



## **FACTUAL HISTORY**

On September 12, 2003 appellant, then a 34-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that he developed nerve entrapment along with atrophic right testicle. He attributed his condition to carrying a city route along with a rural route on July 31, 2003, straining his groin. On October 17, 2003 OWCP accepted aggravation of nerve entrapment right groin with authorized surgical release.<sup>3</sup> Appellant underwent right groin exploration, removal of atrophic testicle, repair of the right inguinal floor with mesh, and excision of remaining cord on October 28, 2003. He returned to a light-duty position on November 24, 2003.

Appellant filed a second occupational disease claim (Form CA-2) on April 16, 2004 for herniated discs and disc degeneration on March 31, 2004. On June 21, 2004 OWCP accepted, as a consequential injury of the July 31, 2003 employment injury, lumbar disc herniation L5-S1 and L4-5. Appellant again returned to limited duty on December 14, 2004. On August 25, 2005 he accepted a modified position at the employing establishment. OWCP authorized the left L4-5 and L5-S1 microdiscectomies on June 26, 2006. He returned to modified duty on January 22, 2007.

On March 24, 2007 appellant filed a claim for a recurrence of disability (Form CA-2a) alleging that he could not sustain an upright position and attributed his condition to his recurrent disc herniations at L5-S1 with severe nerve compression. In a decision dated May 30, 2007, OWCP accepted a recurrence claim of disability.

On May 16, 2007 appellant underwent an L4-5 and L5-S1 reexplorative bilateral decompression laminectomies, bilateral discectomies, and L4-5 and L5-S1 posterolateral interbody fusion with cages, L4, L5, and S1 intertransverse arthrodesis, and L4, L5, and S1 internal fixation. He returned to work on October 4, 2008 where he remained until July 8, 2010 when he was promoted to supervisor, customer service, effective March 13, 2010.<sup>4</sup>

Appellant filed a schedule award claim (Form CA-7) on November 3, 2008. By decision dated November 22, 2010, OWCP granted a schedule award for five percent permanent impairment of his right lower extremity.

On August 28, 2016 appellant filed a claim for a recurrence of disability (Form CA-2a) commencing May 10, 2016 alleging lumbosacral strain with bilateral sciatic neuritis due to work stress. He asserted that he had been diagnosed with chronic pain, anxiety, and depression within the last four months.<sup>5</sup>

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<sup>3</sup> Appellant had four previous nonemployment-related surgeries, including right inguinal hernia repair and three explorations due to groin pain.

<sup>4</sup> The most recent medical evidence prior to appellant's recurrence claim was a series of notes dated June 11, 2013 regarding a facial laceration sustained when a sliding retractable door hit him at work.

<sup>5</sup> Beginning on February 26, 2012, appellant changed employing establishments and was working for the Federal Bureau of Investigations, Dallas, Texas.

Appellant filed a claim for wage-loss compensation (Form CA-7) on August 28, 2016 for the period July 14 through September 2, 2016.

In a letter dated September 8, 2016, OWCP requested additional factual and medical evidence to support the claim and afforded him 30 days to respond.

Appellant submitted a note dated May 18, 2016 from a physician whose signature is illegible diagnosing lumbar disc herniation/strains, right chronic radiculopathy, and sacroiliitis. Dr. Frederic J. Simmons, an osteopath, completed a report dated July 28, 2016 and diagnosed lumbosacral strain with bilateral sciatic neuritis. He indicated that appellant was disabled beginning July 1, 2016.

Dr. Syed Hussain Aziz, an internist, examined appellant on May 19, 2016 and diagnosed chronic mid and lower back pain with stable computerized tomography (CT) results. He noted low back pain with neuropathy and neurogenic claudication. Dr. Aziz indicated that appellant was stable and completely functional working in a law enforcement agency. He also reported that appellant had some work-related stress, but no significant change compared to his prior examination with postsurgical findings related to discectomy, posterior decompression, and fusion at L4-5 and L5-S1.

Dr. Gordon C. Sauer, a clinical psychologist, examined appellant on August 4 and September 8, 2016 and diagnosed anxiety and depression. He found that appellant was totally disabled from work. Appellant also submitted a June 7, 2016 report from Kristen Backe, a mental health specialist.

By decision dated November 28, 2016, OWCP denied appellant's claim for a recurrence of disability finding that the medical evidence of record did not establish that he was disabled due to a worsening of his accepted work-related conditions.<sup>6</sup>

### **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 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>7</sup>

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<sup>6</sup> On December 12 and 30, 2016 appellant requested reconsideration from OWCP of its November 28, 2016 decision. By decision dated March 1, 2017, OWCP reviewed the merits of appellant's recurrence claim and denied modification of the November 28, 2016 decision. The Board and OWCP may not simultaneously have jurisdiction over the same case. Because OWCP must review its prior decision in order to determine whether appellant submitted additional new and relevant evidence, it may not issue a decision regarding the same issue on appeal before the Board. OWCP therefore did not have the authority to issue its March 1, 2017 decision. The Board, therefore, finds that decision to be null and void. *Arlonia B. Taylor*, 44 ECAB 591, 597 (1993).

<sup>7</sup> 20 C.F.R. § 10.5(x).

Appellant has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence, causal relationship between his recurrence of disability commencing May 10, 2016 and his July 31, 2003 employment injury.<sup>8</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>9</sup> In order to establish that a claimant's alleged recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between his or her present condition and the accepted injury must support the physician's conclusion of a causal relationship.<sup>10</sup> A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.<sup>11</sup> Medical rationale includes a physician's detailed opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty, and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and specific employment activity or factors identified by the claimant.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability on May 10, 2016 causally related to his July 31, 2003 employment injury.

OWCP accepted appellant's July 31, 2003 employment injury for aggravation of nerve entrapment, right groin, with authorized surgical release, and lumbar disc herniation L5-S1 and L4-5. Appellant changed jobs in 2012 and subsequently filed a recurrence claim for disability beginning May 10, 2016 due to his additional condition of bilateral sciatic neuritis, chronic pain, anxiety, and depression. By decision dated November 28, 2016, OWCP denied appellant's claim for a recurrence of disability.

Appellant has the burden of proof to provide medical evidence to establish that he was disabled due to a worsening of his accepted work-related conditions.<sup>13</sup> In support of his claim, he submitted medical evidence from Dr. Simmons diagnosing lumbosacral strain with bilateral sciatic neuritis. Dr. Simmons, however, did not provide any opinion regarding the cause of the diagnosed condition. The Board has found that medical evidence that does not offer any opinion

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<sup>8</sup> *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>9</sup> *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>10</sup> *T.M.*, Docket No. 17-0068 (issued April 6, 2017); *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

<sup>11</sup> *T.F.*, 58 ECAB 128 (2006).

<sup>12</sup> *A.D.*, 58 ECAB 149 (2006).

<sup>13</sup> *T.M.*, *supra* note 10; *D.L.*, Docket No. 13-1653 (issued November 22, 2013).

regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>14</sup>

Dr. Aziz diagnosed chronic mid and lower back pain. The Board has held that the mere diagnosis of "pain" does not constitute the basis for payment of compensation.<sup>15</sup> As this report did not provide a clear medical diagnosis nor address causation, it is insufficient to establish appellant's claim of a recurrence due to his accepted employment injury. He further noted no significant change compared to appellant's prior examinations related to his discectomy, posterior decompression, and fusion at L4-5 and L5-S1. This statement does not support appellant's claim for a recurrence as it denies a change in a medical condition, instead indicating that appellant's back conditions had not changed.<sup>16</sup>

Dr. Sauer diagnosed anxiety and depression on August 4, and September 8, 2016. He did not address causal relationship between these conditions and appellant's accepted employment injuries.<sup>17</sup>

Appellant also submitted a June 7, 2016 report from Kristen Backe, a mental health specialist. FECA provides that a physician includes: surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law.<sup>18</sup> Healthcare providers such as licensed clinical social workers, nurses, acupuncturists, physician assistants, and physical therapists are not considered physicians under FECA and their reports and opinions do not constitute competent medical evidence to establish a medical condition, disability or causal relationship.<sup>19</sup>

Finally, the May 18, 2016 note from a physician whose signature is illegible is also insufficient to establish appellant's recurrence claim. A report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence.<sup>20</sup>

Thus, appellant failed to meet his burden of proof.

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<sup>14</sup> *T.M.*, *supra* note 10; *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>15</sup> *Robert Broome*, 55 ECAB 339 (2004).

<sup>16</sup> *C.G.*, Docket No. 16-1196 (issued March 6, 2017).

<sup>17</sup> *Supra* note 14.

<sup>18</sup> 5 U.S.C. § 8101(2); *T.R.*, Docket No. 17-0239 (issued April 12, 2017); *V.C.*, Docket No. 16-0642 (issued April 19, 2016); *Allen C. Hundley*, 53 ECAB 551 (2002). *K.W.*, *supra* note 14; *David P. Sawckuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

<sup>19</sup> *Id.*; *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

<sup>20</sup> *See R.M.*, 59 ECAB 690, 693 (2008); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

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.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability commencing May 10, 2016 causally related to his July 31, 2003 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 28, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 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