

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUE**

The issue is whether appellant has met her burden of proof to establish a recurrence of disability commencing December 3, 2024, causally related to her October 26, 2022 accepted employment injury.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances as set forth in the Board's prior orders are incorporated herein by reference. The relevant facts are as follows.

On October 28, 2022 appellant, then a 53-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that, on October 26, 2022, she injured her back and the entire left side of her body when she slipped on a substance and fell while in the performance of duty. She stopped work on the date of the claimed injury. OWCP initially accepted the claim for right and left shoulder contusions, right and left knee contusions, and cervical and lumbar radiculopathy. It subsequently expanded the acceptance of the claim to include adhesive capsulitis of the right and left shoulders. OWCP paid appellant wage-loss compensation on the supplemental rolls as of December 11, 2022, and on the periodic rolls as of March 24, 2024. On August 24, 2024 appellant returned to full-time, limited-duty work with restrictions.

In visit notes dated December 3, 6, 17, and 23, 2024, Dr. Maykel Desir, an attending Board-certified family practitioner, noted that appellant presented for a follow up of her workers' compensation claim involving her shoulders. He discussed his findings on physical examination and diagnostic studies. Dr. Desir provided impressions of rotator cuff syndrome, right and left; other shoulder lesions, right shoulder located on the right subacromial bursal; and adhesive capsulitis, left. In the December 3, 17 and 23, 2024 visit notes, he opined that appellant had temporary 100 percent impairment. Dr. Desir advised that she could only perform light-duty work at that time. He also held appellant off work due to her complaints of progressive and worsening pain.

In a December 3, 2024 excuse note, Dr. Gregory Montalbano, an orthopedic surgeon, advised that appellant remain out of work until her next evaluation in four weeks.

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> Following the issuance of the February 25, 2026 decision, OWCP received additional evidence. However, 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.*

<sup>4</sup> *Order Reversing Case*, Docket No. 25-0878 (issued December 12, 2025); *Order Remanding Case*, Docket No. 25-0926 (issued December 12, 2025).

In a December 23, 2024 visit note, Dr. Syed Husain, Board-certified in internal medicine and infectious disease, indicated that appellant presented for a follow-up evaluation of her back issues. He provided impressions of lumbar radiculopathy, lumbar region; and lumbar spondylosis without myelopathy or radiculopathy, lumbar region.

Appellant filed a notice of recurrence (Form CA-2a) dated December 12, 2024 wherein she alleged a recurrence of disability from work commencing December 3, 2024, causally related to her accepted October 26, 2022 employment injury.

In a January 6, 2025 visit note, Dr. Desir noted that appellant presented for a follow up for workers' compensation involving both shoulders. He discussed his findings on physical examination and diagnostic examination findings. Dr. Desir reiterated his prior impressions of rotator cuff syndrome, right; and other shoulder lesions, right shoulder distributed on the right subacromial bursa. He also reiterated his prior opinion that appellant had temporary 100 percent impairment and that she could only perform light-duty work with restrictions at that time. Dr. Desir again held her off work due to her complaints of progressive and worsening pain.

In a development letter dated January 23, 2025, OWCP notified appellant of the deficiencies of her recurrence claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On January 27, 2025 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Howard Kiernan, Jr., a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the nature and extent of appellant's employment-related residuals and disability.

OWCP subsequently received additional medical evidence. In a January 14, 2025 report, Dr. Husain reiterated his prior impression of lumbar radiculopathy. He noted that appellant had received a back injection. In a January 24, 2025 visit note, Dr. Husain reiterated his prior impressions of lumbar radiculopathy and lumbar spondylosis.

In a January 23, 2025 visit note, Dr. Desir reiterated his prior impressions of rotator cuff syndrome, right; and other shoulder lesions, right shoulder distributed on the right subacromial bursa. He also reiterated his opinion regarding appellant's total impairment and disability from work.

In a February 19, 2025 medical report, Dr. Kiernan reviewed the SOAF and the medical record. He reported normal findings on appellant's physical and neurological examination of the cervical spine and lumbar spine, right and left shoulders, and right and left knees. Dr. Kiernan provided impressions of no clinical findings of cervical spine radiculopathy, resolved lumbar spine/strain and no clinical findings of lumbar radiculopathy, and resolved right and left shoulder contusion, right and left shoulder history of healed adhesive capsulitis, and right and left knee contusion. He concluded that, based on clinical findings, appellant had no active residuals. Dr. Kiernan opined that she was medically capable of performing her date-of-injury job as a mail processing clerk. He advised that appellant's prognosis was good and there was no need for medical treatment or a vocational rehabilitation program.

On February 24, 2025 appellant responded to OWCP's development questionnaire. She claimed that her recurrence was due to a gradual decrease of function of her left shoulder when moving parcels on the belt on November 24, 2025.

In a March 7, 2025 visit note, Dr. Husain continued to provide impressions of lumbar radiculopathy and lumbar spondylosis.

By decision dated March 26, 2025, OWCP denied appellant's claim for a recurrence of disability commencing December 3, 2024, causally related to her accepted October 26, 2022 employment injury.

On August 25, 2025 appellant requested reconsideration of OWCP's March 26, 2025 decision.<sup>5</sup>

By decision dated September 22, 2025, OWCP denied modification of the March 26, 2025 recurrence decision.

On September 30, 2025 appellant, through counsel, timely appealed the September 22, 2025 decision to the Board.<sup>6</sup> By order dated December 12, 2025, the Board set aside OWCP's September 22, 2025 decision and remanded the case for OWCP to administratively combine OWCP File Nos. xxxxxx549, xxxxxx781, xxxxxx763, and xxxxxx797 followed by a *de novo* decision.<sup>7</sup>

On remand, OWCP administratively combined appellant's claims under OWCP File Nos. xxxxxx549, xxxxxx781, xxxxxx763, and xxxxxx797, with OWCP File No. xxxxxx763 serving as the master file.

OWCP subsequently received diagnostic studies, including May 17 and 27, and September 5, 2025 magnetic resonance imaging (MRI) scan reports of the right shoulder and cervical spine, an October 11, 2025 computerized tomography (CT) scan of the cervical spine, and October 21, 2025 x-ray of the right and left knees.

By *de novo* decision dated February 25, 2026, OWCP denied appellant's claim for a recurrence of disability, finding that the medical evidence of record was insufficient to establish disability from work commencing December 3, 2024, causally related to his accepted October 26, 2022 employment injury.

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<sup>5</sup> On August 25, 2025 appellant also requested reconsideration of OWCP's May 2, 2025 termination decision. By decision dated August 29, 2025, OWCP denied modification of the May 2, 2025 decision.

<sup>6</sup> On September 11, 2025 appellant, through counsel, also appealed OWCP's August 29, 2025 termination decision, and by order dated December 12, 2025, the Board reversed the August 29, 2025 decision. The Board remanded the case for OWCP to administratively combine OWCP File Nos. xxxxxx549, xxxxxx781, xxxxxx763, and xxxxxx797 followed by a *de novo* decision. *Order Reversing Case*, Docket No. 25-0878 (issued December 12, 2025).

<sup>7</sup> *Order Remanding Case*, Docket No. 25-0926 (issued December 12, 2025).

## **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.<sup>8</sup> This term also means an inability to work because a limited-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.<sup>9</sup>

A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.<sup>10</sup>

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.<sup>11</sup>

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.<sup>12</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>13</sup>

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

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<sup>8</sup> 20 C.F.R. § 10.5(x); *see J.D.*, Docket No. 18-1533 (issued February 27, 2019).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>12</sup> *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *see C.C.*, Docket No. 18-0719 (issued November 9, 2018).

<sup>13</sup> *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

recurrence of total disability and to show that he or she cannot perform such limited-duty work.<sup>14</sup> 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.<sup>15</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing December 3, 2024, causally related to her October 26, 2022 accepted employment injury.

In visit notes dated December 3, 6, 17, and 23, 2024 and January 6 and 23, 2025, Dr. Desir provided impressions of rotator cuff syndrome, right and left; other shoulder lesions, right shoulder located on the right subacromial bursal; and adhesive capsulitis, left. He determined that she had temporary 100 percent impairment. Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>16</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>17</sup> Dr. Desir also opined that appellant could only perform light-duty work at the time of his examination, but he also placed her off work due to progressive and worsening pain. His opinion regarding whether appellant was disabled from work was equivocal in nature. The Board has held that medical opinions that are speculative or equivocal in nature are of limited probative value.<sup>18</sup> Therefore, this evidence is insufficient to establish appellant’s recurrence claim.

In a December 3, 2024 excuse note, Dr. Montalbano advised that appellant should remain out of work until her next evaluation in four weeks. However, he failed to explain, with rationale, how the October 26, 2022 employment injury caused or contributed to the claimed disability. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how the claimed disability was related to the accepted employment injury.<sup>19</sup> This evidence, is therefore, insufficient to establish appellant’s recurrence claim.

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<sup>14</sup> 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).

<sup>15</sup> *C.B.*, Docket No. 19-0464 (issued May 22, 2020); *Terry R. Hedman, id.*; *R.N.*, Docket No. 19-1685 (issued February 26, 2020).

<sup>16</sup> 20 C.F.R. § 10.5(f).

<sup>17</sup> See *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>18</sup> *J.W.*, Docket No. 26-0141 (issued April 24, 2026); *C.S.*, Docket No. 25-0705 (issued September 4, 2025); *B.O.*, Docket No. 25-0049 (issued January 10, 2025); *N.B.*, Docket No. 21-0710 (issued August 19, 2022).

<sup>19</sup> See *J.D.*, Docket No. 25-0884 (issued April 22, 2026); *S.K.*, Docket No. 18-1537 (issued June 20, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

Dr. Husain's December 23, 2024, January 24, and March 7, 2025 visit notes, and January 14, 2025 report, likewise, do not provide an opinion on whether appellant sustained a recurrence of disability commencing December 3, 2024. Therefore, this evidence is also insufficient to establish appellant's recurrence claim as the Board has held that medical evidence that does not address whether the claimed disability is causally related to the accepted employment-related conditions is of no probative value.<sup>20</sup>

In his February 19, 2025 report, Dr. Kiernan, OWCP's referral physician, opined that based on his normal clinical findings, appellant had no active residuals and that she was medically capable of performing her date-of-injury job as a mail processing clerk. The Board has held that medical evidence that negates causal relationship is of no probative value.<sup>21</sup> As such, this evidence is insufficient to establish appellant's recurrence claim.

The remaining medical evidence of record consists of diagnostic studies. However, the Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship.<sup>22</sup>

As the medical evidence of record is insufficient to establish a recurrence of disability commencing December 3, 2024, causally related to the accepted October 26, 2022 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.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing December 3, 2024, causally related to her October 26, 2022 accepted employment injury.

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<sup>20</sup> See *N.W.*, Docket No. 25-0270 (issued April 7, 2025); *M.T.*, Docket No. 24-0465 (issued September 27, 2024); *A.O.*, Docket No. 24-0382 (issued May 16, 2024); *F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>21</sup> See *M.H.*, Docket No. 25-0864 (issued January 5, 2026); *F.B.*, Docket No. 22-0679 (issued January 23, 2024); see also *M.J.*, Docket No. 05-577 (issued June 6, 2005).

<sup>22</sup> See *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *A.P.*, Docket No. 18-1690 (issued December 12, 2019); *R.M.*, Docket No. 18-0976 (issued January 3, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 25, 2026 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 2026  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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