

² The Board notes that, following the December 2, 2024 decision, OWCP received additional evidence. 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of disability, commencing August 31, 2024, causally related to his accepted October 17, 2023 employment injury.

FACTUAL HISTORY

On October 19, 2023 appellant, then a 65-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 17, 2023 he injured his right thigh when his right leg collapsed and he fell down stairs while in the performance of duty. He stopped work on that date. OWCP accepted the claim for strain of the right quadriceps muscle. It paid appellant wage-loss compensation on the supplemental rolls from December 2 through 7, 2023.

In a November 2, 2023 report, Dr. David Barnes, an osteopath, related that, on October 17, 2023, appellant's right leg hyperextended while walking downstairs and he fell to the ground. He reported pain in his right thigh and knee. Dr. Barnes reviewed a right knee magnetic resonance imaging (MRI) scan which demonstrated a tear of the quadriceps, tears of the medial and lateral menisci, joint effusion, and chronic tricompartmental chondromalacia. He diagnosed strain of the right quadriceps muscle and sprain of the right knee. Dr. Barnes attributed the diagnosed conditions to appellant's October 17, 2023 employment injury.

On December 4, 2023 Dr. Barnes completed a duty status report (Form CA-17) indicating that appellant could return to work eight hours a day on December 8, 2023 lifting and carrying up to 10 pounds a day, standing six hours a day, walking three hours a day, no kneeling, and only climbing up curbs and into vehicles.

Appellant returned to full-time modified duty within Dr. Barnes' restrictions on December 8, 2023. For the period March 16 through August 30, 2024 the employing establishment completed time analysis forms (Form CA-7a) dated March 25 through September 7, 2024 reporting that he used leave without pay (LWOP) as there was "no work available." OWCP paid appellant intermittent wage-loss compensation from March 16 through August 30, 2024.

On January 30, 2024 Dr. Sergey Kachar, an osteopath Board-certified in orthopedic surgery, related appellant's history of injury on October 17, 2023 and diagnosed right quadriceps rupture, right medial and lateral menisci tears, and right knee chondromalacia. He examined appellant on February 28 and March 14, 2024 and repeated his diagnoses. Dr. Kachar recommended a right knee arthroscopy.

On June 28, 2024 appellant requested authorization for right knee arthroscopy.

On September 7, 2024 appellant filed a claim for compensation (Form CA-7) alleging that no light-duty work was available within his restrictions from August 31 through September 6, 2024. The employing establishment completed a Form CA-7a indicating that he used 40 hours of leave without pay from August 31 through September 5, 2024 as no light-duty work was available.

On September 21, 2024 appellant filed CA-7 forms for the period September 7 through 20, 2024. The employing establishment indicated that appellant did not work and used 80 hours of LWOP. It did not provide a Form CA-7a for this period. On a September 26, 2024 Form CA-7 appellant claimed wage-loss compensation from September 21 through 27, 2024. The employing establishment related that he had returned to work on September 21, 2024 and used LWOP through September 27, 2024. It further noted that it could not verify LWOP hours from September 21 through 27 until after October 7, 2024. The employing establishment did not provide a Form CA-7a for this period.

In a September 30, 2024 development letter, OWCP informed appellant of the deficiencies of his claims for compensation. It advised him of the type of factual and medical evidence needed to establish his claim and afforded him 30 days to submit the necessary evidence.

On October 13 and 25, 2024 appellant filed additional CA-7 forms claiming compensation for disability from work commencing September 28, 2024. On October 13, 2024 the employing establishment indicated on the reverse side of the claim form that he had used 40 hours LWOP weekly and that it needed updated medical evidence to supported temporary total disability .

By decision dated October 30, 2024, OWCP denied appellant's claim for disability from work commencing August 31, 2024 as causally related to the accepted October 17, 2023 employment injury.

On November 19, 2024 appellant requested reconsideration. On August 5, 2024 Dr. Barnes provided a duty status report (Form CA-17) indicating that appellant could work eight hours a day with a 10-pound restriction on lifting and carrying, standing six hours a day, walking three hours a day, climbing curbs and into vehicles only, and no kneeling. In a November 10, 2024 report, Dr. Barnes indicated that he had increased appellant's work restrictions on walking and standing on October 14, 2024 in a separate claim file accepted for a lumbar spine injury.³

By decision dated December 2, 2024, OWCP denied modification.

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

³ OWCP File No. xxxxxx312 was accepted for a lumbar, hip, and right sacroiliac joint sprains. OWCP has not administratively combined the current claim, OWCP File No. xxxxxx919, with OWCP File No. xxxxxx312.

⁴ 20 C.F.R. § 10.5(x); *see M.A.*, Docket No. 23-0713 (issued April 26, 2024); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

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

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.⁶

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.⁷ Where no such rationale is present, the medical evidence is of diminished probative value.⁸

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 to show that he or she cannot perform such limited-duty work.⁹ As part of this burden, 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.¹⁰

ANALYSIS

The Board finds that appellant has established a recurrence of disability for the period August 31 through September 5, 2024.

Appellant returned to full-time modified-duty work effective December 8, 2023. The employing establishment completed CA-7a forms, from March 25 through September 5, 2024

⁵ *Id.*

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

⁷ *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *see C.C.*, Docket No. 18-0719 (issued November 9, 2018).

⁸ *R.D.*, Docket No. 21-0857 (issued August 20, 2024); *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

⁹ *See D.W.*, Docket No. 19-1584 (issued July 9, 2020); *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹⁰ *C.B.*, Docket No. 19-0464 (issued May 22, 2020); *Terry R. Hedman, id.*; *R.N.*, Docket No. 19-1685 (issued February 26, 2020).

reporting that he used LWOP as there was “no work available.” The Board finds that, in this case, the factual evidence of record is sufficient to determine that the employing establishment withdrew a light-duty position or had no light-duty work available for the period August 31 through September 5, 2024, which would indicate a recurrence of disability.¹¹ As noted above, a recurrence of disability can be established under this scenario.¹² The employing establishment completed CA-7a forms indicating that there was no work available from August 31 through September 5, 2024. Therefore, appellant is entitled to wage-loss compensation through September 5, 2024.

The Board further finds that this case is not in posture for decision for the period commencing September 6, 2024.

For the periods beginning September 6, 2024, the Board finds that, in this case, the factual evidence of record is insufficient to determine that the employing establishment withdrew a light-duty position or had no light-duty work available for the period commencing September 6, 2024, which would indicate a recurrence of disability.¹³ For example, the employing establishment noted that it could not verify LWOP hours from September 21 through 27, 2024 until after October 7, 2024.

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.¹⁴ It has an obligation to see that justice is done.¹⁵ Thus, the Board shall remand the case for OWCP to administratively combine appellant’s claims under OWCP File Nos. xxxxxx919 and xxxxxx312 and then request that the employing establishment confirm whether there was work available within appellant’s established work restrictions after September 6, 2024. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has established a recurrence of disability for the period August 31 through September 5, 2024 entitling him to wage-loss compensation. The Board further

¹¹ *C.B.*, Docket No. 24-0597 (issued October 8, 2024); *M.A.*, *supra* note 4; *L.F.*, Docket No. 19-0519 (issued October 24, 2019); *see also M.S.*, Docket No. 18-0130 (issued September 17, 2018).

¹² 20 C.F.R. § 10.5(x); *M.A.*, *id.*; *T.J.*, Docket No. 18-0831 (issued March 23, 2020); *J.D.*, *supra* note 4.

¹³ *See T.R.*, Docket No. 19-1611 (issued October 26, 2020); *see also P.H.*, Docket No. 20-0039 (issued April 23, 2020).

¹⁴ *See C.S.*, Docket No. 23-0870 (issued August 2, 2024); *A.J.*, Docket No. 23-0883 (issued May 23, 2024); *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *K.W.*, Docket No. 15-1535 (issued September 23, 2013); *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

¹⁵ *See A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

finds that the case is not in posture for decision regarding whether appellant has met his burden of proof to establish a recurrence of disability commencing September 6, 2024.

ORDER

IT IS HEREBY ORDERED THAT the October 30 and December 2, 2024 decisions of the Office of Workers' Compensation Programs are reversed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 17, 2025
Washington, DC

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

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

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