

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

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C.A., Appellant )

and )

U.S. POSTAL SERVICE, SOUTHERN )  
MARYLAND PROCESSING & DISTRIBUTION )  
CENTER, Capitol Heights, MD, Employer )

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**Docket No. 10-1932  
Issued: June 17, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 20, 2010 appellant filed a timely appeal of the Office of Workers' Compensation Programs' (OWCP) March 2 and June 15, 2010 merit decisions denying his recurrence of disability claim and a July 13, 2010 nonmerit decision denying his request for reconsideration. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has established that he sustained a recurrence of total disability commencing October 19, 2009 causally related to his December 30, 2004 employment-related injury; and (2) whether the Office properly denied his request for reconsideration under 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

On appeal, appellant contends that the Office failed to consider new and relevant medical evidence he submitted along with his June 23, 2010 request for reconsideration in support of his recurrence of disability claim.

### **FACTUAL HISTORY**

On December 30, 2004 appellant, then a 48-year-old mechanic, filed a traumatic injury claim alleging that he experienced pain in his lower back when he bent down from the knee at work that day.

On November 27, 2009 appellant filed a recurrence of disability claim commencing October 19, 2009. He was not working at the time of the alleged recurrence of disability due to an injury. Following appellant's alleged December 30, 2004 injury, he had returned to limited-duty work. In an October 22, 2009 letter, appellant noted that, on October 19, 2009, he was at home when, as he attempted to exit his car, he felt a sharp pain in his lower back and could not get out of the car.

Medical records dated December 30, 2004 through January 18, 2005 stated that appellant had back pain and a lumbar strain. A January 7, 2005 report which contained the typed name of Dr. Michael A. Hill, a Board-certified internist, released appellant to return to work on January 7, 2005 with physical restrictions. In an October 21, 2009 progress note, Dr. Sagar V. Nootheti, an attending Board-certified orthopedic surgeon, reviewed a history that appellant slipped and injured his lower lumbar spine and neck. Appellant had recurrent pain in his lower lumbar and cervical spines. Dr. Nootheti listed his findings on clinical examination, noting that appellant had stiffness, pain and limited motion in the above-noted areas. He recommended physical therapy to treat appellant's neck and lower lumbar spine pain.

By decision dated January 8, 2010, the Office accepted appellant's claim for resolved lumbar strain. Also, on January 8, 2010 it requested that he submit factual and medical evidence, including a rationalized medical opinion from an attending physician explaining whether or how his current condition was causally related to the December 30, 2004 employment injury or October 19, 2009 incident.

In a January 22, 2010 report, Dr. Nootheti reviewed a history that appellant slipped and tripped at work on December 30, 2004. He diagnosed chronic lumbar strain, disc disease and cervical strain. Dr. Nootheti indicated with an affirmative mark that the diagnosed conditions were caused or aggravated by an employment activity.

On February 1, 2010 appellant filed a claim for wage-loss compensation Form CA-7 for the period December 22, 2009 through January 22, 2010. In a January 22, 2010 progress note, Dr. Nootheti reiterated the history that appellant slipped and tripped at work on December 30, 2004. He noted appellant's recurrent back pain over the past three to four months. Appellant complained about sharp pain radiating to his lower extremity. Dr. Nootheti listed his findings on physical examination and chronic lumbosacral sprain and disc herniation with radicular symptoms. He concluded that appellant could not work.

In a March 2, 2010 decision, the Office denied appellant's recurrence of disability claim on the grounds that the medical evidence of record was insufficient to establish total disability on October 19, 2009 due to his accepted December 30, 2004 employment injury.

By letter dated March 11, 2010, appellant requested reconsideration.

In a June 15, 2010 decision, the Office denied modification of the March 2, 2010 decision. The evidence submitted by appellant was found insufficient to establish that he sustained a recurrence of disability commencing October 19, 2009 due to his December 30, 2004 employment injury.

In a June 23, 2010 letter, appellant requested reconsideration. He stated that the results of an accompanying March 29, 2010 lumbar magnetic resonance imaging (MRI) scan supported the damage to his back on December 30, 2004 and recurrence of disability on October 19, 2009.

By decision dated July 13, 2010, the Office denied appellant's request for reconsideration. It found that he failed to raise a substantive legal question or submit new and relevant evidence.

### **LEGAL PRECEDENT -- ISSUE 1**

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment, which caused the illness. The term 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 (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>2</sup>

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. 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 light-duty job requirements.<sup>3</sup>

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>4</sup> In this regard, medical evidence

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<sup>2</sup> 20 C.F.R. § 10.5(x).

<sup>3</sup> See *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>4</sup> See *Ricky S. Storms*, 52 ECAB 349 (2001); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.<sup>5</sup> While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that appellant sustained a resolved lumbar strain as a result of bending down from the knee at work on December 30, 2004. Appellant claimed a recurrence of disability commencing October 19, 2009. He must demonstrate either that his condition has changed such that he could not perform the activities required by his modified job or that the requirements of the limited light-duty job changed. The Board finds that the record contains no evidence that the limited light-duty job requirements were changed or withdrawn or that appellant's employment-related condition has changed such that it precluded him from performing limited light-duty work.

The medical records dated December 30, 2004 through January 18, 2005 predate the alleged recurrence of disability on October 19, 2009 and, thus, do not render any opinion on causal relationship. The Board finds that these reports do not establish appellant's claim for a recurrence of disability.

Dr. Nootheti found that appellant had stiffness, pain and limited motion in his lower lumbar and cervical spines for which he required physical therapy. However, his October 21, 2009 progress note did not provide a firm medical diagnosis or address how the diagnosed condition and appellant's claimed recurrence of disability commencing October 19, 2009 were causally related to the December 30, 2004 injury. Medical evidence which does not offer any opinion regarding causal relationship is of diminished probative value.<sup>7</sup> Dr. Nootheti did not provide any opinion explaining how appellant's lumbar and cervical conditions were caused by the accepted 2004 lumbar strain. He also did not provide any opinion addressing appellant's disability for work commencing October 19, 2009. Further, it appears that Dr. Nootheti relied on an inaccurate history of injury. Dr. Nootheti stated that appellant slipped and injured his lower lumbar and cervical spines on December 30, 2004. This history is inconsistent with appellant's statement of injury and the incident accepted by the Office. The Board finds that Dr. Nootheti's progress note is insufficient to establish appellant's claim.

Similarly, Dr. Nootheti's January 22, 2010 report is insufficient to establish appellant's claim. He again relied on an inaccurate history of injury as he stated that appellant slipped and tripped at work on December 30, 2004. Dr. Nootheti indicated with an affirmative mark that his chronic lumbar strain, disc disease and cervical strain were caused by the December 30, 2004

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<sup>5</sup> For the importance of bridging information in establishing a claim for a recurrence of disability, see *Richard McBride*, 37 ECAB 748 at 753 (1986).

<sup>6</sup> See *Ricky S. Storms*, *supra* note 4; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>7</sup> See *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

injury. Reports which only address causal relationship with a check mark without more by way of medical rationale explaining how the incident caused the injury are insufficient to establish causal relationship and are of diminished probative value.<sup>8</sup> Dr. Nootheti did not adequately explain how the diagnosed conditions were caused or contributed to by the accepted injury.<sup>9</sup> The Board finds that his report is insufficient to establish appellant's claim.

Dr. Nootheti's January 22, 2010 progress note found that appellant was totally disabled for work. He relied on the inaccurate history of injury that appellant slipped and tripped at work on December 30, 2004. Dr. Nootheti listed his findings on clinical examination. He diagnosed chronic lumbosacral sprain and disc herniation with radicular symptoms. Again, Dr. Nootheti did not adequately address how appellant's accepted lumbar strain had changed such that he became disabled as of October 19, 2009. The Board finds that his progress note is insufficient to establish appellant's claim.

Appellant failed to submit rationalized medical evidence establishing that his disability commencing October 19, 2009 resulted from the residuals of his accepted lumbar strain.<sup>10</sup> He has not met his burden of proof.<sup>11</sup>

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(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

To require the Office to reopen a case for merit review under section 8128 of FECA,<sup>12</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>13</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>14</sup> When a claimant fails to meet one of the above

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<sup>8</sup> See *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

<sup>9</sup> See *Gloria J. McPherson*, 51 ECAB 441 (2000) (the opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant).

<sup>10</sup> *Cecelia M. Corley*, 56 ECAB 662 (2005).

<sup>11</sup> *Tammy L. Medley*, 55 ECAB 182 (2003).

<sup>12</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

<sup>13</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>14</sup> *Id.* at § 10.607(a).

standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

### **ANALYSIS -- ISSUE 2**

The Office denied appellant's request for further reconsideration on the merits of his claim on the grounds that he failed to submit any evidence or argument to warrant a merit review. On appeal, appellant contended that he submitted a March 29, 2010 lumbar MRI scan with his request for reconsideration which was not considered by the Office. The evidence, however, is not contained in the case record.

Although timely filed, appellant's June 23, 2010 application for reconsideration did not set forth any argument or contain evidence that either: (1) showed that the Office erroneously applied or interpreted a specific point of law; (2) advanced a relevant legal argument not previously considered by the Office; or (3) constituted relevant and pertinent new evidence not previously considered by the Office.<sup>15</sup> Because he failed to meet at least one of these standards, the Office properly denied the application for reconsideration without reopening the case for a review on the merits.<sup>16</sup>

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a recurrence of total disability commencing October 19, 2009 causally related to his December 30, 2004 employment-related injury. The Board further finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

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<sup>15</sup> *Id.* at § 10.606.

<sup>16</sup> *Id.* at § 10.608; *M.E.*, 58 ECAB 694 (2007) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 13, June 15 and March 2, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 17, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board