

**United States Department of Labor
Employees' Compensation Appeals Board**

L.Z., Appellant

and

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Phoenix, AZ,
Employer**

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**Docket No. 16-1134
Issued: June 16, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 6, 2016 appellant filed a timely appeal from an April 18, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant met her burden of proof to establish a recurrence of disability beginning December 3, 2015 causally related to her February 17, 2015 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence to OWCP after the April 18, 2016 decision was issued. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this additional evidence. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On February 18, 2015 appellant, then a 48-year-old postal support employee (PSE) clerk, filed a traumatic injury claim (Form CA-1) for “lower back pain” that allegedly arose on February 17, 2015 due to offloading trays of mail into cages. On March 6, 2015 OWCP accepted appellant’s claim for thoracic back sprain. She experienced periods of intermittent wage-loss, and worked part-time, limited-duty beginning April 30, 2015. Effective August 29, 2015, appellant resumed her full-time, regular duties.³

On January 20, 2016 appellant filed a recurrence of disability claim (Form CA-2a) alleging that on December 3, 2015 she experienced a recurrence of disability due to her February 17, 2015 employment injury. She stated that since she had returned to work her pain had become intense and was bothering her most of the time. Appellant awoke with pain in her lower back after a workday and related it to her prior work injury because the pain was located in the same area. She reported that she had sustained no intervening injuries between her original injury on February 17, 2015 and the alleged recurrence on December 3, 2015. The employing establishment challenged appellant’s claim for recurrence of disability as she had not reported any pain or other issues to her supervisor and had failed to submit sufficient medical evidence establishing causal relationship.

In a December 8, 2015 report, Dr. Adarmes asserted that appellant experienced a back pain flare-up “[l]ast Friday while at work [when] [appellant] was bending and twisting while sweeping.” He reported that she had great difficulty rising out of a chair and climbing up onto the examination table. Dr. Adarmes diagnosed thoracic and lumbar sprain and took appellant off work for 10 days. In a December 8, 2015 work excuse note, he took her off work from December 5 to 17, 2015 due to her work-related injury.

On January 12, 2016 Dr. Adarmes reported that appellant had visited the emergency room since her last visit. Appellant took pain medication prior to physical therapy, passed out, and woke up in the emergency room. Dr. Adarmes noted that she had experienced increased pain when getting out of a chair or working. He diagnosed syncopal episode and recommended avoidance of all morphine-derived opioids. In a January 12, 2016 work excuse note, Dr. Adarmes took appellant off work for three weeks due to her work-related back injury.

In a January 22, 2016 duty status report (Form CA-17), Dr. Adarmes advised that appellant was still able to resume work.

In a duty status report (Form CA-17) dated February 10, 2016, Dr. Adarmes released appellant to full-time work on February 11, 2016 with the following restrictions: standing in 30-minute intervals for a total of four hours per day, walking in 30-minute intervals for a total of two hours per day, pulling and pushing no more than 5 pounds continuously and 20 pounds intermittently, and no bending, stooping, or twisting.

³ In a report dated August 27, 2015, Dr. Demitri A. Adarmes, a Board-certified internist and physiatrist, released appellant to return to work without restrictions. He diagnosed both thoracic and lumbar sprains, and advised that the latter condition should be added to appellant’s claim.

In a March 8, 2016 letter, OWCP advised appellant of the deficiencies of her recurrence claim. It requested additional evidence in support of the claim and afforded appellant 30 days to respond to its inquiries.

In response, appellant submitted two reports from Dr. Adarmes dated December 17, 2015 indicating that he had administered a lumbar steroid injection that day and had taken her off work through January 12, 2015 for her work-related injury. She further submitted a January 22, 2016 operative report from Dr. Adarmes who administered fluoroscopically-guided left L3-4, L4-5, and L5-S1 diagnostic facet joint nerve blocks.

In a February 10, 2016 progress report, Dr. Adarmes asserted that appellant went to physical therapy following her procedure and was dismissed because she was doing well. He advised that she was capable of performing full-time limited duty.

On March 2, 2016 appellant accepted a job offer from the employing establishment as a full-time modified PSE clerk with the following restrictions: sitting for an average of four hours per day, walking/standing (while changing positions as necessary for comfort) for an average of four hours per day, and lifting/carrying up to five pounds no more than two hours per day.

OWCP referred appellant, along with a statement of accepted facts and the medical evidence of record, to Dr. Michael A. Steingart, a Board-certified orthopedic surgeon, for a second opinion examination to determine the nature and extent of her accepted conditions. In his March 14, 2016 report, Dr. Steingart diagnosed thoracic sprain and degenerative thoracic disc. He also diagnosed lumbar sprain/strain and an annular disc tear at L3-4, which he indicated were related to appellant's employment injury. Dr. Steingart explained that twisting, turning, and lifting could aggravate a preexisting issue related to the lumbar and thoracic spine. He opined that appellant's preexisting condition of a degenerative thoracic and lumbar spine was temporarily aggravated by the work injury, which had resolved. Dr. Steingart concluded that she had reached maximum medical improvement and no additional treatment was needed. He opined that appellant was not capable of returning to her date-of-injury position "because of the aggravation of [appellant's] lumbar and thoracic spine, which [had] occurred on two occasions even after she was better." Dr. Steingart advised that she was capable of performing a sedentary to a light-duty type of job with the following restrictions: one hour of twisting, bending, and stooping, lifting up to 10 pounds for one to two hours per day, squatting one hour per day, and kneeling one hour per day.

In a March 15, 2016 report, Dr. Adarmes opined that appellant was capable of full duty for four hours per day followed by light duty for four hours per day with restrictions on lifting, carrying, pushing, pulling, and torquing.

On March 29, 2016 Dr. Adarmes released appellant to full-time full-duty work without restrictions.

In an April 4, 2016 report of termination of disability and/or payment (Form CA-3), the employing establishment indicated that appellant resumed her full duties without restrictions effective March 29, 2016.

By decision dated April 18, 2016, OWCP denied appellant's recurrence claim as the medical evidence of record was insufficient to establish that she sustained a recurrence of disability on December 3, 2015 causally related to her February 17, 2015 employment injury.

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 injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴ Recurrence of disability also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁵ Generally, a withdrawal of a light-duty assignment would constitute a recurrence of disability where the evidence established continuing injury-related disability for regular duty.⁶ A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties or other downsizing or where a loss of wage-earning capacity determination is in place.⁷

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.⁸

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish that the recurrence is causally related to the original injury.⁹ This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the condition is causally related to the employment injury.¹⁰ The physician's opinion must be based on a complete and accurate factual and medical history and supported by sound medical reasoning.¹¹

⁴ 20 C.F.R. § 10.5(x).

⁵ *Id.*

⁶ *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6a(4) (June 2013).

⁷ 20 C.F.R. §§ 10.5(x), 10.104(c) and 10.509; *see* Federal (FECA) Procedure Manual, *id.* at Chapter 2.1500.2b.

⁸ *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

⁹ 20 C.F.R. § 10.104(b); *see* Federal (FECA) Procedure Manual, *supra* note 6 at Chapter 2.1500.5 and 2.1500.6.

¹⁰ *See S.S.*, 59 ECAB 315, 318-19 (2008).

¹¹ *Id.* at 319.

ANALYSIS

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹² The claimant has the burden of proof to establish her claim for compensation. However, OWCP shares responsibility in the development of the evidence to see that justice is done.¹³ In this instance, it referred appellant with a statement of accepted facts and the medical evidence of record to Dr. Steingart for a second opinion examination to determine the nature and extent of her accepted conditions.

Based on a review of Dr. Steingart's March 14, 2016 report, the Board finds that he failed to fully explain the nature and extent of appellant's accepted conditions and related disability. He asserted that twisting, turning, and lifting could aggravate a preexisting issue related to the lumbar and thoracic spine and opined that appellant's preexisting condition of a degenerative thoracic and lumbar spine was temporarily aggravated by the work injury. Dr. Steingart concluded that appellant's temporary aggravation had resolved, but advised that she was not capable of returning to her date-of-injury position and provided work restrictions. A physician's opinion on causal relationship must be based on a complete factual and medical background and must be supported by medical rationale.¹⁴ Under the circumstances, additional clarification is necessary.¹⁵ Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁶

On remand OWCP shall obtain clarification from Dr. Steingart regarding whether appellant's claimed recurrence of disability on or after December 3, 2015 is causally related to her February 17, 2015 employment injury. After OWCP has further developed the record, it shall issue a *de novo* decision.

CONCLUSION

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

¹² See *S.L.*, Docket No. 16-0202 (issued August 23, 2016).

¹³ *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁴ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁵ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.3f(2) (July 2011).

¹⁶ *Richard F. Williams*, 55 ECAB 343, 346 (2004).

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: June 16, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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