

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

W.M., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Minneapolis, MN, Employer**

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**Docket No. 16-1658
Issued: May 3, 2017**

Appearances:
*Capp P. Taylor, Esq., for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 15, 2016 appellant, through counsel, filed a timely appeal from a July 7, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issues are: (1) whether appellant established that he sustained a recurrence of disability commencing February 11, 2015 causally related to his March 7, 2013 employment injury; and (2) whether he sustained a back injury as a consequence of his employment injury.

FACTUAL HISTORY

On March 13, 2013 appellant, then a 35-year-old medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that on March 7, 2013 he fractured his right ankle when he slipped and fell while stepping out of his vehicle in the employing establishment parking lot. He stopped work. On March 14, 2013 appellant underwent right ankle surgery. OWCP accepted his claim for closed fracture of the right ankle and paid compensation benefits.

On July 25, 2013 appellant returned to part-time limited-duty work for four hours per day. He stopped work again on July 29, 2013 and filed a claim for recurrence of disability (Form CA-2a). OWCP accepted appellant's recurrence of disability claim and expanded the acceptance of his claim to include right knee medial collateral ligament (MCL) sprain. It paid wage-loss compensation benefits. Appellant returned to work part time on October 3, 2013. He stopped work again on November 17, 2013.³ On May 25, 2014 appellant returned to his original position.

Appellant continued to receive medical treatment and underwent diagnostic examinations. In a May 28, 2014 magnetic resonance imaging (MRI) scan examination report of the right knee, Dr. Nathan D. Block, a Board-certified diagnostic radiologist, observed slight surface irregularity of the undersurface of the medial meniscal body and mild thickening of the MCL near its femoral attachment without signal abnormality suggestive of old resolved sprain. He reported that the examination was otherwise negative. In an August 4, 2014 computerized tomography (CT) scan report of the right ankle, Dr. Eric J. Weinberg, a Board-certified diagnostic radiologist, noted postoperative changes along the distal fibula. No definite residual fracture line or acute findings were confirmed.

In a January 15, 2015 progress note, Dr. Fernando A. Pena, a Board-certified orthopedic surgeon, examined appellant for status post right ankle surgery performed on March 14, 2013. He related appellant's complaints of continued problems and difficulties to the ankle, including spasms. Dr. Pena reported a completely benign examination with full range of motion of the ankle, hind foot, and midfoot joints. Neurovascular examination was also grossly intact. He diagnosed status post right ankle open reduction internal fixation (ORIF). Dr. Pena explained that he still did not understand the source of appellant's pain, especially since the August 2014 CT scan did not show any obvious pathology. He recommended an additional MRI scan to explain the source of appellant's spasms and cramping. Dr. Pena indicated that appellant could work with restrictions.

³ Appellant filed various claims for wage-loss compensation beginning November 18, 2013. In a decision dated April 21, 2014, OWCP denied his claim for disability compensation beginning November 18, 2013. Appellant did not appeal the April 21, 2014 decision.

Appellant underwent the requested MRI scan examination by Dr. Berta Kvamme, a Board-certified diagnostic radiologist, who indicated in a February 6, 2015 report that appellant had mild degenerative changes involving the lumbar spine with a component of probable mild congenital central stenosis to the thecal sac with a superimposed prominent posterior epidural fat pac and bulge with mild-to-moderate central stenosis at L4-L5.

On February 11, 2015 appellant stopped work again and filed wage-loss compensation claims (Form CA-7) for the period February 11 to April 4, 2015.

Dr. Pena continued to treat appellant. In work status reports dated February 11 and 20, 2015, he indicated that appellant was unable to work on February 11, 2015 until he had a lumbar spine consultation which was pending workers' compensation approval.

In consultation notes dated February 27 and March 27, 2015, Gretchen Zachel, a certified physician assistant, indicated that appellant was seen for follow-up of significant pain from an employment injury. She noted that a lumbar spine MRI scan showed mild degenerative changes in appellant's lumbar spine. Upon examination, Ms. Zachel observed vertebral tenderness, spasm, paraspinous tenderness, and trigger points in appellant's lumbar spine. She also related appellant's complaints of pain with lumbar spine extension and lateral rotation to both sides and pain to palpation over right and left facet joints. Examination of the lower extremities revealed large degenerative changes and decreased range of motion. Ms. Zachel diagnosed right lower extremity pain, back pain, and neck pain.

By letter dated April 1, 2015, OWCP advised appellant that the evidence of record was insufficient to establish his claims for disability compensation for the period February 11 to March 21, 2015 due to a worsening of his March 7, 2013 employment injury. It noted that the medical evidence received referred to a back condition, but OWCP had only accepted appellant's claim for a right knee and ankle condition. OWCP requested that appellant respond to an attached questionnaire and submit medical evidence to establish that he was unable to work during the claimed period due to a spontaneous change and worsening of his accepted conditions. Appellant was afforded 30 days to submit the requested evidence.

Dr. Pena examined appellant again and indicated in a progress note dated April 6, 2015 that appellant was not approved for workers' compensation with regards to appellant's low back pain. He diagnosed status post right ankle ORIF. Dr. Pena explained that he could neither guarantee nor rule out that appellant's back condition was connected to his ankle injury. He opined that there was a possibility that appellant had some aggravation of his back given the fact that he had been limping and walking unevenly on his ankle joint. Dr. Pena again opined that appellant was unable to work beginning February 11, 2015.

By decision dated April 22, 2015, OWCP denied appellant's claim for compensation for a recurrence of disability for the period February 11 to April 4, 2015 finding that the medical evidence of record failed to establish that he was unable to work as a result of his March 7, 2013 employment injury. It determined that the medical evidence was insufficient to demonstrate that he sustained a change or worsening of his accepted right knee and ankle conditions to the extent that he was unable to work.

On May 19, 2015 OWCP received appellant's request, through counsel, for a hearing before an OWCP hearing representative. Appellant continued to file various wage-loss compensation claims (Form CA-7).

Dr. Matthew Thorson, Board-certified in pain medicine and anesthesiology, related in an April 23, 2015 report that appellant complained of pain in his neck, upper back with spasm, right foot, right knee, and right hip. He noted that the precipitating event was an employment injury. Dr. Thorson reviewed appellant's history and indicated that an imaging study revealed right knee MCL partial tear and mild lumbar stenosis. Upon examination, he observed no acute distress. Dr. Thorson diagnosed right knee arthralgia, right knee sprain, chronic pain syndrome, and lumbar spinal stenosis. He reported that appellant's low back was not related to his accepted injury, but his knee was. Dr. Thorson noted that appellant had become a chronic pain, narcotic patient because of the length of time it had taken to get his knee injection approved.

Appellant continued to receive treatment from Ms. Zachel for follow-up of pain management. In an April 24, 2015 consultation note, Ms. Zachel provided physical examination findings similar to her previous reports. Examination of the lower extremities revealed large joint degenerative changes and decreased range of motion. Ms. Zachel diagnosed neck pain, back pain, and right lower extremity pain.

In progress notes dated May 19 to October 27, 2015, Courtney Freeman, a physician assistant, related appellant's complaints of pain in his neck radiating to the bilateral shoulders, upper and lower back, right ankle, right foot, right knee, and right hip. She diagnosed chronic pain syndrome, thoracic pain, lumbar spinal stenosis, right knee arthralgia, and right knee sprain/strain. In an August 10, 2015 form, Ms. Freeman indicated that appellant was unable to work beginning August 10, 2015.

Dr. Pena continued to treat appellant. In an October 26, 2015 follow-up report, he noted that appellant complained of pain and swelling on the lateral ankle and increasing back pain after wearing a walking boot. Dr. Pena related that appellant had been back to work intermittently between May 2014 and March 2015, but was not currently working. On examination, he observed full range of motion of the ankle, hind foot, and midfoot joints. Neurovascular examination was intact. Dr. Pena diagnosed right ankle pain of unknown etiology and status post right ankle surgery. He indicated that he informed appellant of the possibility that the walking boot and altering his gait were contributing factors to his hip and back pain. On a separate form, Dr. Pena noted that appellant was unable to work beginning October 27, 2015. In a December 14, 2015 order form, he recommended physical therapy to address pain and swelling likely due to the disuse of the ankle.

In a November 24, 2015 report, Cole Weiske, a certified physician assistant, related appellant's complaints of right knee pain since a March 2013 employment injury. He reviewed appellant's history and conducted an examination. Mr. Weiske diagnosed lower extremity segmental dysfunction, right knee sprain, and right knee joint pain. He opined that all diagnoses were causally related to the March 7, 2013 accident.

A hearing was held on December 22, 2015. Appellant, who was represented by counsel, confirmed that his last day of work was February 10, 2015. He described his duties as a medical

support assistant, which included proper scheduling of appointments, completing doctor's orders for patients, assisting patients to the appropriate department, and performing clerical duties such as faxing and data entry. Appellant noted that his job was primarily sedentary, but he walked around a bit to locate doctors or nurses. He testified that he began to notice back pain around April 2013 when he was placed in a walking boot. Appellant explained that he used a walking boot until May 2013, then he used a hinged knee brace, and a cane. He alleged that his back pain worsened during the time. Appellant believed that his knee injury and the boot caused uneven walking which contributed to his back condition.

Appellant further discussed the medical providers who were treating him for his lower extremity and back pain. He noted that Dr. Pena initially advised him not to work in February 2015 due to persistent right ankle, right knee, and lower back pain. Appellant related that Dr. Thorson also submitted various requests for injections and a knee scope for his right knee, but OWCP denied those requests. He reported that Dr. Thorson took him out of work in September or October 2015. Counsel asserted that Dr. Pena and Dr. Thorson would be submitting statements within 30 days.

In a decision dated February 10, 2016, an OWCP hearing representative affirmed the April 22, 2015 decision which denied appellant's recurrence of disability claim. He found that the evidence of record did not support disability from work beginning February 11, 2015 due to the worsening or residuals of the March 7, 2013 employment injury. The hearing representative further determined that the medical evidence of record lacked sufficient rationale to establish that appellant sustained a consequential lumbar condition due to his March 7, 2013 employment injury.

On April 11, 2016 appellant, through counsel, requested reconsideration. In a statement dated April 7, 2016, counsel noted that in a March 29, 2016 report, Dr. Thorson discussed his opinion that appellant's altered gait caused or at least contributed to appellant's lumbar condition. He asserted that the evidence demonstrated that appellant suffered a consequential injury to his lumbar spine and that he had additional restrictions which rendered him incapable of performing his job. Counsel requested that OWCP accept the consequential lumbar condition and pay wage-loss compensation from February 11, 2015 forward. Appellant resubmitted diagnostic examination reports and Dr. Pena's reports from 2015.

Dr. Thorson examined appellant again and in a report dated March 29, 2016, he indicated that he had treated appellant since January 2014 for work-related injuries to the right ankle and right knee. He explained that appellant had a history of a severely fractured right ankle and right medial collateral ligament injury of the right knee. Dr. Thorson related that he subsequently treated appellant for low back pain secondary to lumbar spinal stenosis and spondylosis. He opined that appellant developed the low back issue secondary to the initial lower extremity issue. Dr. Thorson explained that appellant had to walk with an altered gait, which may have advanced the low back pain issue. He opined that based on the February 2015 MRI scan findings of spinal stenosis and spondylosis, clinical correlation of pain and gait pattern, and overall patient history, it was within a reasonable degree of medical certainty "that the altered gait caused by the initial right ankle and right knee injuries caused or at least materially contributed to the lumbar stenosis/spondylosis." Dr. Thorson reported that with regard to the low back condition, appellant was capable of working with restrictions.

In a report dated May 11, 2016, Dr. Pena indicated that he treated appellant regarding his right ankle pain. He noted that appellant's last visit was on October 26, 2015. Dr. Pena related that appellant wished to discuss his workmen's compensation case and asked about a letter from his lawyer. He reported no new symptoms or other concerns. Dr. Pena reported that an examination was not performed and diagnosed status post right ankle ORIF surgery completed on March 14, 2013.

By decision dated July 7, 2016, OWCP denied modification of the February 10, 2016 decision. It determined that the medical evidence of record attributed appellant's current symptoms and inability to work to low back pain, and not his accepted right ankle and leg conditions. OWCP found that appellant failed to establish that his low back condition or his inability to work on February 11, 2015 was causally related to the March 7, 2013 employment injury.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.⁴ For each period of disability claimed, an employee has the burden of establishing a causal relationship between his or her recurrence of disability and the accepted employment injury.⁵

OWCP's implementing regulations define a recurrence of disability as 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.⁶ 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.⁷

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative, and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury.⁸ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *Dominic M. Descaled*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁶ 20 C.F.R. § 10.5(x).

⁷ *Id.*

⁸ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

that conclusion with sound medical reasoning.⁹ For each period of disability claimed, the employee must establish that he was disabled for work as a result of the accepted employment injury. The Board will not require OWCP to pay compensation for disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁰

ANALYSIS -- ISSUE 1

OWCP accepted that on March 7, 2013 appellant sustained a closed fracture of the right ankle and MCL sprain of the right knee when he slipped and fell at work. He underwent right ankle surgery and was placed off work. On May 25, 2014 appellant returned to work. He stopped work again on February 11, 2015 and filed various claims for wage-loss compensation. OWCP denied appellant's recurrence of disability claims finding that he had failed to provide sufficient medical evidence to establish that his March 7, 2013 work-related injuries changed or worsened to the extent that he was no longer able to work. The Board finds that the medical evidence of record is insufficient to establish that appellant was disabled from work beginning February 11, 2015 as a result of his work-related injury.

Appellant received medical treatment from Dr. Pena during the claimed period of disability. In work status reports dated February 11 to April 6, 2015, he indicated that appellant could not work beginning February 11, 2015 until he underwent a lumbar consultation. Although Dr. Pena advised that appellant could not work beginning February 11, 2015, he did not provide any opinion on the cause of appellant's inability to work. The Board has found that medical evidence which does not offer any opinion regarding the cause of disability is of limited probative value on that issue.¹¹ Dr. Pena further related in an October 26, 2015 report that appellant had been on and off work between May 2014 and March 2015. He noted that appellant complained of increasing pain in his lateral ankle and back. Dr. Pena diagnosed right ankle pain of unknown etiology and status post right ankle surgery. In a work status form, he noted that appellant was unable to work. However, Dr. Pena did not address any specific period of disability, but merely noted in general terms that appellant had been off work intermittently from May 2014 and March 2015. Moreover, he failed to explain whether appellant's inability to work was causally related to his March 7, 2013 employment injury or otherwise provide medical reasoning for why appellant's current symptoms or disability was due to his work-related right knee and ankle injuries. For these reasons, the Board finds that Dr. Pena's reports are insufficient to establish appellant's recurrence of disability claim.¹²

Appellant also received treatment from various physician assistants, including Ms. Zachel, Ms. Freeman, and Mr. Weiske in reports dated February 27 to November 24, 2015.

⁹ *Nicolea Bruso*, 33 ECAB 1138 (1982).

¹⁰ *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹¹ *J.H.*, Docket No. 15-1877 (issued May 3, 2016); *Michael E. Smith*, 50 ECAB 313 (1999).

¹² See *William A. Archer*, 55 ECAB 674 (2004) (the Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of claimed disability with medical rationale).

These reports, however, are of no probative value to establish appellant's recurrence of disability claim as physician assistants are not considered "physicians" under FECA.¹³

There are no other medical reports of record which address the issue of appellant's disability beginning February 11, 2015. The medical evidence of record fails to establish that appellant was unable to work beginning February 11, 2015 as a result of his March 7, 2013 employment injury. The Board notes that a May 28, 2014 MRI scan examination of appellant's right knee by Dr. Block and an August 4, 2014 CT scan report of appellant's right ankle by Dr. Weinberg suggested no significant abnormalities. Accordingly, the medical evidence of record does not support a spontaneous change or worsening of appellant's work-related right ankle and knee injuries to the extent that appellant was no longer able to work.

The Board finds that appellant did not submit evidence to show a change in the nature and extent of his work-related right ankle and knee injuries. Therefore, appellant did not meet his burden of proof to establish a recurrence of disability beginning February 11, 2015 causally related to the March 7, 2013 employment injury.

LEGAL PRECEDENT -- ISSUE 2

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening event.¹⁴ Once the work-connected character of an injury has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent, nonindustrial cause.¹⁵ The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.¹⁶

An employee seeking benefits under FECA has the burden of proof to establish a claim for a consequential injury.¹⁷ As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal

¹³ Section 8102(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. As nurses, physician assistants, physical and occupational therapists are not "physicians" as defined by FECA, their medical opinions regarding diagnosis and causal relationship are of no probative medical value. 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹⁴ See *Kathy A. Kelley*, 55 ECAB 206 (2004); *Carlos A. Marerro*, 50 ECAB 170 (1998).

¹⁵ Where a person has a preexisting condition that is not disabling, but which becomes disabling because of aggravation causally related to the employment, then regardless of the degree of such aggravation, the resulting disability is compensable. *P.B.*, Docket No. 13-1866 (issued March 7, 2014); *S.W.*, Docket No. 11-1678 (issued February 22, 2012); *Arnold Gustafson*, Docket No. 89-438 (issued October 30, 1989).

¹⁶ See A. Larson, *The Law of Workers' Compensation* § 10.01 (June 2010).

¹⁷ *J.A.*, Docket No. 12-603 (issued October 10, 2012).

relationship. Rationalized medical evidence is an opinion of reasonable medical certainty and must be supported by sound medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.¹⁸

ANALYSIS -- ISSUE 2

OWCP accepted appellant's claim for closed fracture of the right ankle and MCL sprain of the right knee. Appellant alleges that he developed a lumbar condition as a result of walking with an altered gait due to his right ankle and right knee conditions. The Board finds that appellant has not established a consequential back injury as a result of his accepted right ankle and right knee injuries.

Appellant submitted various reports by Dr. Thorson to support his claim for a consequential back injury. In an April 23, 2015 report, Dr. Thorson related appellant's complaints of pain in his neck, upper back, right foot, right knee, and right hip. He reviewed appellant's history and conducted an examination. Dr. Thorson diagnosed right knee arthralgia, right knee sprain, chronic pain syndrome, and lumbar spinal stenosis. He noted that "the low back is not related to this case." In a March 29, 2016 report, Dr. Thorson indicated that he had treated appellant since January 2014 for work-related injuries to the right ankle and right knee. He noted that he subsequently treated appellant for low back pain secondary to lumbar spinal stenosis and spondylosis. Dr. Thorson opined that appellant developed the low back issue secondary to the initial lower extremity issue. He explained that appellant had to walk with an altered gait, "which may have" advanced the low back pain issue. Dr. Thorson reported "that the altered gait caused by the initial right ankle and right knee injuries caused or at least materially contributed to the lumbar stenosis/spondylosis." He indicated that appellant could work with restrictions.

Although Dr. Thorson opined that appellant's lumbar condition was causally related to the March 7, 2013 employment incident, he did not provide any medical rationale or explanation to support his conclusion. The Board has found that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁹ Dr. Thorson attributed appellant's subsequent back condition to his work-related right ankle and knee injuries because appellant had to walk with an altered gait. He did not, however, explain the mechanism of how appellant's uneven walking caused or contributed to a subsequent lumbar condition. The Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.²⁰

A well-rationalized opinion based on medical rationale is particularly warranted in this case when Dr. Thorson did not attribute appellant's lumbar condition to his work-related injuries

¹⁸ *Id.*

¹⁹ *T.M.*, Docket No. 08-975 (February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

²⁰ *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

until two years after the March 7, 2013 employment injury. Moreover, the medical evidence of record demonstrates that a February 6, 2015 MRI scan of the lumbar spine by Dr. Kvamme showed mild degenerative changes with stenosis. Thus, it is unclear if appellant's current lumbar complaints and inability to work relate to his March 7, 2013 employment injury or to previously degenerative changes.²¹ Accordingly, the Board finds that Dr. Thorson has failed to provide adequate medical rationale to support his conclusion that appellant sustained a consequential back injury.

Appellant also received treatment from Dr. Pena for his back symptoms. In an April 6, 2015 progress note, Dr. Pena noted that appellant was not approved for workers' compensation with regards to the association between appellant's low back pain and his right ankle. He explained that he could neither guarantee nor rule out the fact that appellant's back was not causally connected to the ankle injury. Dr. Pena opined that there was a "possibility" that appellant had some aggravation of his back given the fact that he had been limping and walking unevenly on his ankle joint. He further indicated in an October 26, 2012 report that there was a "possibility" that appellant's walking boot and altering his gait contributed to his hip and back pain. The Board notes that Dr. Pena's opinion lacks probative value as it is vague, equivocal, and speculative in nature.²² He failed to provide any definitive explanation for how appellant developed a consequential back injury as a result of the March 7, 2013 employment injury. An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.²³ Accordingly, these reports are insufficient to establish a consequential back injury.

On appeal, counsel alleges that Dr. Thorson clearly opined that the altered gait caused by appellant's work-related right ankle and right knee injuries caused or at least materially contributed to his lumbar stenosis/spondylosis. As explained above, however, Dr. Thorson's reports lacked sufficient medical rationale to support his opinion on causal relationship. Appellant has not submitted sufficient medical evidence to establish that he sustained a consequential lumbar condition due to his March 7, 2013 employment injury. Accordingly, the Board finds that he failed to meet his burden of proof to establish his claim.

Appellant may submit new evidence or argument as part of a formal 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. § 10.606 through § 10.607.

CONCLUSION

The Board finds that appellant has not established a recurrence of disability from work commencing February 11, 2015 causally related to his March 7, 2013 employment injury. The

²¹ *R.E.*, Docket No. 14-868 (issued September 24, 2014).

²² *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

²³ *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

Board also finds that he has not established a consequential back injury causally related to his work-related right ankle and right knee injuries.

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2016 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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