



restriction. On April 3, 1998 the Office accepted the claim for a sprain of the lumbar region and approved physical therapy. The Office paid appropriate benefits. The record reflects that appellant has preexisting right thoracic and left lumbar scoliosis and neck and left arm complaints resulting from a nonwork-related motor vehicle accident on June 13, 1997. He was also involved in a nonwork-related dog bite on February 15, 1999, sustained two work-related slip and falls on August 31, 1999 and January 11, 2000<sup>1</sup> and was involved in a nonwork-related September 6, 2000 motor vehicle accident. He retired on disability effective February 9, 2001. On March 24, 2001 appellant was involved in another nonwork-related motor vehicle accident. On November 9, 2001 he underwent decompression and fusion of the lumbar spine at the L2-3 levels and on May 12, 2003 underwent decompression and fusion of the lumbar spine at the L1-4 levels.

Objective testing following appellant's March 24, 2001 nonwork-related motor vehicle accident revealed fractures at the L1-2 level and a flexion deformity at L2-3 and magnetic resonance imaging (MRI) scan studies of April 10 and August 15, 2001 showed a disc herniation at the L2-3 levels.

On August 14, 2001 Dr. Jeffrey S. Janofsky, a Board-certified psychiatrist, performed a second opinion evaluation for the Office. Appellant was diagnosed with malingering, memory and psychological impairment, a pain disorder associated with both psychological factors and a general medical condition, a substance-induced mood and psychotic disorder, and marijuana, alcohol and opiate dependence. Dr. Janofsky opined that there was a direct connection between appellant's pain disorder symptoms and his work injury but, given appellant's attempt to malingering, he could not say to what extent the pain disorder actually caused impairment. He opined that, most, if not all, of appellant's current disabling symptoms were related to depressive and psychotic symptoms secondary to his opiate, marijuana and alcohol dependency and were not secondary to pain directly physiologically related to his on-the-job injuries.

On January 23, 2002 Dr. Daniel Tang, a Board-certified orthopedic surgeon, performed a second opinion examination for the Office without access to appellant's x-rays or MRI scan studies. Dr. Tang provided an impression of depression and back and leg pain. On the basis of his physical examination, he opined that appellant was not disabled from employment from a spinal standpoint. Although appellant had several positive Waddell signs on examination, Dr. Tang stated that this was not consistent with defined spinal etiology. He further stated that in order to form a complete judgment, he would need to review appellant's previous x-rays and MRI scan studies.

On July 28, 2003 appellant filed a Form CA-7 claim for compensation. However, he did not indicate a period for which compensation was claimed.

On August 11, 2003 appellant filed a claim for a recurrence of disability beginning January 12, 1998. He indicated that he returned to work on January 13, 1998, but missed time from work due to back pain and various falls and hospitalizations. He also advised that he had

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<sup>1</sup> The record reflects that the Office accepted the August 31, 1999 incident for a sprain of the right hand and wrist and the January 11, 2000 incident for a contusion of the chest wall and left shoulder. The Office paid appellant for the time he lost from work for each respective injury.

three back surgeries. The employing establishment stated that appellant returned to full-time regular duty on January 8, 1998 and indicated that no accommodations to his regular duties were made.

By letter dated August 22, 2003, the Office advised appellant regarding the information needed to support his recurrence claim. The Office received medical documentation for the period August 20, 1998 through September 23, 2003 from several physicians, including the following: Dr. Riffat S. Ashai, a Board-certified psychiatrist, Dr. Joseph K. Jamaris, a Board-certified neurological surgeon, Dr. Lawrence Shin, a Board-certified orthopedic surgeon, Dr. Warren Ross, a Board-certified internist, Dr. Michael A. Franchetti, a Board-certified orthopedic surgeon, Dr. Robert Viener, a Board-certified orthopedic surgeon, Dr. Melvin Kordon, a Board-certified family practitioner, and Dr. Navinder Sethi, an orthopedic surgeon. The primary diagnosed conditions were: chronic low back pain, sciatic lumbar radiculopathy, lumbar stenosis, urinary urgency, severe depression, lumbar disc protrusion, scoliosis, lumbar facet syndrome, lumbar myofascitis and lumbar neuritis. Several of the physicians attributed appellant's back condition and related problems to the November 7, 1997 work injury.

In a March 27, 2003 report, Dr. Ashai opined that appellant was permanently medically disabled from a chronic emotional illness for which there is no cure. In a Form CA-20 attending physician's report, Dr. Ashai opined, by checking a box "no," that appellant's bipolar attentive disorder was not caused or aggravated by employment activity.

In a May 23, 2003 report, Dr. Ross advised that appellant suffers from several incapacitating medical problems which renders him totally disabled. Dr. Ross advised that appellant has severe spinal stenosis and spinal instability which resulted in a past spinal surgery and a more recent spinal stabilization procedure. He advised that appellant has chronic pain, a seizure disorder and a bipolar affective disorder. Dr. Ross opined that, as appellant requires a complex medical regimen, in which many of the medications used produce a depression in mental functioning, he is totally disabled. In an August 27, 2003 Form CA-20 attending physician's report, Dr. Ross opined, with a check mark, that appellant's lumbar disc herniation at L2-3, fractured T11-12, spinal pain, mental disorder secondary to chronic pain and lumbar stenosis was caused by the work injury in 1997.

In a September 4, 2003 report, Dr. Jamaris advised that appellant was first seen by his partner, Dr. Lancelotta, on January 18, 2000 complaining of low back pain since a work-related injury of November 7, 1997, when he was lifting some heavy files and fell backwards onto his back. Dr. Jamaris indicated that appellant saw Drs. Kordon, Dyer, Shin, Drapkin before he first saw him on March 24, 2001, following a motor vehicle accident. He stated that appellant then presented to the emergency room again in the summer of 2001 and was referred to his office on August 8, 2001 complaining of bitter low back and right leg pain. Because of continued low back pain with bilateral leg pain and episodic urinary incontinence, appellant underwent a L2 and L3 laminectomy with left L2 discectomy and L2-3 insitu fusion on November 9, 2001 and was successfully discharged by November 12, 2001, ambulating and having marked improvement in leg symptoms, but continued complaints of low back pain. Dr. Jamaris stated that, on November 29, 2001, he became concerned about appellant's suicidal ideation and informed both his primary care physician, Dr. Ross, and his psychiatrist, Dr. Ashard, as well as physical therapists. Dr. Jamaris stated that he saw appellant on February 20, 2002, when

appellant complained of increased pain, and on July 24, 2002, when appellant complained of new severe right hip pain, which prompted urgent myelography. He indicated that the July 31, 2002 myelography and computerized tomography (CT) scan revealed osteophytes and extradural defect at L2-3 with angulation, which were previously seen. Dr. Jamaris advised that he last saw appellant on January 8, 2003, when he was complaining of significant low back and bilateral leg pains. Examination revealed minor scoliosis with the convexity to the left and a mildly antalgic gait. There was no weakness, but there was guarding on the right L4 hypesthesia. SLR was painful on the left at 75 and at 60 on the right. He advised that he had not seen appellant since January 8, 2003, but had recommended at that time that appellant seek additional orthopedic spine surgeon's opinions, since previous evaluations by Dr. Larry Shin and Dr. Paul McAfee felt appellant would be a poor candidate for lumbar fusion. After reviewing appellant's extensive history and available records, Dr. Jamaris opined that appellant's ongoing lumbar condition was a consequence of the work-related injury of November 7, 1997.

In a September 15, 2003 Form CA-20 report, Dr. Vaughan Dahl opined, with a check mark, that appellant's back conditions were causally related to his November 7, 1999 work injury.

In a Form CA-20 attending physician's report of August 27, 2003, Dr. Sethi opined, by checking a box "yes," that appellant's back conditions were caused by his November 7, 1997 work injury. In a September 23, 2003 report, Dr. Sethi advised that appellant had instability at the L2-3 level with focal kyphosis at the same level for which he underwent a posterior fusion and instrumentation with reduction of the kyphosis on May 12, 2003. He opined that appellant's condition was related to his November 7, 1997 injury as his recent surgery was necessary secondary to complications from his previous surgery. However, in a September 23, 2003 report, Dr. Sethi opined, by checking the appropriate box, that appellant's conditions were not caused or aggravated by employment activities.

In a September 24, 2003 Form CA-20 attending physician's report, Dr. Lawrence Shin, an orthopedic spine surgeon, advised that appellant's atypical back pain and mild kyphosis was not caused or aggravated by his work injury of lifting boxes.

By decision dated December 12, 2003, the Office denied appellant's recurrence of disability claim, finding that the medical evidence failed to establish that the claimed recurrence was the result of the accepted injury or progression of the accepted conditions as other intervening factors caused total disability.

### **LEGAL PRECEDENT**

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.<sup>2</sup> 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 condition is

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<sup>2</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992).

causally related to the employment injury.<sup>3</sup> Moreover, the physician's conclusion must be supported by sound medical reasoning.<sup>4</sup>

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>5</sup> In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.<sup>6</sup> While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>7</sup>

It is an accepted principle of workers' compensation law and the Board has so recognized, 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 cause which is attributable to the employee's own intentional conduct. 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. If a member weakened by an employment injury contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury.<sup>8</sup> An employee who asserts that a nonemployment-related injury was a consequence of a previous employment-related one has the burden of proof to establish that such was the fact.<sup>9</sup> In this case, appellant's burden includes submitting rationalized medical opinion evidence, showing that his claimed recurrence of disability was the direct and natural result of the accepted work-related aggravation in 1997. He has the burden to establish that his recurrence is directly attributable to federal employment factors. The Office procedure manual states: "A recurrence of disability differs from a new injury in that with a recurrence, no event other than the previous injury accounts for the disability."<sup>10</sup>

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<sup>3</sup> Section 10.104(a)(b) of the Code of Federal Regulations provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The physician's report should include the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions and the prognosis. 20 C.F.R. § 10.104.

<sup>4</sup> See *Robert H. St. Onge*, *supra* note 2.

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

<sup>6</sup> For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, *supra* note 2; *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 748 (1986).

<sup>7</sup> See *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>8</sup> *Sandra Dixon-Mills*, 44 ECAB 882 (1993).

<sup>9</sup> *Margarette B. Rogler*, 43 ECAB 1034 (1992).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.4 (January 1995).

## ANALYSIS

The Office accepted that appellant sustained a back strain on November 7, 1997. He stopped work on November 12, 1997 and returned on January 8, 1998 with a 10-pound permanent lifting restriction. On February 9, 2001 appellant retired on medical disability.

Although appellant filed a recurrence of disability claim for the period January 12 to 13, 1998, there is no evidence of total disability for the claimed period or any evidence of wage loss prior to appellant's February 9, 2001 retirement.<sup>11</sup> Moreover, it appears that the Office continued to pay for his medical treatment for his accepted back strain. Accordingly, the Board will view the evidence from appellant's date of retirement, February 9, 2001, to determine whether he sustained a recurrence of disability causally related to his accepted November 7, 1997 employment injury.

The Board notes that the objective testing taken on March 24, 2001 following the nonwork-related motor vehicle accident revealed fractures at the L1-2 level and a flexion deformity at L2-3 and an April 10, 2001 MRI scan showed a disc herniation at the L2-3 levels which later resulted in two back surgeries. Thus, the March 24, 2001 nonwork-related motor vehicle accident becomes a separate, independent intervening factor which is not compensable.

The Board finds that appellant has not submitted the necessary rationalized medical evidence to substantiate that his current spinal conditions or his disc herniation at the L2-3 level, which necessitated the two back surgeries, are causally related to the November 7, 1997 employment injury. In his September 4, 2003 report, Dr. Jamaris advised that he first saw appellant on March 24, 2001 following a motor vehicle accident, summarized appellant's complaints and medical treatment and opined that appellant's ongoing lumbar condition remained a consequence of the work-related injury of November 7, 1997. Dr. Jamaris, however, did not discuss whether appellant sustained a recurrence of disability on or after January 12, 1998 independent of intervening factors. A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury.<sup>12</sup> In this case, Dr. Jamaris provided no rationale that appellant's work or subsequent work-related injuries aggravated his condition to the point of resulting in a herniated disc four years after the work-related injury. Neither did he discuss the objective evidence following the nonwork-related motor vehicle accident of March 24, 2001. Medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relation.<sup>13</sup> The Board finds that Dr. Jamaris' report is insufficient to establish that appellant's claimed recurrence is a direct result of the 1997 injury and not due to independent, intervening factors.

Dr. Ross opined, in an August 27, 2003 form report, that appellant suffered from a lumbar disc herniation at L2-3, fractured T11-12, spinal pain, mental disorder secondary to

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<sup>11</sup> The record indicates that appellant was compensated for all relevant time periods related to this current claim and his other claims. *See supra* note 1.

<sup>12</sup> 20 C.F.R. § 10.5(x) and (y). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1) (January 1995).

<sup>13</sup> *Albert C. Brown*, 52 ECAB 152 (2000).

chronic pain and lumbar stenosis. He checked “yes” that the condition was caused or aggravated by employment. In a September 15, 2003 report, Dr. Dahl also opined that appellant’s back conditions were causally related to his November 7, 1999 work injuries by checking “yes” that the condition was caused or aggravated by employment. The reports of both Dr. Ross and Dr. Dahl, however, are of little probative value as the Board has held that the checking of a box “yes” on a form report, without additional explanation or rationale, is insufficient to establish causal relationship.<sup>14</sup>

The Board notes that, although Dr. Sethi had indicated with a checkmark that appellant’s back condition was caused or aggravated by his employment, the physician explained in his September 23, 2003 report that appellant’s instability at the L2-3 level with focal kyphosis was related to his November 7, 1997 injury as the surgery was necessary secondary to complications from the previous surgery. As noted, a medical opinion supporting causal relationship must be supported by sound medical rationale based on a complete and accurate factual and medical history.<sup>15</sup> As it is not clear whether Dr. Sethi knew about appellant’s nonwork-related motor vehicle accidents, his opinion is entitled to little probative value. Additionally, it is noted that in a form report also of September 23, 2003, Dr. Sethi opines that appellant’s conditions are not work related and provides no explanation for his change in opinion.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability on or after January 12, 1998 causally related to his accepted November 7, 1997 employment injury.

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<sup>14</sup> *Calvin E. King*, 51 ECAB 394 (2000).

<sup>15</sup> *Ronald A. Eldridge*, 53 ECAB \_\_\_\_ (Docket No. 01-67, issued November 14, 2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 12, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 12, 2004  
Washington, DC

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member