

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability commencing May 18, 2022 causally related to her accepted July 17, 2021 employment injury.

FACTUAL HISTORY

On July 21, 2021 appellant, then a 47-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on July 17, 2021 she felt a sharp pain on the right side of her back when picking up a bundle of magazines from a hamper while in the performance of duty. She stopped work on July 20, 2021 and returned to light-duty work with restrictions on December 7, 2021. OWCP accepted the claim for other intervertebral disc displacement, lumbar region, and radiculopathy, lumbar region. It paid appellant wage-loss compensation on the supplemental rolls from September 1, 2021 through May 17, 2022. Appellant stopped work completely on May 18, 2022.

In a May 18, 2022 reports, Dr. Phillip L. Wagner, a Board-certified occupational medicine specialist, noted appellant's July 17, 2021 date of injury and related that her magnetic resonance imaging (MRI) scan showed herniated discs at L4-5 and L5-S1 levels. He diagnosed lumbar disc herniation and radicular pain, noting that appellant's symptoms continued with severe pain intermittently and constant moderate discomfort with radicular pain to the right thigh and groin area. For the period May 18 through June 2, 2022, Dr. Wagner related that appellant could perform modified activity at work and home.

On May 23, 2022 appellant filed a claim for compensation (Form CA-7) for the period May 18 through 29, 2022.

In a June 2, 2022 reports, Dr. Wagner related that appellant had weakness with moderate-to-severe radicular pain to the lower extremity. He placed her off work from June 2 through 30, 2022 due to incapacitating injury or pain from her diagnosed lumbar disc herniation and radicular pain. Dr. Wagner explained that appellant's work status changed as she was unable to tolerate even short episodes of sitting, standing or driving.

On June 2, 2022 OWCP requested that the employing establishment provide information regarding whether limited-duty work was available for appellant as of May 18, 2022.

On June 20 and July 4, 2022 appellant filed Form CA-7 claims for disability from work for the period May 21 through July 1, 2022.

In a development letter dated June 3, 2022, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation. It advised her of the type of medical evidence required to establish a worsening of the accepted employment injury. OWCP also requested that appellant provide verification from the employing establishment regarding whether light-duty work remained available. It afforded her 30 days to submit the necessary evidence.

In June 30, 2022 reports, Dr. Wagner noted the July 17, 2021 date of injury and held appellant off work from June 30 through July 21, 2022 due to incapacitating injury or pain due to lumbar disc herniation and radicular pain.

By decision dated July 21, 2022, OWCP denied appellant's claim for wage-loss compensation for disability from work commencing May 21, 2022. It found that there was no explanation from a physician regarding how her condition worsened as to prevent her from continuing to work her limited-duty position and there was no evidence that her limited-duty position was no longer available.

In a June 30, 2022 video visit report, Dr. Wagner noted appellant's July 17, 2021 date of injury. He diagnosed lumbar disc herniation and radicular pain and placed her off work from June 30 through July 21, 2022 due to incapacitating injury or pain.

On July 14, 2022 appellant underwent a right L5 transforaminal epidural steroid injection. She continued to claim wage-loss compensation for disability from work.

On September 1, 2022 appellant requested reconsideration.

OWCP thereafter received an April 27, 2022 report from Dr. Ralph A. Crisostomo, a Board-certified physiatrist, who diagnosed right leg pain and recommended a right L5 transforaminal epidural steroid injection.

In July 21 and August 3, 2022 reports, Dr. Wagner placed appellant off work from July 21 through August 11, 2022 due to incapacitating injury or pain due to lumbar disc herniation and radicular pain. He indicated that appellant's symptoms worsened on June 2, 2022 due to her attempt to return to limited duty which involved a long drive in a flexed position and resulted in a recurrence of severe radicular pain.

In August 11, 2022 reports, Dr. Wagner indicated that appellant was three-weeks' post steroid injection with improvement. He placed appellant on modified activity at work and at home for the period August 11 through September 1, 2022.

Appellant continued to submit claims for wage-loss compensation.

In September 1 and October 6, 2022 reports, Dr. Wagner reported that appellant's symptoms worsened. He diagnosed lumbar disc herniation and radicular pain and placed appellant on modified activity for the periods September 1 through November 3, 2022.

In November 10, 2022 reports, Dr. Wagner reported that appellant returned with marked exacerbation of pain, and indicated that a neurosurgery consultation was needed as soon as possible. He placed her off work from November 10 through December 8, 2022 due to incapacitating injury or pain and that she was unable to sustain position during the day. Dr. Wagner opined that surgery was likely.

By decision dated November 30, 2022, OWCP denied modification of its prior 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 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.⁴

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.⁵

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, based on 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.⁶ Where no such rationale is present, the medical evidence is of diminished probative value.⁷

ANALYSIS

The Board finds that this case is not in posture for decision.

The record reflects that on June 2, 2022 OWCP requested that the employing establishment provide information regarding whether limited-duty work was available for appellant as of May 18, 2022. Additionally, OWCP requested that appellant provide verification from the employing establishment regarding whether light-duty work remained available. It afforded her 30 days to submit the necessary evidence. OWCP, however, did not obtain any written documentation from the employing establishment establishing whether light-duty work was or was

³ 20 C.F.R. § 10.5(x); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

⁶ See *J.D.*, Docket No. 18-0616 (issued January 11, 2019); see *C.C.*, Docket No. 18-0719 (issued November 9, 2018).

⁷ See *M.T.*, Docket No. 25-0180 (issued January 25, 2025); *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

not available as of May 18, 2022, and the period, if any, that light-duty work continued to be unavailable. Accordingly, the evidence of record is insufficient to determine whether a light-duty job remained available to appellant as of May 18, 2022.⁸

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.⁹ While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹⁰

On remand, OWCP shall request that the employing establishment clarify the circumstances of appellant's cessation of work, and whether light-duty work within her restrictions remained available or had been withdrawn as of May 18, 2022.¹¹ This evidence is of the character normally obtained from the employing establishment and is more readily accessible to OWCP than to appellant.¹² Following other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

⁸ See *D.M.*, Docket No. 18-0527 (issued July 29, 2019); *J.G.*, Docket No. 17-0910 (issued August 28, 2017); *M.A.*, Docket No. 16-1602 (issued May 22, 2017).

⁹ See *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

¹⁰ *C.L.*, Docket No. 20-1631 (issued December 8, 2021); *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹¹ *K.T.*, Docket No. 17-0009 (issued October 8, 2019).

¹² *D.M.*, *id.*; *J.T.*, Docket No. 15-1133 (issued December 21, 2015); *J.S.*, Docket No. 15-1006 (issued October 9, 2015).

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2022 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 9, 2025
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