

FACTUAL HISTORY

On December 9, 2018 appellant, then a 58-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on December 8, 2018 she was lifting two heavy parcels when she felt a sharp shooting pain in her lower back and down her left leg while in the performance of duty. OWCP accepted her claim for sciatica, left side.

Appellant accepted a modified-duty mail handler assignment on December 20, 2018.

OWCP paid appellant wage-loss compensation on its supplemental rolls for intermittent disability commencing February 15, 2019.

In a March 25, 2021 report, Dr. Christian Ledet, a Board-certified anesthesiologist and pain medicine specialist, noted appellant's chronic pain, long-term current use of opiate analgesic drug, long-term drug therapy, and radiculopathy due to lumbar intervertebral disc disorder.

An April 5, 2021 magnetic resonance imaging (MRI) scan read by Dr. Aaron C. Hurlbut, a Board-certified diagnostic radiologist, revealed findings of L1-3 mild-to-moderate bilateral facet arthropathy, L3-5 severe bilateral facet arthropathy, L4-5 left subarticular annular tear, and mild L3-4 neural foraminal stenosis.

Appellant stopped work on April 5, 2021.

In an April 8, 2021 report, Dr. Ledet noted appellant's history of injury and medical treatment. He related that an MRI scan of appellant's lumbar spine revealed degenerative changes and annular tears associated with neuritis and radiculopathy. Dr. Ledet diagnosed chronic pain and radiculopathy due to lumbar intervertebral disc disorder. He held appellant off work from April 5 through 9, 2021 and advised that she could return to work on Monday April 12, 2021.

In an April 16, 2021 disability certificate, Dr. Leona N. Holcomb, a family medicine specialist, held appellant off work from April 15 to May 15, 2021.

On April 29 and 30, 2021 appellant filed claims for compensation (Form CA-7) for disability from work.

In a May 3, 2021 development letter, OWCP noted that appellant was claiming disability from work due to a material change/worsening of her accepted work-related conditions and that the evidence submitted was insufficient to establish total disability. It advised her of the definition of recurrence of disability and the type of medical and factual evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In an April 8, 2021 disability certificate, Dr. Ledet noted that appellant was off work from Monday, April 5 to Sunday, April 11, 2021, and could return to work on April 12, 2021, with no change in restrictions.

In April 16, 2021 progress notes, Dr. Holcomb diagnosed acute left-sided low back pain with left-sided sciatica, and injury of back, subsequent encounter. In an April 16, 2021 disability certificate, she placed appellant off work from April 15 until May 15, 2021.

Appellant continued to file Form CA-7 claims for continuing disability from work.

In a May 14, 2021 disability certificate, Dr. Holcomb placed appellant off work for six weeks due to her continued back pain.

In a June 3, 2021 response to OWCP's development questionnaire, appellant related that her injury was ongoing and that she had not recovered. She explained that she had persistent pain, some days worse than others. Appellant described her work activities and noted that they included bending stooping and walking while in discomfort. She related that on April 5, 2021 she could hardly move and it was "agony" just to get out of bed.

In a June 11, 2021 disability certificate, Dr. Holcomb opined that appellant should not return to work until she obtained a second opinion evaluation from another pain specialist.

OWCP received a copy of the March 25 and April 8, 2021 reports from Dr. Ledet and physical therapy notes.

By decision dated June 22, 2021, OWCP denied appellant's claim for a recurrence of disability. It found that the medical evidence of record was insufficient to establish disability from work due to a material change or worsening of her accepted work-related conditions.

OWCP subsequently received additional evidence, including treatment notes dated June 10, 2021, wherein Dr. Ledet diagnosed chronic pain and radiculopathy due to intervertebral disc disorder.

In a June 25, 2021 report, Dr. Ledet provided a summary of appellant's medical treatment. He noted that she was first seen on August 14, 2019 for lower extremity radiculopathy, which was consistent with appellant's MRI scan which demonstrated degenerative changes and disc herniation at the L3-4 with associated stenosis at the neural foramina. Dr. Ledet described appellant's treatment including epidural steroids in September and October 2019 with no substantial improvement. He noted that the April 5, 2021 MRI scan revealed severe facet arthropathy in the lumbar spine with L3-4 foraminal disc bulge and associated stenosis, and degenerative disc disease and facet arthropathy at L4-5 with "annular tear." Dr. Ledet opined that appellant's MRI scan findings were consistent with the pain and disability that appellant continued to experience in the low back and left lower extremity and that it is understandable that she would have a great deal of difficulty with work activities that required bending, lifting, standing, or sitting for even short periods of time. He advised, "unfortunately, we do not have good treatments for this progressive degenerative process that you're experiencing."

OWCP received copies of prior reports and November 19, 2020 treatment notes from Dr. Ledet. In this report, Dr. Ledet noted appellant's radiculopathy due to lumbar intervertebral disc disorder, with an onset on August 14, 2019.

In a July 20, 2021 report, Dr. Holcomb noted that appellant was seen for many months regarding her work injury and subsequent low back pain. She noted that appellant had tried several medications and was sent to a pain management specialist. Dr. Holcomb also noted that appellant had been treated with several epidural injections which were not helpful. She opined that appellant had an "ongoing issue and not a recurrence. Her low back pain is worsening." Dr. Holcomb related that appellant described "the pain as excruciating. With any short episodes of activity such as sitting, walking, or standing, she is in severe pain. She finds more comfort only if she is laying

down.” Dr. Holcomb opined that she could not predict how long appellant would be in pain and unable to work and held appellant off work for two months from July 20 through September 20, 2021.

On August 13, 2021 appellant requested reconsideration. In an August 13, 2021 letter, she noted that she was fine before her traumatic injury, that she had never recovered, and that she dealt with her injury on a daily basis. Appellant explained that she was offered a modified job on December 20, 2018, and she was still injured but “striving” to do her job. She indicated that her duties required standing, walking, bending, carrying, reaching, grasping, rewrapping, sitting and typing and that she would call in periodically on days that “weren’t so good.” Appellant related that on the morning of April 5, 2021 she was not doing anything different, but that she could barely move. She related that over a period of time, her injury had worsened, and she was limited in her activities and mobility in her daily life. Appellant described her treatment and drug therapies, noted that none of them worked, and indicated that surgery was not an option.

In support of her request for reconsideration, appellant submitted an August 6, 2021 report, wherein Dr. Holcomb related that appellant returned to work on December 9, 2018, as she was offered a modified job. She noted that appellant tried to perform that job, but found the activities worsened her original left sciatica, as well as her low back pain, and periodically took days off work due to pain and decreased mobility. Dr. Holcomb noted that on April 5, 2021 appellant could barely move while she was undergoing an MRI scan for further evaluation on her back pain. She related that appellant followed the prescribed testing, treatments, physical therapy, epidurals, and consultations, without improvement, and in fact experienced worsening of the pain and inability to function. Dr. Holcomb opined that appellant was no longer able to work and should apply for disability.

By letters dated August 19 and September 27, 2021, OWCP referred appellant to the June 22, 2021 decision, which denied her claim for total disability from April 5, 2021 and continuing. It explained that no further action would be taken and she was to follow her appeal rights enclosed with that decision if she disagreed.

OWCP continued to receive Form CA-7 claims for continuing disability through October 22, 2021.

By decision dated November 8, 2021, OWCP denied modification of its June 22, 2021 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.³

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

³ 20 C.F.R. § 10.5(x); *T.J.*, Docket No. 18-0831 (issued March 23, 2020).

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

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability on April 5, 2021, causally related to her accepted December 8, 2018 employment injury.

Appellant provided several reports from Dr. Ledet. In November 19, 2020 progress notes, Dr. Ledet noted appellant's diagnosis of radiculopathy due to lumbar intervertebral disc disorder. He related that this condition was onset on August 14, 2019. In a March 25, 2021 report, Dr. Ledet noted appellant's chronic pain and diagnosed radiculopathy due to lumbar intervertebral disc disorder. In an April 8, 2021 report, he related appellant's diagnoses and placed her off work from April 5 through 9, 2021. In an April 8, 2021 disability certificate, Dr. Ledet noted that appellant was off work from Monday, April 5 to Sunday, April 11, 2021. He also saw appellant on June 10, 2021 and diagnosed chronic pain and radiculopathy due to intervertebral disc disorder. In a June 25, 2021 report, Dr. Ledet related that appellant was first seen on August 14, 2019 for lower extremity radiculopathy, which was consistent with appellant's MRI scan which demonstrated degenerative changes and disc herniation at L3-4 with associated stenosis at the neural foramina. He noted that appellant's April 5, 2021 MRI scan revealed severe facet arthropathy in the lumbar spine with L3-4 foraminal disc bulge and associated stenosis and degenerative disc disease and facet arthropathy at L4-5 with "annular tear." Dr. Ledet opined that it was understandable that appellant would have a great deal of difficulty with work activities that required bending, lifting, standing, or sitting for even short periods of time. While Dr. Ledet found that appellant was disabled and placed her off work, he did not address whether the disability was causally related to the accepted employment injury of sciatica. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

⁵ *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

⁶ *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

value on the issue of causal relationship.⁷ This evidence is therefore of no probative value and insufficient to meet appellant's burden of proof.⁸

Appellant also submitted several reports from Dr. Holcomb. In April 16, 2021 treatment notes, Dr. Holcomb diagnosed acute left-sided low back pain with left-sided sciatica, and injury of back, subsequent encounter. She provided April 16, May 14, and June 11, 2021 disability certificates and opined that appellant should not return to work. In a July 20, 2021 report, Dr. Holcomb opined that appellant had an "ongoing issue and not a recurrence. Her low back pain is worsening." She explained that appellant related that "the pain as excruciating." In an August 6, 2021 report, Dr. Holcomb opined that appellant was no longer able to work and should apply for disability. However, Dr. Holcomb did not provide an opinion on causal relationship. The Board has held that 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.⁹ Dr Holcomb's reports are therefore of no probative value and insufficient to meet appellant's burden of proof to establish her disability claim.

The record also contains diagnostic reports. However, the Board has long held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused any of the diagnosed conditions or associated disability.¹⁰ For this reason, the Board finds that the diagnostic reports are insufficient to establish appellant's disability claim.

OWCP also received May 13, 2021 physical therapy notes. Certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers are not considered physicians as defined under FECA.¹¹ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹²

As the medical evidence of record is insufficient to establish causal relationship between the claimed recurrence of disability and the accepted employment injury, the Board finds that appellant has not met her 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 and 20 C.F.R. §§ 10.605 through 10.607.

⁷ See *T.M.*, Docket No. 21-1310 (issued March 7, 2022); *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

⁸ See *D.B.*, Docket No. 21-0503 (issued August 24, 2021).

⁹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁰ See *T.W.*, Docket No. 20-1669 (issued May 6, 2021); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹¹ Section 8101(2) of FECA provides that the term 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 *A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA).

¹² *Id.*

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability on April 5, 2021 causally related to her accepted December 8, 2018 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 8, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 30, 2022
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board