United States Department of Labor
Employees' Compensation Appeals Board

O.R., Appellant	)	
and	)	**Docket No. 23-0156**
	)	**Issued: August 22, 2023**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Miami, FL, Employer	)	

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
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On August 20, 2020 appellant filed a timely appeal from an August 6, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

---

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the August 6, 2020 OWCP decision, appellant submitted additional evidence to the Board. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of disability commencing October 5, 2015, causally related to his accepted April 22, 2013 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On April 23, 2013 appellant, then a 29-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on April 22, 2013 he injured his right gluteus and lower back when lifting bags while in the performance of duty. OWCP assigned OWCP File No. xxxxxx033 and accepted the claim for lumbar sprain and a herniated disc at L5-S1.[4] On April 1, 2014 appellant underwent a right hemilaminectomy at L5 and S1, an S1 foraminotomy, a partial facetectomy of the L5 nerve root, and an excision of a disc herniation at L5-S1. OWCP paid him wage-loss compensation for total disability on the supplemental rolls effective April 1, 2014, and on the periodic rolls, effective April 6, 2014.

On August 22, 2014 Dr. Jonathan A. Hyde, an orthopedic surgeon, released appellant to return to work without restrictions. On August 25, 2014 appellant resumed his regular employment.

In an undated report received on October 5, 2015 Dr. Jesse Shaw, an osteopath, provided a history of the April 22, 2013 employment injury. He noted that appellant complained of pain radiating into his right leg. Dr. Shaw diagnosed right quadriceps muscle weakness and atrophy, effusion of the right knee, and a cartilage defect of the right trochlea.

In a progress report dated October 5, 2015, Dr. Shaw discussed appellant's complaints of pain in the right thigh and knee. On examination, he found 4/5 strength in the left thigh with intact sensation, no swelling, and a normal gait. Dr. Shaw diagnosed unspecified right joint effusion, right muscle wasting and atrophy, and right muscle weakness. He related that, "There is atrophy of the right quadricep leading to a nonphysiological altered gait mechanics leading to pathological knee symptoms. I do believe [that appellant's] symptoms are a result from a prior injury." Dr. Shaw provided similar progress reports on November 16, 2015 and February 15, 2016.

In a report dated November 6, 2015, Dr. Jonathan A. Hyde, an orthopedic surgeon, advised that he had last evaluated appellant on January 23, 2015 for right calf cramping and low back pain. He had recommended a magnetic resonance imaging (MRI) scan, but appellant sought treatment

[3] *Order Remanding Case*, Docket No. 19-1241 (issued June 23, 2020).

[4] Appellant has other claims pending before OWCP. Under OWCP File No. xxxxxx403, OWCP accepted that on May 14, 2013 he sustained an aggravation of a herniated disc at L5-S1. OWCP denied appellant's claims for August 6 and December 9, 2014 traumatic injuries under OWCP File Nos. xxxxxx404 and xxxxxx125, and his occupational disease claim for an emotional condition under OWCP File No. xxxxxx667.

from another physician who told appellant that "his knee issues were coming from the back." Dr. Hyde diagnosed lumbar intervertebral disc displacement. He related that quadriceps atrophy would occur from an issue at L4-5 or L3-4 rather than L5-S1. Dr. Hyde indicated that appellant related that his knee pain was preventing him from working. He deferred work restrictions to the physician treatment appellant for his knee problem as it did not "appear to be associated with the L5-S1 region." In a state workers' compensation form report of even date, Dr. Hyde found that appellant had no work restrictions.

An MRI scan of the lumbar spine, obtained on November 12, 2015 revealed disc bulging at L2 through L5 resulting in mild stenosis, changes at L5-S1 consistent with a right laminotomy, and disc bulging with mild bilateral lateral recess stenosis and disc material abutting the descending S1 nerve roots.

In a November 13, 2015 progress report, Dr. Hyde diagnosed lumbar intervertebral disc displacement. He reviewed the MRI scan and found that it showed only postlaminectomy changes at L5-S1 with "a full resolution of the herniation." Dr. Hyde found that appellant's back was intact neurologically and that he had "no permanent restrictions since there is no recurrence of herniation." He opined that appellant's knee pain was "not a direct consequence of [appellant's] herniated disc or the resultant spine surgery" but instead caused by a biomechanical problem. Dr. Hyde recommended an evaluation for right knee pain. In a state workers' compensation form report of even date, he found no change in appellant's restrictions.

On November 16, 2015 appellant filed a claim for compensation (Form CA-7) for disability from work from November 16 through 25, 2015.

In a development letter dated November 24, 2015, OWCP advised appellant of the deficiencies of his claim and of the factual and medical evidence required to establish a recurrence of disability. It noted that he returned to his usual employment on August 25, 2014 and worked until November 16, 2015. OWCP afforded appellant 30 days to submit the requested information.

On November 17, 2015 Dr. Hyde advised appellant that he required no further treatment due to his "workers' compensation back injury" and indicated that he would no longer serve as appellant's physician.

By decision dated January 25, 2016, OWCP found that appellant had not established a recurrence of disability commencing November 16, 2015 causally related to his accepted April 22, 2013 employment injury.

In a progress report dated February 15, 2016, Dr. Shaw discussed appellant's complaints of low back pain and pain and weakness in his right thigh. He diagnosed right joint effusion, right muscle wasting and atrophy, generalized right muscle weakness, and lumbar radiculopathy. On examination Dr. Shaw found tenderness to palpation of the lumbar paraspinal muscles with spasms and decreased motion, and 4/5 strength of the right thigh with tenderness to light palpation. He submitted a similar progress report on March 30, 2016.

An MRI scan of the right knee, obtained on March 31, 2016 revealed joint effusion with findings of a ruptured popliteal cyst and a possible bone bruise without definite fracture.

On April 5, 2016 Dr. Dr. Samy F. Bishai, an orthopedic surgeon, described appellant's complaints of back pain, weakness and atrophy of the right quadriceps, pain and swelling in the right knee joint, calf swelling, and right leg radiculopathy. He recounted appellant's history of employment injuries on April 22 and May 14, 2013 treated with surgery on April 1, 2014. On examination, Dr. Bishai found right knee tenderness and some "wasting or atrophy of the vastus medialis of the quadriceps muscle group of the right knee." For the right lower extremity, he diagnosed slight atrophy of the vastus medialis of the right knee joint and to rule out internal derangement. Dr. Bishai related that "the vastus medialis atrophy is not related to a primary pathology in the right knee joint, but is rather related to [appellant's] back condition." He attributed the right knee condition to the May 14, 2013 employment injury.

In a report dated April 15, 2016, Dr. Mark Fishman, an osteopath, indicated that appellant complained of low back pain due to an April 22, 2013 employment injury. He noted that appellant's back pain had worsened in December 2015 and he had "not worked since that point in time." Dr. Fishman provided findings on examination and diagnosed lumbar disc degeneration, lumbosacral spondylosis, lumbar stenosis, lumbar myofascial pain syndrome, and lumbar postlaminectomy syndrome. He recommended a functional capacity evaluation (FCE) to determine work capacity. Dr. Fishman submitted a similar report on April 29, 2016.

On September 27, 2016 appellant requested reconsideration.

By decision dated December 15, 2016, OWCP denied modification of its January 25, 2016 decision.

On December 28, 2016 appellant requested reconsideration. He related that his back problems worsened after his workload increased on December 2014 and he was moved to checkpoint baggage from a sedentary position. Appellant maintained that his injures of April 22 and May 14, 2013 were related.

By decision dated February 28, 2017, OWCP denied modification of its December 15, 2016 decision.

In a report dated March 21, 2017, Dr. Scott S. Katzman, an orthopedic surgeon, discussed appellant's history of an April 22, 2013 employment injury treated with surgery. He diagnosed low back pain, right leg radiculitis, and status postsurgery at L5-S1. Dr. Katzman found that appellant should remain on his "present work status which is no bending, stooping, twisting, partial rest with prolonged sitting, standing, and walking, and no heavy lifting greater than 50 pounds." In a state workers' compensation form of even date, he provided work restrictions.

In progress reports and state workers' compensation forms dated April 10 to December 2017, Dr. Katzman discussed his treatment of appellant and provided work restrictions.

On June 14, 2017 Dr. Bishai related that appellant's second injury on May 14, 2013 had caused an aggravation of the April 22, 2013 and "the development of radiculopathy due to compression of a nerve root in the back." He noted that appellant's work duties, including constant kneeling, may have contributed to his right knee joint injury. Dr. Bishai advised that appellant should avoid further kneeling because it would aggravate his knee condition.

Subsequently, OWCP received a November 16, 2015 memorandum from the employing establishment. The employing establishment indicated that prior to beginning his recertification process on November 9, 2015 appellant advised that he was unable to lift 50 to 70 pounds. Appellant filed Forms CA-2a and CA-7 requesting wage loss. The employing establishment noted that he had requested leave without pay beginning November 16, 2015 pending OWCP's decision on his claim.

On November 27, 2017 appellant requested reconsideration.

Thereafter, OWCP received an undated report from Dr. Shaw. Dr. Shaw related that he was currently treating appellant for employment injuries sustained on April 22 and May 14, 2013. He found that, based on physical examinations, history, and MRI scans of the right knee, appellant would not be able to work in a position that required kneeling or squatting as of October 5, 2015. Dr. Shaw opined that strenuous activity or repetitive squatting or kneeling would aggravate appellant's right knee symptoms.

Appellant submitted physical therapy reports from 2018.

By decision dated February 22, 2018, OWCP denied modification of its February 28, 2017 decision.

In a Form CA-7 dated January 5, 2018, received by OWCP on March 2, 2018 appellant requested wage-loss compensation for disability from work commencing October 5, 2015.

On February 27, 2018 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that on October 26, 2017 he sustained a recurrence of disability causally related to his accepted April 22, 2013 employment injury. He advised that he stopped work on October 26, 2017. Appellant related that he had resigned from work before being terminated for excessive absences, and noted that he had subsequently worked as a driver and on call security bailiff. The form was not signed by the employing establishment.

In a progress report dated March 5, 2018, Dr. Katzman noted that appellant had a history of an L5-S1 disc herniation on the right side that required intervention. He currently complained of left-sided back pain and radiculopathy. Dr. Katzman diagnosed low back pain, lumbar disc desiccation, degeneration, and displacement at L5-S1 with bilateral foraminal narrowing, and improved L4-5 facet synovitis and foraminal narrowing. He attributed the new complaints on the left to the April 22, 2013 employment injury. Dr. Katzman related that L5-S1 degeneration caused "bilateral foraminal narrowing with left lumbar radiculopathy complaints." He opined that appellant could continue to work with modification. In a state workers' compensation form of even date, a healthcare provider listed work restrictions.

In a development letter dated March 7, 2018, OWCP indicated that it had received appellant's Form CA-7 requesting compensation beginning October 5, 2015. It advised him of the factual and medical evidence required to establish a recurrence of disability and noted that it had previously denied his claim for a recurrence of disability for the period November 16, 2015 ongoing. OWCP requested a reasoned opinion from appellant's physician addressing why appellant was unable to work for the period October 5 through November 15, 2015. It afforded him 30 days to submit the requested information.

By decision dated April 27, 2018, OWCP found that appellant had not established a recurrence of disability from October 5 through November 15, 2015 causally related to his accepted April 22, 2013 employment injury.

In a statement dated May 6, 2018, appellant asserted that he had sustained left sciatica due to his accepted work injury.

In a progress report dated May 10, 2018, Dr. Katzman related that he was treating appellant for an April 22, 2013 employment injury. He noted that the most recent lumbar MRI scan on April 11, 2017 showed worsening disc desiccation and collapse at L5-S1 with facet synovitis and foraminal narrowing. Dr. Katzman discussed appellant's complaints of left leg radiculopathy. He diagnosed low back pain, lumbar disc desiccation, degeneration at L5-S1 with bilateral foraminal narrowing, facet synovitis and foraminal narrowing at L4-5, and left lumbar radiculitis with left-sided lumbar sciatica. Dr. Katzman found that appellant could work light duty lifting up to 25 pounds frequently and a maximum of 50 pounds.

On May 14, 2018 appellant requested reconsideration.

By decision dated May 16, 2018, OWCP denied modification of its February 22, 2018 decision.

By decision dated May 17, 2018, OWCP denied modification of its April 27, 2018 decision.

Subsequently, OWCP received a March 31, 2017 lumbar MRI scan, which found a left posterior disc herniation at T12-L1, a disc bulge with mild central stenosis at L3-4 and L4-5, and a disc bulge with enhancing soft tissue consistent with granulation tissue that seemed adjacent to the exiting S1 nerve roots at L5-S1.

On May 27, 2018 appellant requested reconsideration of the May 16 and 17, 2018 decisions. He related that he was unable to lift 70 pounds as required by his job at the employing establishment.

An MRI scan of the lumbar spine, obtained on June 18, 2018 revealed disc bulges without stenosis or neural foramina at L2 to L5, a stable disc herniation at T12-S1, and a disc herniation with tearing of the annulus and central canal stenosis at L5-S1.

By decision dated June 29, 2018, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

On August 1, 2018 Dr. Christopher McCarthy, who specializes in pain management, diagnosed low back pain, a left T12-L1 disc herniation without significant stenosis, mild-to-moderate foraminal stenosis at L4-5 with facet hypertrophy, and left groin pain. He recommended a sacroiliac injection. In a state workers' compensation form report of even date, Dr. McCarthy indicated that appellant had unchanged restrictions.

In a progress report dated August 3, 2018, Dr. Katzman diagnosed low back pain after a left facet block at L5-S1. He advised that appellant could continue with the same work restrictions.

In a state workers' compensation form report of even date, a physician assistant provided work restrictions.

By decision dated August 20, 2018, OWCP denied modification of its May 17, 2018 decision.

On August 17, 2018 Dr. Katzman noted that appellant sustained an injury on April 22, 2013 treated with an L5-S1 laminectomy and discectomy. He advised, "The fact that [appellant] has L5-S1 continued symptomatology is probably related, but it is facetogenic, he still can do modified work activities." Dr. Katzman doubted that appellant could work in baggage claim performing heavy lifting, but could work modified duty. He related, "I do believe that [appellant's] continued complaints would be still related to the original injury...." In a state workers' compensation form report of even date, Dr. Katzman provided work restrictions.

On August 22, 2018 appellant requested reconsideration. He asserted that he had also sustained a December 10, 2014 injury at work, but had not filed a claim. Appellant advised that he was wrongfully terminated from the employing establishment after the December 10, 2014 injury, but subsequently reinstated. He returned to work on October 26, 2015 and requested reasonable accommodation which was denied. Appellant was removed from employment on July 6, 2016. He obtained disability retirement.

On August 24, 2018 Dr. Katzman reviewed medical evidence from appellant's original injury, and noted that on January 23, 2015 Dr. Hyde reported that appellant had left low back discomfort. He diagnosed facetogenic low back pain and lumbar disc displacement at L5-S1 with left-sided back and hip pain. Dr. Katzman related, "It is our opinion that [appellant] is likely to continue to aggravate his back pain indefinitely with continued bending and lifting. I would place [appellant] with permanent restrictions of no lifting more than 25 pounds and he is unlikely to reengage with his prior job description at [the employing establishment] with the heavy baggage lifting and carrying and we will put him on modified work restrictions indefinitely."

By decision dated November 20, 2018, OWCP denied modification of its August 20, 2018 decision.

Appellant appealed to the Board.

On June 25, 2019 and April 28, 2020 Dr. Katzman treated appellant for left low back pain after an April 22, 2013 work injury. He diagnosed facetogenic low back pain.

By order dated June 23, 2020, the Board set aside the November 20, 2018 decision and remanded the case for OWCP to administratively combine OWCP File Nos. xxxxxx033, xxxxxx403, and xxxxxx404 to be followed by a *de novo* decision regarding appellant's claim.[5]

On remand, OWCP administratively combined the case records, with OWCP File No. xxxxxx033 serving as the master file.

---

[5] *Id*.

By decision dated August 6, 2020, OWCP denied modification of its August 20, 2018 decision.

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 compensable injury or illness and without an intervening injury or new exposure in the work environment.[6] This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.[7]

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.[8]

OWCP's procedures provide additional guidance as to when a notice of recurrence should be filed. Its procedures provide, in relevant part, that a recurrence of disability does not include a work stoppage caused by "[a] condition which results from a new injury, even if it involves the same area of the body previously injured, or by renewed exposure to the causative agent of a previously suffered occupational disease."[9] If a new work-related injury or exposure occurs, a Form CA-1 or CA-2 should be completed accordingly.[10] OWCP's procedures further provide:

> "[I]n some occupational disease cases where the diagnosis remains the same, but disability increases due to additional exposure to the same work factors, the claimant may submit Form CA-2a rather than filing a new claim. For instance, a claimant with carpal tunnel syndrome who has returned to work but whose repetitive work activities result in the need for surgery, is not required to file a new claim."

---

[6] 20 C.F.R. § 10.5(x); *C.Y.*, Docket No. 22-0474 (issued November 14, 2022); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

[7] *Id*.

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *A.A.*, Docket No. 19-0957 (issued October 22, 2019); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

[9] *Id*. at Chapter 2.1500.3c(5) (June 2013).

[10] *Id*.

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability commencing October 5, 2015 causally related to his accepted April 22, 2013 employment injury.

On March 21, 2017 Dr. Katzman recounted the history of appellant's April 22, 2013 employment injury and resultant surgery. He diagnosed low back pain, radicular right leg radiculitis, and status post L5-S1 hemilaminectomy, with partial L5 facetectomy and excision of an L5-S1 disc herniation. Dr. Katzman found that appellant should continue with his current limitations of no bending, stooping, twisting, partial rest with prolonged sitting, standing, and walking, and no heavy lifting greater than 50 pounds. He continued to provide work restrictions in progress reports dated April 10 to December 2017. Dr. Katzman, however, did not specifically attribute appellant's disability to his April 22, 2013 employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[11] Further, Dr. Katzman did not provide any rationale for his disability determination. He failed to explain how the April 22, 2013 employment injury resulted in disability from employment on or after October 5, 2015. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/level of disability has an employment-related cause.[12] For these reasons, Dr. Katzman's report is insufficient to meet appellant's burden of proof to establish a recurrence of disability.

On March 5, 2018 Dr. Katzman advised that appellant had new complaints of pain on the left side of his back with radiculopathy. He diagnosed low back pain, lumbar disc desiccation, degeneration, and displacement at L5-S1 with bilateral foraminal narrowing, and improved L4-5 facet synovitis and foraminal narrowing and attributed the new complaints on the left to the April 22, 2013 employment injury. Dr. Katzman found that appellant could continue working with restrictions. He submitted similar progress reports dated May through August 2018. On August 17, 2018 Dr. Katzman attributed appellant's continued symptoms at L5-S1 to his accepted April 22, 2013 employment injury. He found that it was unlikely that appellant could work in baggage claim due to the heavy lifting required. On August 24, 2018 Dr. Katzman listed permanent work restrictions, including no lifting over 25 pounds. Again, however, he failed to explain with medical rationale how appellant's work restrictions were related to the accepted work injury.[13] As Dr. Katzman's opinion is conclusory in nature, it is insufficient to establish appellant's recurrence claim.[14]

---

[11] *See A.H.* Docket No. 22-0978 (issued January 24, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] *See H.C.*, Docket No. 22-0844 (issued December 5, 2022); *J.S.*, Docket No. 18-0944 (issued November 20, 2018).

[13] *See T.B.*, Docket No. 21-0480 (issued January 10, 2022); *J.K.*, Docket No. 19-0462 (issued August 5, 2019).

[14] *See M.S.*, Docket No. 19-0189 (issued May 14, 2019); *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *B.H.*, Docket No. 18-1219 (issued January 25, 2019); *Birger Areskog*, 30 ECAB 571 (1979).

In an undated report, Dr. Shaw related that he was treating appellant for April 22 and May 14, 2013 employment injuries. He opined that appellant could not work in a position that required kneeling or squatting beginning October 5, 2015 due to his knee condition. Dr. Shaw, however, failed to attribute appellant's disability to the accepted April 22, 2013 back injury. The Board has held that medical evidence that does not provide an opinion as to whether a period of disability is due to an accepted employment condition is insufficient to meet a claimant's burden of proof.[15]

In state workers' compensation form reports dated 2017 and 2018, Dr. Katzman and Dr. McCarthy provided work restrictions. These reports, however, fail to contain a rationalized explanation regarding the cause of the provided limitations and thus are of limited probative value and insufficient to establish appellant's claim.[16]

The remaining evidence fails to address the relevant issue of whether appellant was disabled beginning October 5, 2015 due to his accepted April 22, 2013 employment injury. On November 6, 2015 Dr. Hyde diagnosed lumbar intervertebral disc displacement. He noted that appellant advised that his knee pain prevented him from work. Dr. Hyde indicated that he would defer to the physician treating appellant for his knee condition for work restrictions. In an accompanying state workers' compensation form report of even date, he found that appellant had no work restrictions. On November 13, 2015 Dr. Hyde advised that appellant's back was neurologically sound and discharged him from care. In reports dated October 5, 2015 to March 30, 2016, Dr. Shaw found that appellant had atrophy of the right quadriceps due to altered gait mechanics, which he attributed to a prior injury. He diagnosed unspecified right joint effusion, right muscle wasting and atrophy, and right muscle weakness. In progress reports dated June 25, 2019 and April 28, 2020, Dr. Katzman treated appellant for left low back pain after an April 22, 2013 work injury. He diagnosed facetogenic low back pain. In a report dated April 5, 2016, Dr. Bishai discussed appellant's history of work injuries on April 22 and May 14, 2013 and diagnosed atrophy of the vastus medialis of the right knee. On June 14, 2017 he opined that appellant's second injury on May 14, 2013 had aggravated his April 22, 2013 employment injury causing nerve root compression in the back and radiculopathy. Dr. Bishai further found that appellant's work duties may have aggravated his knee condition. On August 1, 2018 Dr. McCarthy diagnosed low back pain, a left T12-L1 disc herniation without significant stenosis, mild-to-moderate foraminal stenosis at L4-5 with facet hypertrophy, and left groin pain. On April 15 and 29, 2016 Dr. Fishman noted that appellant had not worked since his low back pain worsened in December 2015. He diagnosed lumbar disc degeneration, lumbosacral spondylosis, lumbar stenosis, lumbar myofascial pain syndrome, and lumbar postlaminectomy syndrome. As theses physicians failed to address the relevant issue of disability from work due to the accepted

---

[15] *See W.S.*, Docket No. 21-0257 (issued February 22, 2022); *B.M.*, Docket No. 20-0826 (issued May 10, 2021); *Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019).

[16] *See J.G.*, Docket No. 21-1334 (issued May 18, 2022).

April 22, 2013 employment injury, this evidence is insufficient to establish appellant's recurrence claim.[17]

OWCP also received the results of diagnostic studies. However, diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address causation.[18]

Appellant also submitted reports from physical therapists and physician assistants. The Board has held that the reports of physical therapists and physician assistants do not constitute probative medical evidence as physical therapists and physician assistants are not physicians under FECA.[19] Consequently, these reports are of no probative value regarding appellant's disability claim.

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 October 5, 2015 causally related to his accepted April 22, 2013 employment injury.

[17] *See D.M.*, Docket No. 21-0930 (issued February 8, 2023); *A.G.*, Docket No. 21-0756 (issued October 18, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

[18] *K.R.*, Docket No. 20-1103 (issued January 5, 2021); *F.S.*, Docket No. 19-0205 (issued June 19, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

[19] Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). *See supra* note 8 at Chapter 2.805.3a(1) (January 2013); *R.L.*, Docket No. 20-0284 (issued June 30, 2020); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also P.D.*, Docket No. 21-0920 (issued January 12, 2022) (a physical therapist is not a physician under FECA).

ORDER

IT IS HEREBY ORDERED THAT the August 6, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board