



## ISSUE

The issue is whether appellant met her burden of proof to establish a recurrence of disability commencing March 21, 2015, causally related to a January 14, 2009 employment injury.

## FACTUAL HISTORY

This matter has previously been before the Board.<sup>3</sup> The facts and circumstances outlined in the Board's prior decision are incorporated herein by reference, the relevant facts are as follows.

On January 14, 2009, appellant then a 40-year-old mail handler, filed traumatic injury claim (Form CA-1) alleging that she injured her right leg and back when a coworker ran a power jack into the side of a hand jack which struck her in the leg. She did not stop work.

Appellant was seen in an emergency room on January 15, 2009 by Dr. George Hobbib, Board-certified in emergency medicine, for a right lower leg and low back injury. She had a history of low back pain, lumbar degenerative disc disease, and a pinched nerve. Dr. Hobbib diagnosed leg contusion and back pain. He released appellant to return to work the next day with limited right leg use.

Appellant was treated by Dr. Lisa Affatato, a Board-certified internist, on February 11, 2009, who returned appellant to work with restrictions. In a duty status form dated August 20, 2010, Dr. Affatato diagnosed back pain, right leg and ankle contusion. She indicated that appellant could return to work eight hours per day with restrictions.

On October 8, 2010 the employing establishment offered and appellant accepted a modified assignment as a regular mail handler, 8:30 a.m. to 5:00 p.m., subject to the restrictions set forth by Dr. Affatato.

The case was dormant until appellant submitted a May 1, 2012 attending physician's report (Form CA-2) from Dr. Affatato, who noted that appellant was hit on the right leg at work on January 14, 2009. She diagnosed lumbar herniated disc by magnetic resonance imaging (MRI) scan and noted by checking a box marked "yes" that appellant's condition was caused or aggravated by work activity. On March 21, 2013 appellant was treated for back and leg pain. Dr. Affatato noted paralumbar tenderness and diagnosed lumbar disc disease and knee pain.

On March 29, 2013 appellant filed a claim for a recurrence of disability (Form CA-2) alleging that on January 9, 2013 she had a recurrence of disability when she was, sitting and standing at work which triggered a bad reaction in her back and legs. She noted developing a herniated disc in her back and arthritis in her knee due to her work duties.

On March 21 2013 Dr. Affatato treated appellant for back and leg pain. Appellant reported back pain after sitting for any brief period of time as well as swelling of the legs. She

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<sup>3</sup> Docket No. 14-1619 (issued January 26, 2014).

ordered right knee x-rays and prescribed medication and physical therapy. Appellant submitted a return to work slip from Dr. Affatato on April 4 and May 3, 2013, who indicated that appellant was disabled from work due to arthritis of the spine and a right leg injury.

Dr. Affatato noted in a July 8, 2013 report that appellant's first MRI scan in March 2009 revealed degenerative disc disease and a subsequent MRI scan in April 2012 revealed significant changes at level L5-S1. She opined that the changes may partly be explained by repeated lifting of 30 to 50 pounds over multiple years, but the changes were arthritic in nature and may also be related to the aging process. Dr. Affatato noted that it was difficult to determine how much of appellant's symptoms were related to what occurred in 2009 since there were significant gaps between visits, diagnostic study recommendations, and treatment.

On May 7, 2013 OWCP advised that appellant's claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and limited medical expenses had been administratively paid. It advised that it was reopening the matter since she had claimed a recurrence of disability. OWCP informed appellant that her January 14, 2009 traumatic injury claim had been accepted for contusions of the right lower leg and back.

On May 22, 2013 OWCP advised appellant that a new occupational disease claim was administratively created using the Form CA-2a she had filed on March 29, 2013, with a date of injury of January 9, 2013. On June 11, 2013 it assigned OWCP File No. xxxxxx808.

Appellant subsequently provided an October 22, 2012 lumbar spine MRI scan which showed minimal grade retrolisthesis of L5 on S1 on a degenerative basis and small disc herniations at L4-5 and L5-S1.

In a decision dated July 12, 2013, OWCP denied appellant's occupational disease claim in OWCP File No. xxxxxx808 because she failed to establish that her medical condition was causally related to work events. On August 8, 2013 appellant requested an oral hearing which was held before an OWCP hearing representative on January 23, 2014.

In an October 2, 2013 return to work slip, Dr. Affatato returned appellant to work-light duty on October 5, 2013 with restrictions of sitting limited to 30 minutes, no lifting, standing limited to 20 minutes, and 15 to 20 minutes of walking. In an undated report, she noted that as a result of the January 2009 work accident appellant sustained leg and back pain. Dr. Affatato advised that appellant's back pain started in 2002 and her leg pain began after the 2009 accident. On February 4, 2014 she opined that the January 2009 injury resulted in ongoing weakness, right leg pain with presumed nerve injury based on appellant's radicular symptoms, right ankle tenosynovitis, and chronic pain and swelling.

On January 27 and 28, 2014 appellant was treated by Dr. Robert Rajczy, a podiatrist, for pain on the inside of her foot and ankle. She reported having a 2009 injury at work where she was hit with a power jack and was treated for back and leg pain. Dr. Rajczy diagnosed tendinitis, nerve entrapment of the foot, and limb pain. He noted that right foot and ankle x-rays revealed no arthritic or degenerative changes and no fractures or dislocations. Dr. Rajczy noted evidence of pes planus foot type and dispensed an ankle brace.

In a March 24, 2014 decision, an OWCP hearing representative affirmed the July 12, 2013 decision, which denied appellant's occupational disease claim. She also instructed OWCP to administratively combine File Nos. xxxxxx313 and xxxxxx808 and to develop appellant's claim for a recurrence of disability. On April 2, 2014 OWCP administratively combined the two claims. On August 26, 2014 appellant appealed the March 24, 2014 decision to the Board.<sup>4</sup> The Board affirmed the March 24, 2014 decision by decision dated August 26, 2014.

Appellant subsequently submitted reports from Dr. Eric Ratner, a Board-certified anesthesiologist, dated July 2 and 9, August 6, and September 10, 2013, in which he administered bilateral L3-4, L4-5, and L5-S1 intra articular facet joint injections. Dr. Ratner diagnosed bilateral lumbar facet disease causing bilateral axial back pain and bilateral L5-S1 radiculitis. In his July 2, 2013 report, he noted that appellant presented with low back and lower extremity pain. Dr. Ratner indicated that she injured her low back in 2008 and 2009 and was diagnosed with a herniated disc in 2009. He noted that a lumbar MRI scan in 2009 revealed a disc herniation at L5-S1 and a subsequent MRI scan in October 2012 showed disc herniation at L4-5 and L5-S1 with facet inflammation from L3 to S1 bilaterally. Dr. Ratner diagnosed lumbar facet inflammation from L3-S1 bilaterally and displaced disc at L4-5 and L5-S1 causing discogenic and radiculitis. In July 30 to September 24, 2013 reports, he noted that the bilateral lumbar facet injections provided 80 percent pain relief for a brief time. On October 7, 2014 and January 13, 2015 Dr. Ratner noted that appellant underwent L5-S1 transforaminal epidural injections for leg pain with some relief.

On March 24, 2015 appellant filed a claim for a recurrence of disability (Form CA-2a) alleging a recurrence of disability for which she stopped work on March 21, 2015. The employing establishment advised that she worked limited duty after the original injury. Appellant submitted a March 24, 2015 note from Dr. Ratner who reported providing right L5-S1 transforaminal and caudal epidural steroid injections with good relief of pain.

On April 16, 2015 OWCP advised appellant of the type of evidence needed to establish her recurrence claim. It particularly requested that she submit a physician's reasoned opinion addressing the relationship of her claimed recurrent condition and her original injury, along with a description of her current symptoms, recent diagnostic studies, a current diagnosis description of work duties she was unable to perform on the date of recurrence, and a recommended course of treatment.

Appellant subsequently submitted a March 29, 2015 report from Dr. Ratner who diagnosed degenerative disc disease and radiculopathy. Dr. Ratner noted that on March 10, 2015 she underwent right L5-S1 transforaminal and caudal epidural steroid injections with good pain relief. Appellant reported that her condition worsened with prolonged sitting and walking. Dr. Ratner noted no changes in her physical examination. Also submitted was a March 4, 2009 lumbar spine x-ray which revealed a small left paracentral disc herniation at L5-S1.

In a decision dated June 29, 2015, OWCP denied appellant's claim for a recurrence of disability commencing March 21, 2015.

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<sup>4</sup> *Id.*

Appellant subsequently submitted a July 16, 2015 report from Dr. Ratner who treated her for a displaced disc causing lower back pain and weakness. Dr. Ratner recommended a right L4 and L5 transforaminal injection and a caudal epidural steroid injection. He further indicated that he would refer appellant for a functional capacity evaluation and therapy.

On August 14, 2015 appellant requested reconsideration. She submitted a March 20, 2015 e-mail from an employing establishment manager, E.A., to appellant's supervisor, R.C., noting that appellant's January 14, 2009 injury was the only claim open for medical benefits. E.A. indicated that if appellant claimed limitations then she must provide a medical note with her limitations as well as a request for light duty from a manager.

Appellant submitted a July 6, 2015 appeal from a May 19, 2015 decision from a state unemployment compensation review board denying her claim for unemployment benefits. She asserted that she worked as a limited-duty mail processor since the 2009 work injury until March 21, 2015 when R.C. informed her that her compensation claim was closed. Appellant contended that her 2009 claim was still open and her restrictions were still in place.

Appellant filed an Equal Employment Opportunity (EEO) complaint on August 5, 2015. On June 16, 2015 E.A. responded to the EEO complaint and indicated that she had only one claim that was open which occurred on January 14, 2009 and was accepted for medical benefits for a lower leg and back injury. E.A. noted that appellant had no limitations and that there was no duty status report (Form CA-17) in the record validating her restrictions. She advised that appellant must submit medical documentation, listing her restrictions, along with a letter to the plant manager requesting light duty. R.C. noted that, on June 17, 2015, several employees, including appellant, whose claims were no longer open were requested to update their workers' compensation paperwork or request light duty.

In a decision dated November 12, 2015, OWCP denied modification of the June 29, 2015 decision.

On June 14, 2016 appellant, through counsel, requested reconsideration. She submitted additional evidence and asserted that the employing establishment did not have a limited-duty job for her as the limited-duty position was withdrawn.

Appellant submitted May 12, 2015 transcript excerpts from testimony before an unemployment compensation review board. R.C. testified that appellant's last day of employment was March 21, 2015 because her workers' compensation claim was closed. He indicated that on March 21, 2015 he informed her that her claim was closed and requested that she provide updated medical evidence which demonstrated her claim was open or request light duty through the plant manager. R.C. indicated that appellant did not request light duty from the plant manager and did not provide medical information to OWCP. Appellant submitted a portion of an August 19, 2015 decision from the Pennsylvania Unemployment Compensation Board of Review which determined the employing establishment failed to offer her a limited-duty position, although the employing establishment was aware or should have been aware that she had an open claim since 2009 due to work-related injuries.

Appellant provided a March 31, 2016 report in which Dr. Ratner noted providing a right L4-5 transforaminal epidural steroid injection. Dr. Ratner noted that she experienced myofascial pain superimposed and secondary from the underlying disc and facet pathology which was treated with compounded pain cream. In a follow-up assessment note dated March 31, 2016, he diagnosed degenerative disc disease and radiculopathy. Dr. Ratner noted that on February 27, 2016 appellant had right L4-5 transforaminal and caudal epidural steroid injections with good relief of pain. Appellant reported that her condition worsened with prolonged standing and walking. Dr. Ratner noted no changes in her physical examination. In reports dated December 30, 2014, March 10, June 27, and October 31, 2015, and February 27 and July 30, 2016, he performed bilateral L3-4, L4-5, L5-S1 intra articular facet joint injections. Dr. Ratner diagnosed bilateral L4-5, L5-S1 radiculitis due to degenerative disc disease and displaced discs.

In a decision dated September 12, 2016, OWCP denied modification of its November 12, 2015 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 resulting from a previous injury or illness without an intervening cause or a new exposure to the work environment that caused the illness. It can also mean 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>5</sup> A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties, or other downsizing.<sup>6</sup>

OWCP procedures provide:

“It the employing [establishment] has withdrawn a limited[-]duty assignment made specifically to accommodate the claimant's condition due to the work-related injury, and the withdrawal did not occur for cause, RIF, or closure of the facility, the CE [claims examiner] need only establish continuing injury-related disability for regular duty to accept the recurrence and begin payment of compensation benefits.

“To do so, the CE will need to ensure that the file contains an accurate description of the nature and extent of injury-related disability. It should be clear from the medical evidence of record that the claimant continues to suffer residuals of work injury that are disabling. If the evidence is insufficient, the CE will need to request this information.”<sup>7</sup>

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<sup>5</sup> *J.F.*, 58 ECAB 124 (2006).

<sup>6</sup> 20 C.F.R. § 10.5(x). *See also Richard A. Neidert*, 57 ECAB 474 (2006).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6a(4) (June 2013).

## ANALYSIS

OWCP accepted that appellant sustained contusions of the right lower leg and back. Appellant returned to a light-duty job and continued to work until March 21, 2015 when she stopped work. On March 24, 2015 she filed a claim for a recurrence of disability, commencing March 21, 2015. The Board finds that the medical record lacks a well-reasoned narrative from appellant's physicians relating appellant's claimed recurrent disability to her accepted employment injury.

Appellant submitted multiple reports from Dr. Ratner who provided treatment including epidural steroid injections in her lumbar spine. Dr. Ratner's diagnoses included degenerative disc disease, myofascial pain, and radiculopathy. He related that appellant's condition worsened with prolonged sitting and walking. However, Dr. Ratner did not specifically address whether she had a recurrence of disability on or about March 21, 2015 causally related to the accepted employment back and right lower leg contusions. He also did not explain how degenerative disc disease, radiculopathy, displaced disc was causally related to the accepted conditions of contusion of the back and right lower leg.<sup>8</sup>

Reports from Dr. Affatato dated July 8, 2013 and February 4, 2014 and Dr. Rajczyk dated January 27 and 28, 2014 do not establish the claimed recurrent condition since they predate the time of the claimed recurrence on or about March 21, 2015 and thus, do not address the relevant time period.

Other medical reports submitted by appellant, including reports of diagnostic testing, failed to specifically address whether she sustained a recurrence of disability on or about March 21, 2015 causally related to the January 14, 2009 work injury, nor did they note a particular change in the nature of appellant's physical condition, arising from the employment injury that prevented her from performing her light-duty position. Therefore, the Board finds that appellant has not met her burden of proof to establish disabling employment-related residuals.

Appellant asserted that on March 21, 2015 the employing establishment withdrew her limited-duty position. She contends that on March 21, 2015, R.C. incorrectly determined that her claim was closed and he did not consider her 2009 work injury which was open for medical benefits. However, the Board finds that appellant has not submitted sufficient medical evidence to establish work-related disability, on or about March 21, 2015, causally related to her January 14, 2009 work injury. The record indicates that OWCP and the employing establishment sought updated medical evidence to support the need for continuing restrictions due to the accepted work injury. It only stopped providing light duty when it did not receive any updated medical evidence supporting a continuing need for light duty. The record does not

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<sup>8</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury).

contain current medical records establishing ongoing restrictions as a result of appellant's work injury.<sup>9</sup>

Appellant did not otherwise submit medical evidence showing that she sustained a recurrence of disability beginning on or about March 21, 2015 causally related to her January 14, 2009 work injury.<sup>10</sup>

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 that she sustained a recurrence of disability causally related to her accepted condition.

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<sup>9</sup> See *E.L.*, Docket No. 10-0196 (issued October 4, 2010) (the record contained no bridging medical evidence to establish that appellant's continuing need for light duty was necessitated by the accepted condition and not due to other diagnosed conditions).

<sup>10</sup> Appellant submitted a portion of a Pennsylvania, unemployment compensation review board decision. However, the Board has held that the determination of an employee's rights or remedies under other statutory authority does not establish entitlement to benefits under FECA. See *Beverly R. Jones*, 55 ECAB 411 (2004).



**ORDER**

**IT IS HEREBY ORDERED THAT** the September 12, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 2017  
Washington, DC

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

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

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