

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

A.B., Appellant)	
)	
and)	Docket No. 24-0449
)	Issued: July 10, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
MINNEAPOLIS VA MEDICAL CENTER,)	
Minneapolis, MN, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 26, 2024 appellant filed a timely appeal from a January 12, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability commencing August 16, 2023, causally related to her accepted May 12, 2023 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that OWCP received additional evidence following the January 12, 2024 decision. 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.*

FACTUAL HISTORY

On June 2, 2023 appellant, then a 48-year-old custodial worker, filed a traumatic injury claim (Form CA-1) alleging that on May 12, 2023 she sustained neck and right shoulder injuries when she lifted a bag of dirty linen to dump into a bin and heard a pop in her neck, while in the performance of duty. She stopped work on May 15, 2023.

On May 15, 2023 appellant was examined by Dr. Ashley M. Nadeau, an occupational medicine specialist, in the employing establishment's health clinic. Dr. Nadeau noted appellant's history of injury on May 12, 2023. He diagnosed cervical and lumbar strains causally related to the claimed employment incident, and recommended work restrictions. An addendum report of even date noted that a magnetic resonance imaging (MRI) scan of appellant's cervical spine indicated an impression of mild-to-moderate degenerative findings.

In a May 17, 2023 report, Dr. Neel Patel, Board-certified in cardiovascular disease, noted that he treated appellant on that date, and she would be unable to work from May 17 to June 2, 2023. In a separate report also dated May 17, 2023, he diagnosed neck pain on the right side and acute right-sided low back pain with right-sided sciatica.

The employing establishment offered appellant a light-duty assignment, which included no lifting or carrying over 10 pounds, no pushing or pulling over 10 pounds, and no repetitive bending or twisting at the waist. Appellant accepted modified job offer and returned to full-time light duty on June 2, 2023.

In a July 27, 2023 progress note, Dr. Jaya Durvasula, a family medicine specialist, indicated that appellant would like to return to work without any restrictions. She assessed numbness and tingling of the right upper extremity, paresthesia of right upper extremity, neck pain, and weakness of right upper extremity. Dr. Durvasula noted that she provided a letter releasing appellant to return to work without restrictions, despite her recommendation to the contrary.

On August 4, 2023 the employing establishment indicated that appellant returned to full-time regular duty, without restrictions, on July 27, 2023.

In an August 20, 2023 treatment note, Dr. Milkeesso Hama Foge, a Board-certified internist, requested that appellant be excused from work effective August 16, 2023.

On August 22, 2023 OWCP accepted the claim for cervical and lumbar sprains.

On September 1, 2023 appellant informed OWCP that she was rushed to the emergency room in an ambulance on August 16, 2023, due to severe pain in her lower back.

OWCP received August 26, 2023 discharge instructions from Dr. Foge indicating a diagnosis of motor vehicle collision.

In a September 1, 2023 letter, the employing establishment noted that it appeared that appellant was in a nonwork-related motor vehicle collision, and referred to the August 26, 2023, discharge instructions, which noted a diagnosis of motor vehicle collision.

On September 7, 2023 appellant filed claims for compensation (Form CA-7) for disability from work commencing August 16, 2023.

In a September 11, 2023 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her disability claim. It advised her of the type of additional factual and medical evidence needed and afforded her 30 days to submit the necessary evidence.

In a September 21, 2023 treatment note, Dr. Durvasula noted that appellant experienced low back pain since her work injury on May 12, 2023, and that appellant related that she lifted a lot of heavy wet laundry, and her job involved a lot of bending. She explained that at the time of the injury, appellant had more severe neck and shoulder pain and her back pain was overlooked. Dr. Durvasula noted that when advised that she could return to work without restrictions on July 27, 2023, appellant returned to work, despite her ongoing pain and disability; however, her back pain had increased, and she was unable to work since August 16, 2023. She noted that an August 16, 2023 lumbar MRI scan revealed an L4-5 posterior disc bulge and mild bilateral foraminal stenosis.

In a letter dated September 22, 2023, OWCP requested additional information from appellant, including all medical records related to her motor vehicle collision. It advised her of the type of factual and medical evidence necessary to establish her recurrence claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant subsequently submitted the completed questionnaire, denied any new motor vehicle or any other accident, and explained that her motor vehicle collision occurred on January 7, 2023. She noted that after her May 12, 2023 injury, she returned to full-duty work on July 27, 2023, and her back pain worsened. Appellant also related that she had not sustained any other injuries on or off the job since her original work injury.

On October 5, 2023 OWCP advised appellant that she should consider filing a new claim, as she alleged ongoing exposure to work factors, which was an intervening cause and therefore not a recurrence.

In an October 17, 2023 treatment note, Dr. Claire Saad, Board-certified in family medicine, advised that appellant was seen for back pain with radiculopathy that originated on May 12, 2023. She recounted that appellant was treated at a hospital from August 16 through 23, 2023, and continued to have back pain that affected her daily activities. Appellant's August 16, 2023 MRI scan showed a bulging disc at L4-5 and advised that appellant would be unable to return to work until she was evaluated by a spine specialist.

By decision dated October 24, 2023, OWCP denied appellant's claim for a recurrence of disability commencing August 16, 2023, due to her accepted employment injury. It explained that the medical evidence of record was insufficient to establish disability from work due to a material change/worsening of her accepted work-related conditions.

On January 4, 2024 appellant requested reconsideration.

In support thereof, appellant submitted August 16, 2023 hospital admission records, wherein Dr. James S. Kosowicz, a Board-certified internist, noted that appellant presented with

back pain. Dr. Kosowicz recounted her statements that she had bent over earlier in the day, felt a pop in her back, and experienced excruciating back pain in her lower back. August 17, 2023 hospital records from Dr. Foge indicated that appellant presented with acute back pain after bending over. August 26, 2023 discharge records from Dr. Joudat Yazigi, a Board-certified internist, also indicated that appellant presented with acute back pain after bending over.

In a November 6, 2023 statement, appellant's supervisor, A.S., noted that she received a call from appellant on or about August 21, 2023, informing her that she was admitted to the hospital. A.S. recounted that appellant related that she was getting dressed when her legs just gave out and she fell to the floor.

In a December 28, 2023 report, Dr. Saad noted that appellant was seen that day, appellant's May 15, 2023 medical note was reviewed, and it indicated that appellant had right-sided neck pain and right-sided low back pain due to the work-related injury that occurred on May 12, 2023.

By decision dated January 12, 2024, OWCP denied modification of the October 24, 2023 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.³ 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.⁴ 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. The 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.⁵

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position, or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability, and to show that he or she cannot perform such limited-duty work.⁶ As part of

³ 20 C.F.R. § 10.5(x); *see M.A.*, Docket No. 23-0713 (issued April 26, 2024); *T.J.*, Docket No. 18-0831 (issued March 23, 2020); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

⁶ *C.L.*, Docket No. 20-1631 (issued December 8, 2021); *D.W.*, Docket No. 19-1584 (issued July 9, 2020); *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty job requirements.⁷

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁸ Where no such rationale is present, the medical evidence is of diminished probative value.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing August 16, 2023, causally related to her accepted May 12, 2023 employment injury.

Appellant returned to full-time regular duty, without restrictions, on July 27, 2023. She has alleged that her back condition worsened when she bent over while dressing on August 16, 2023. Appellant subsequently stopped work and filed a Form CA-7, claiming disability from work commencing August 16, 2023, which OWCP adjudicated as a claim for a recurrence of disability.

In support of her recurrence claim, appellant submitted a report from Dr. Foge, who held appellant off work effective August 16, 2023. However, Dr. Foge did not provide an opinion that appellant was disabled from work commencing August 16, 2023, due to a spontaneous recurrence of her May 12, 2023 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.¹⁰ As such, Dr. Foge's report is insufficient to establish appellant's recurrence claim.¹⁰

In a September 21, 2023 treatment note, Dr. Durvasula explained that at the time of the injury, appellant had more severe neck and shoulder pain and her back pain was overlooked. Appellant returned to work on July 27, 2023, despite her ongoing pain and disability; however, her back pain increased, and she was unable to work since August 16, 2023. Dr. Durvasula's opinion supported that appellant's ongoing work activities after July 27, 2023 caused her disability as of August 16, 2023. However, he did not provide rationale explaining how appellant's accepted conditions had worsened such that she was disabled from work commencing August 16, 2023.

⁷ *Id.*

⁸ *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *C.C.*, Docket No. 18-0719 (issued November 9, 2018); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁹ *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

¹⁰ *P.L.*, Docket No. 22-0337 (issued September 9, 2022); *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

The Board has held that a medical report is of limited probative value when it contains a conclusion regarding disability and causal relationship which is unsupported by medical rationale. This report is, therefore, insufficient to establish appellant's recurrence claim.

In an October 17, 2023 treatment note, Dr. Saad advised that appellant would be unable to return to work until she was evaluated by a spine specialist. However, she did not provide an opinion on how appellant's accepted condition had worsened such that she was disabled from work commencing August 16, 2023.¹¹

OWCP also received other medical reports including August 16, 2023 hospital admission records signed by Dr. Kosowicz, who noted that appellant presented with back pain after she bent over earlier in the day and felt a pop in her back; August 17, 2023 hospital records from Dr. Foge who indicated that appellant presented with acute back pain after bending over; August 26, 2023 discharge instructions from Dr. Foge with a diagnosis of motor vehicle collision; August 26, 2023 discharge records from Dr. Yazigi who indicated that appellant presented with acute back pain after bending over; and a December 28, 2023 report from Dr. Saad who related that appellant was seen for right-sided neck pain and right-sided low back pain due to the May 12, 2023 work injury. However, none of these physicians provided an opinion that appellant was disabled from work commencing August 16, 2023, due to a spontaneous recurrence of her May 12, 2023 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.¹² These reports, therefore, are of no probative value and are insufficient to establish appellant's recurrence claim.

As the medical evidence of record is insufficient to establish a recurrence of disability commencing August 16, 2023, causally related to the accepted May 12, 2023 employment injury, the Board finds that appellant has not met her burden of proof.

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 her burden of proof to establish a recurrence of disability commencing August 16, 2023, causally related to her May 12, 2023 employment injury.

¹¹ *Id.*

¹² *P.L.*, Docket No. 22-0337 (issued September 9, 2022); *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2024
Washington, DC

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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