

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

B.B., Appellant)	
)	
and)	Docket No. 15-1738
)	Issued: January 12, 2017
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Brockton, MA, Employer)	
)	

Appearances: *Case Submitted on the Record*
Appellant, pro se
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 14, 2015 appellant filed a timely appeal from a May 21, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.³

¹ Together with her appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). By order dated July 26, 2016, the Board denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 15-1738 (issued July 26, 2016).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant submitted additional evidence after OWCP rendered its May 21, 2015 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1).

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish additional work-related conditions causally related to her July 5, 2011 work injury; and (2) whether she met her burden of proof to establish a recurrence of total disability due to her July 5, 2011 work injury.

FACTUAL HISTORY

On July 6, 2011 appellant, then a 51-year-old laundry worker supervisor, filed a traumatic injury claim (Form CA-1) alleging a right leg injury on July 5, 2011 when a “sani-trux” laundry cart she was unloading from a tractor trailer rolled backward, and she twisted her right leg while trying to push it forward. She did not stop work at the time of her July 5, 2011 injury. Appellant continued working in a light-duty position which she had been performing since January 2011 due to a prior work injury.⁴

On July 7, 2011 appellant visited Dr. Sucheta J. Doshi, an attending Board-certified family practitioner, and reported that she twisted her right leg on July 5, 2011 while unloading a laundry cart from a tractor trailer at work. On physical examination she reported pain in her back and right leg. Dr. Doshi noted “there are no findings on [examination] except the complaints of pain” and she diagnosed lumbosacral strain.

OWCP accepted appellant’s claim for a lumbosacral strain. Appellant received medical treatment for her back condition from two Board-certified orthopedic surgeons in the same medical practice, Dr. Arthur P. Carriere and Dr. Howard D. Martin.

The findings of August 31, 2011 x-ray testing of appellant’s lumbar spine contained an impression of moderate disc space narrowing at L4-5 and L5-S1 consistent with degenerative disc disease. A magnetic resonance imaging (MRI) scan of her lumbar spine, obtained on November 22, 2011, showed an impression of moderately advanced degenerative disc disease and circumferential bulges of the disc annuli at L4-5 and L5-S1. There was no significant central spinal stenosis at L4-5 or L5-S1.

Dr. Carriere referred appellant for physical therapy and she participated in an OWCP-authorized physical therapy program between November 2011 and January 2012. In a March 21, 2012 report, Dr. Martin reported that appellant complained of back and right leg pain. Appellant exhibited some restriction of back motion with pain complaints upon physical examination, but did not exhibit any muscle weakness and had a negative straight leg raising test. Dr. Martin

⁴ OWCP previously accepted other work-related traumatic injuries, including a back sprain/strain on January 12, 2009 (File No. xxxxxx251); muscle spasm of the back, right shoulder sprains/strains, and bilateral shoulder impingement syndrome on April 6, 2009 (File No. xxxxxx608); and abdominal strain on March 18, 2010 (File No. xxxxxx560). Appellant received compensation for various periods of disability. She claimed that she sustained a back injury on September 10, 2007 (File No. xxxxxx128) but her claim was administratively closed upon receipt and placed in short-form closure status. Appellant also has two retired claims which were filed for back conditions sustained on September 18, 1997 (File No. xxxxxx513) and March 24, 1998 (File No. xxxxxx956).

diagnosed lumbar canal stenosis and lumbar radiculopathy.⁵ In a July 13, 2012 letter, he indicated that the report of the March 21, 2012 physical examination detailed appellant's "subjective complaints."

The record reflects that appellant received no further medical treatment until August 28, 2013. In a report detailing appellant's visit on that date, Dr. Marshal S. Armitage, an attending Board-certified orthopedic surgeon, noted that appellant chiefly complained of bilateral shoulder, arm, and hand pain. He diagnosed bilateral impingement syndrome of the upper extremities.

In a September 12, 2013 report, Dr. Martin indicated that appellant presented "after an 18-month absence of the recurrence of her axial low back pain in excess of right-sided radiculopathy." Appellant reported that she was away on vacation approximately three weeks ago and developed, without an obvious or specific incident, axial low back pain and, to a far lesser extent, right-sided radiculopathy. Dr. Martin noted that physical examination revealed some restriction of back motion, negative straight leg testing, and normal motor and sensory examination of the lower extremities. He diagnosed lumbar spinal stenosis and lower back pain.

The case record contains another gap in the treatment of appellant's medical condition until July 2014. In a July 2, 2014 letter, Dr. Laurie L. Han, an attending Board-certified internist, indicated that appellant had a documented history of lumbar disc disease that manifested itself with right-sided sciatic and lower back pain. She noted that appellant had chronic low-grade pain and occasional exacerbations of more severe pain.⁶

On July 1, 2014 appellant completed a notice of an occupational injury and claim for compensation (Form CA-2) alleging "degenerative disc disease lumbar spine, down leg." She claimed that this condition was caused by repetitive work, dumping bags on belts, unloading trucks, pushing carts, folding laundry, and using machines. Appellant indicated that she became aware of her condition and its relationship to her federal employment on January 1, 1987. OWCP created a new occupational disease claim and assigned File No. xxxxxx670.

In a letter dated August 6, 2014, OWCP advised appellant regarding the type of evidence needed to establish an occupational disease claim. In another letter dated August 6, 2014, it requested information from the employing establishment. Appellant contacted OWCP *via* telephone on August 15, 2014 to advise that she had filed the wrong type of claim in July 2014 and wished to file a claim for a recurrence of disability due to her July 5, 2011 work injury, rather than a claim for a new occupational disease.

In a letter dated August 19, 2014, OWCP informed appellant that, if she wanted her claim for an occupational disease to be converted to a claim for a recurrence, she had to make such a request in writing.

⁵ Dr. Martin recommended during this period that appellant continue working in a light-duty position with restrictions of lifting/carrying no more than five pounds.

⁶ Dr. Han indicated, "See attached MRI documenting the degree of lumbar spine disease. Injury dates back to 1997." No diagnostic test results were attached to Dr. Han's July 2, 2014 letter.

In an undated letter received by OWCP on August 29, 2014, appellant advised that her claim filed in July 2014 was not for a new injury. She spoke to an OWCP official *via* telephone on September 4, 2014. The official advised appellant that, based upon her prior calls and correspondence, her Form CA-2 claim created under File No. xxxxxx670 had been deleted from the electronic record.⁷

Appellant submitted an August 26, 2014 report in which Dr. Huan T. Ngo, an attending Board-certified emergency medicine physician, indicated that she reported to the emergency room on that date with a chief complaint of lumbosacral pain. Dr. Ngo noted that appellant had a history of “back injury and intervertebral disc disease” and diagnosed “back pain.”

In an August 29, 2014 narrative report, an attending nurse practitioner noted that appellant reported that she experienced back pain while at work on August 25, 2014. In this report and a form report dated August 29, 2014, the nurse recommended that appellant continue to perform light-duty work with no lifting or carrying more than five pounds.

In an August 29, 2014 form report, Dr. Han indicated that appellant was excused from work on August 28 and 29, 2014 and could return to light-duty work, with no heavy lifting, on September 1, 2014. The findings of August 29, 2014 x-ray testing of appellant’s lumbosacral spine contained an impression of degenerative disc disease at L4-5 and L5-S1.⁸

On October 7, 2014 OWCP issued appellant a development letter advising her of the type of evidence needed to establish a claim for a recurrence of disability. It requested that she complete an attached development questionnaire. In response to the development letter, appellant submitted a questionnaire that she completed on October 29, 2014. She explained that her back began hurting at work and progressively worsened as the day went on. Appellant asserted that the degenerative disc disease of her lumbar spine and sciatica radiating into her right leg were related to her original July 5, 2011 injury.⁹

Appellant submitted an attending physician’s report (Form CA-20), completed on September 22, 2014, in which Dr. Han listed the date of injury as July 5, 2011 and the history of injury as “unloading truck.” Dr. Han diagnosed degenerative disc disease of the lumbar spine and sciatica of the right leg and checked a box marked “Yes” indicating that appellant’s condition was caused or aggravated by the listed employment activity. She noted that appellant was “still working” in a light-duty position. In another form report dated September 22, 2014, Dr. Han indicated that appellant could return to modified duty.

⁷ By letter dated September 8, 2014, OWCP again advised appellant that the claim for an occupational injury had been deleted and that the Form CA-2 had been converted into a claim for recurrence of disability (Form CA-2a) under the file number for the instant claim. It informed her that all documents from the deleted file would be moved into the file for her July 5, 2011 traumatic injury case.

⁸ In a September 3, 2014 letter received on September 22, 2014, appellant again advised that her claim was for a recurrence of disability due to her July 5, 2011 work injury, rather than a claim for a new occupational disease.

⁹ Appellant also indicated, without elaboration, that her low back had been injured in August 2013.

In an October 1, 2014 report, Dr. Doshi indicated in the history portion of the report that appellant had been followed for a July 5, 2011 back injury and was “being seen for a recurrence on [August 25, 2014].” She noted that a report dated September 22, 2014 had found appellant capable of performing modified duty with no lifting or carrying more than five pounds.

In October 1 and 14, 2014 reports, an attending nurse indicated that appellant was cleared for modified duty.

By decision dated December 1, 2014, OWCP denied appellant’s claim for a recurrence of total disability due to her July 5, 2011 work injury. It found that she had failed to submit rationalized medical evidence establishing a recurrence of disability due to a spontaneous worsening of her accepted work-related condition, a lumbosacral strain. OWCP also determined that appellant failed to submit medical evidence establishing that she sustained additional work-related conditions as a result of her July 5, 2011 work injury, including degenerative lumbar disc disease and right-sided sciatica.

Appellant disagreed with OWCP’s December 1, 2014 decision and requested a review of the written record by an OWCP hearing representative. She submitted a handwritten statement in which she continued to argue that she had sustained a recurrence of disability and that degenerative lumbar disc disease and sciatica were due to the July 5, 2011 injury.

In a November 3, 2014 report, Dr. Stefan C. Muzin, an attending Board-certified physical medical and rehabilitation physician, described appellant’s July 5, 2011 work injury while loading a truck. He noted that she complained of low back pain and pain going down her right leg. Dr. Muzin reported findings on physical examination and diagnosed degenerative lumbar disc disease and lumbar spondylosis/facet arthritis. He indicated that the MRI scan did not show any major neural compression and that appellant’s physical examination was “relatively benign.” Dr. Muzin recommended that appellant participate in physical therapy.

In a December 18, 2014 report, Dr. Han discussed appellant’s medical history, noting that she reported having back problems since 1997. He indicated that her most recent flare-up of lower back and radicular pain occurred on August 26, 2014. Dr. Han noted that the degenerative disc disease and arthritis of appellant’s back were permanent and that she had permanent restrictions, including no lifting or carrying more than five pounds.

On February 2, 2015 Dr. Muzin indicated that appellant had L4-5 versus L5-S1 nerve compression on the right side which might explain her symptoms and weakness. He recommended additional MRI scan testing and an electromyogram of the right leg.

By an April 22, 2015 letter, the employing establishment controverted appellant’s claims for recurrence of disability and for additional work-related conditions because she had failed to submit medical evidence supporting her claims.

By decision dated May 21, 2015, the hearing representative affirmed OWCP’s December 1, 2014 decision finding that appellant had failed to submit rationalized medical evidence establishing a recurrence of total disability due to her July 5, 2011 work injury. OWCP further found that appellant had failed to establish additional work-related conditions as a result

of her July 5, 2011 work injury, including degenerative lumbar disc disease and right-sided sciatica.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any specific condition and/or disability for which compensation is claimed are causally related to the employment injury.¹⁰

The medical evidence required to establish a causal relationship between a claimed condition and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.¹¹

ANALYSIS -- ISSUE 1

OWCP accepted appellant’s claim for a lumbosacral strain sustained on July 5, 2011 when a laundry cart she was unloading from a tractor trailer rolled backward and she twisted her right leg trying to pull it forward. Appellant did not stop work on July 5, 2011. She continued working in the light-duty position she had been performing since January 2011 due to a prior work injury.¹² In July 2014, she filed a claim for recurrence alleging that she sustained a recurrence of total disability due to her July 5, 2011 work injury. In conjunction with this recurrence of disability claim, appellant claimed additional work-related conditions as a result of her July 5, 2011 work injury, including degenerative lumbar disc disease and right-sided sciatica.

The Board finds that appellant failed to submit sufficient evidence to establish her claim for additional work-related conditions as a result of her July 5, 2011 work injury.

Appellant submitted a September 22, 2014 Form CA-20 report in which Dr. Han, an attending physician, listed the date of injury as July 5, 2011 and the history of injury as “unloading truck.” Dr. Han diagnosed degenerative disc disease of the lumbar spine and sciatica of the right leg and checked a box marked “Yes” indicating that her conditions were caused or aggravated by the listed employment activity. Dr. Han however did not provide medical rationale in support of his opinion on causal relationship. The Board has held that when a physician’s opinion on causal relationship consists only of checking a box to a form question,

¹⁰ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

¹¹ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹² Appellant was subjected to work restrictions including no lifting or carrying more than five pounds.

without more by the way of medical rationale, that opinion has little probative value and is insufficient to establish causal relationship.¹³

Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.¹⁴ Dr. Han did not describe the July 5, 2011 work incident in any detail or explain the medical process through which it could have caused or aggravated degenerative lumbar disc disease, right-sided sciatica, or some condition other than the accepted lumbosacral strain.

The record contains reports in which other attending physicians diagnosed degenerative lumbar disc disease and right-sided sciatica/radiculopathy, but none of these reports contain an opinion that these conditions were related to the July 5, 2011 work injury. For example, in a March 21, 2012 report, Dr. Martin diagnosed lumbar canal stenosis and lumbar radiculopathy. In a November 3, 2014 report, Dr. Muzin diagnosed degenerative lumbar disc disease and lumbar spondylosis/facet arthritis. Although Dr. Martin and Dr. Muzin mentioned the July 5, 2011 work injury, neither physician provided an opinion that appellant had sustained degenerative lumbar disc disease, lumbar spondylosis/facet arthritis, or any condition other than a lumbosacral strain as a result of the July 5, 2011 work injury.

As appellant failed to submit a rationalized medical report establishing a medical condition other than a lumbosacral strain as a result of the July 5, 2011 work injury, OWCP properly denied her claim for additional work-related conditions.

LEGAL PRECEDENT -- ISSUE 2

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she 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 or she 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.¹⁵

The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The

¹³ See *D.D.*, 57 ECAB 734, 739 (2006); *Deborah L. Beatty*, 54 ECAB 340, 341 (2003).

¹⁴ *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

¹⁵ *S.F.*, 59 ECAB 525 (2008); *Terry R. Hedman*, 38 ECAB 222 (1986). 20 C.F.R. § 10.5(x) provides, "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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This 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."

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.¹⁶

ANALYSIS -- ISSUE 2

Appellant claimed a recurrence of total disability due to her accepted July 5, 2011 work injury, a lumbosacral strain.¹⁷ The Board finds that appellant failed to submit medical evidence establishing a recurrence of total disability due to her accepted July 5, 2011 work injury.

Appellant submitted an August 29, 2014 form report in which Dr. Han indicated that she was excused from work on August 28 and 29, 2014 and could return to light-duty work, with no heavy lifting, on September 1, 2014. Dr. Han however provided no opinion on the cause of appellant's disability. The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's condition/disability is of limited probative value on the issue of causal relationship.¹⁸

In an October 1, 2014 report, Dr. Doshi, an attending physician, indicated in the history portion of the report that appellant had been followed for a July 5, 2011 back injury and was "being seen for a recurrence on [August 25, 2014]." She did not, however, provide her own rationalized medical opinion that appellant sustained a recurrence of disability due to her July 5, 2011 work injury. In her report, Dr. Doshi merely repeated appellant's belief that she sustained such a recurrence of disability.

The Board notes that the record contains several reports in which attending physicians found that appellant could continue performing the light-duty work she had performed since 2011. None of these physicians described a worsening of appellant's July 5, 2011 work injury that was supported by objective findings on physical examination and diagnostic testing. A rationalized medical opinion supporting appellant's claim for a recurrence of disability is especially necessary in the present case as appellant had a preexisting back condition and the record contains significant gaps in the medical treatment of her back condition.¹⁹

Appellant failed to submit probative medical evidence showing that her July 5, 2011 work injury worsened such that she had total disability from work in 2014 as alleged.²⁰ On appeal she argues that she sustained a recurrence of disability due to her July 5, 2011 work injury because she continued to have symptoms which she believed were related to that injury. For the

¹⁶ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹⁷ The Board notes that appellant did not identify a specific date for her claimed recurrence of disability but rather generally indicated that it occurred in July or August 2014.

¹⁸ See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

¹⁹ The Board further notes that appellant did not allege or establish a change in the nature and extent of her light-duty job requirements. See *supra* note 15.

²⁰ *L.L.*, Docket No. 13-829 (issued August 20, 2013).

reasons described above, appellant failed to submit medical evidence establishing such a work-related recurrence of disability due to her July 5, 2011 work injury.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish additional work-related conditions causally related to her July 5, 2011 work injury. The Board further finds that she did not meet her burden of proof to establish a recurrence of total disability due to her July 5, 2011 work injury.

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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