018 decision, OWCP vacated in part and affirmed in part its November 1, 2016 termination decision, finding that the medical evidence of record was sufficient to establish that appellant had continuing residuals of specific accepted conditions entitling her to further medical benefits, but her wage-loss compensation remained terminated.

On April 13, 2020 appellant filed a notice of recurrence (Form CA-2a). She indicated that the recurrence began at 10:30 p.m. on March 11, 2020, when her left leg buckled while she was walking in her home, which caused her to violently fall onto a concrete slab landing. Appellant

³ OWCP assigned the present claim OWCP File No. xxxxxx976. On March 24, 2011 appellant, then working 100 percent official time as president of her local union, filed a traumatic injury claim (Form CA-1) alleging that on March 21, 2011 she fell while walking to a meeting and sustained the following injuries which OWCP accepted as employment related: a back sprain; left knee and leg sprains; right shoulder and upper arm sprains; and meniscal tear of the right knee. OWCP assigned that claim File No. xxxxxx044. The record indicates that OWCP File Nos. xxxxxx976, and xxxxxx044 have been administratively combined by OWCP, with File No. xxxxxx976 serving as the master file.

noted that this was the exact nature of her accepted injuries sustained on March 21, 2011, November 2014, and April 11, 2019. She stopped work on March 12, 2020. In an April 18, 2020 statement, appellant related that at approximately 11:00 a.m. on April 3, 2020 her left leg gave out, and with her left-side weakness, she landed on the left side of her head injuring her head, neck, right shoulder, right arm, entire spine, and left knee, and that her right third toe turned blue.

OWCP, in a development letter dated April 20, 2020, provided a definition of a recurrence of disability and informed appellant of the deficiencies of her claim. Additionally, it advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the required evidence.

By letter dated April 21, 2020, the employing establishment controverted appellant's recurrence claim, contending that the medical evidence submitted was insufficient to establish a recurrence of disability causally related to her accepted employment injury.

OWCP received diagnostic test reports dated April 20, 2020 from Dr. Alex L. Sleeker, a Board-certified diagnostic radiologist. In his April 20, 2020 cervical spine computerized tomography (CT) scan report, Dr. Sleeker provided an impression of multilevel degenerative disc disease throughout the cervical spine, most significant at C5-6 where there was mild-to-moderate spinal canal and moderate bilateral foraminal stenosis. He also provided an impression of slightly less significant degrees of stenosis above this level. In his right shoulder magnetic resonance imaging (MRI) scan report of even date, Dr. Sleeker provided impressions of increased moderate-to-severe glenohumeral osteoarthritis since 2011 and reactive glenohumeral joint effusion and synovitis with possible tiny loose bodies. He provided additional impressions of increased mild supraspinatus and infraspinatus tendinosis, no full-thickness rotator cuff tendon tear, and mild acromioclavicular osteoarthritis that may cause subacromial impingement.

OWCP also received hospital records dated April 20, 2020.

A May 14, 2020 progress note signed by Susan Kewer, a certified physician assistant, provided an assessment of primary osteoarthritis of the right shoulder. She also noted that appellant was treated with a cortisone injection in the right glenohumeral joint.

By decision dated June 10, 2020, OWCP denied appellant's claim for a recurrence of disability, commencing March 12, 2020, finding that the evidence of record was insufficient to establish the claimed period of recurrent disability.

OWCP thereafter received additional hospital records dated April 20, 2020.

A May 21, 2020 report signed by Jennifer Thompson, a certified nurse practitioner, provided assessments of degenerative cervical disc and a body mass index that exceeded 25.

In a June 9, 2020 lumbar spine MRI scan report, Dr. Jean M. Dufour, a diagnostic radiologist, provided impressions of degenerative disease mainly at L2-3 and L3-4 and no focal canal or foraminal compromise. In a thoracic spine MRI scan report of even date, he provided impressions of degenerative joint disease and kyphosis, and no focal findings.

In an October 22, 2020 report, Dr. Gregory J. O'Shanick, a Board-certified psychiatrist, diagnosed concussion without loss of consciousness, seizure disorder, visuo-vestibular, post-trauma vision disorder, convergence insufficiency, sleep apnea, cognitive communication disorder, attention deficit disorder, depression due to traumatic brain injury, and left visual field neglect. In an October 27, 2020 general morphometry report, he found no evidence of asymmetry, and noted progressive expansion and atrophy of caudate bilaterally.

Appellant was terminated from the employing establishment, effective January 3, 2021, due to an unauthorized absence and failure to follow instructions.

On June 9, 2021 appellant, through then-counsel, requested reconsideration of the June 10, 2020 decision.

By decision dated June 23, 2021, OWCP denied modification of its June 10, 2020 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 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 Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.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

⁴ 20 C.F.R. § 10.5(x); *see 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).

⁵ *Id.*

⁶ *See S.G.*, Docket No. 20-0828 (issued January 6, 2022); *M.F.*, Docket No. 20-0136 (issued August 5, 2021); *G.L.*, Docket No. 16-1542 (issued August 25, 2017); *Theresa L. Andrews*, 55 ECAB 719, 722 (2004). *See also Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *P.R.*, Docket No. 20-0596 (issued October 6, 2020); *D.T.*, Docket No. 19-1064 (issued February 20, 2020); *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

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.⁸ Where no such rationale is present, the medical evidence is of diminished probative value.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability, commencing March 12, 2020, causally related to her accepted March 31, 2010 employment injury.

In support of her claim, appellant submitted Dr. O'Shanick's October 22, 2020 report in which he diagnosed concussion without loss of consciousness, seizure disorder, visuo-vestibular, post-trauma vision disorder, convergence insufficiency, sleep apnea, cognitive communication disorder, attention deficit disorder, depression due to traumatic brain injury, and left visual field neglect, which were not conditions accepted by OWCP in appellant's claim. Dr. O'Shanick does not, however, provide an opinion on causal relationship. 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 of no probative value.¹⁰ For this reason, the Board finds that Dr. O'Shanick's report is insufficient to establish appellant's burden of proof.¹¹

Appellant also submitted additional diagnostic test reports that addressed her brain, cervical and lumbar areas of the spine, and right shoulder. However, the Board has held that reports of diagnostic testing lack probative value, as they do not address whether a given medical condition or period of disability was caused by the employment.¹²

Additionally, appellant submitted a May 14, 2020 progress note from Ms. Kewer, a certified physician assistant, and a May 21, 2020 report from Ms. Thompson, a certified nurse practitioner. The Board has held that certain healthcare providers such as physician assistants and

⁸ See *J.S.*, Docket No. 19-1035 (issued January 24, 2020); *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁹ *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

¹⁰ *C.M.*, Docket No. 21-0004 (issued May 24, 2021); *R.J.*, Docket No. 19-0179 (issued May 26, 2020); *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019).

¹¹ *K.E.*, Docket No. 19-1922 (issued July 10, 2020).

¹² See *K.W.*, Docket No. 20-0230 (issued May 21, 2021); *M.M.*, Docket No. 20-1557 (issued November 3, 2021); *T.G.*, Docket No. 20-0032 (issued November 10, 2020); *R.N.*, Docket No. 19-1685 (issued February 26, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

nurse practitioners are not considered physicians as defined under FECA.¹³ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. Thus, this evidence is of no probative value and is insufficient to establish appellant's recurrence claim.

The Board further finds that the remaining medical evidence submitted by appellant does not provide an opinion concerning appellant's recurrence of disability commencing March 12, 2020. The hospital records dated April 20, 2020 do not address whether appellant was disabled for work commencing March 12, 2020. They are, therefore, of no probative value and insufficient to establish the recurrence claim.¹⁴

As appellant has not submitted sufficient medical evidence to establish that she was disabled from work, commencing March 12, 2020, due to a spontaneous change or worsening of her March 31, 2010 employment injury, the Board finds that she has not met her burden of proof to establish her claim.

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 March 12, 2020, causally related to her accepted March 31, 2010 employment injury.

¹³ Section 8102(2) of FECA provides as follows: (2) 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* 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); *see also* *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (a physician assistant and nurse practitioner are not considered a physician as defined under FECA).

¹⁴ *M.V.*, Docket No. 20-0872 (issued January 27, 2021); *P.R.*, *supra* note 7; *M.L.*, Docket No. 18-1058 (issued November 21, 2019); *D.J.*, Docket No. 18-0200 (issued August 12, 2019).

ORDER

IT IS HEREBY ORDERED THAT the June 23, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 29, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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