



back while undergoing a fitness-for-duty examination on July 7, 1993. On August 11, 1993 appellant filed a claim for a recurrence of disability, alleging that she was totally disabled due to her accepted low back condition as of July 30, 2003. The Office authorized compensation for temporary total disability for the period from August 2 through 13, 1993 and accepted the diagnoses of aggravation of degenerative disc disease and arthritis of the lower back. Appellant returned to duty with restrictions on August 13, 1993 but submitted her resignation from the employing establishment on August 18, 1993, citing "personal reasons." Following her resignation, appellant secured private employment at numerous jobs until March 1, 2001, when she injured her lower back while working for Western Navajo Juvenile Services as a correctional counselor.<sup>1</sup> Appellant stated that on March 1, 2001 she experienced a problem with the brake shoes of the truck she was driving and exited the vehicle to call for assistance. As she was walking to a pay telephone, she stepped in a pothole and injured her back.

In an emergency room report dated March 2, 2001, Dr. Lola K. Sue, a specialist in internal medicine, stated:

"This is a 32-year-old female who comes in with a chief complaint of low back pain, which started this morning. She stated that yesterday she had twisted and lifted a truck and ever since then has been having pain running down, actually she was doing fine, but then this morning when she woke up she had an acute pain running down to the bottom of her feet on the right side."

Dr. Sue observed that appellant's past medical history was significant due to chronic low back pain. In a report dated March 4, 2001, Dr. Sue stated that appellant underwent a computerized axial tomography scan, which revealed a herniated nucleus pulposus at L4-5. The diagnosis of herniated disc at L4-5 was also indicated by magnetic resonance imaging scan dated July 5, 2001.

On July 11, 2002 appellant filed a Form CA-7 claim for wage loss commencing August 18, 1993. In a January 22, 2003 report, Dr. William K. Kvien, appellant's treating physician, noted that her initial back injury occurred in August 1992 while working for the employing establishment. Dr. Kvien advised that appellant attempted to return to work during the following summer of 1993 but was unable to work for more than a few months due to back and leg pain and weakness. He last examined appellant on January 8, 2003, at which time her symptoms included lower back pain with weakness in both legs. Dr. Kvien stated:

"[Appellant] states these symptoms and problems have never really resolved since the original injury. I am not aware of any significant recurrent injury. She has not had steady employment since the original injury. Her diagnosis is low back and leg pain with broad based central disc herniation at the L4-5 level with radiculopathy involving both lower extremities. I believe this is a longstanding result of her original injury. She may eventually require surgery pending the results of her epidural steroids."

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<sup>1</sup> She has not worked since being terminated from Western Navajo Juvenile Services in October 2001.

By decision dated March 4, 2003, the Office denied appellant's recurrence of disability claim. The Office found that appellant failed to submit medical evidence sufficient to establish that her back condition or disability as of August 18, 2003 was caused or aggravated by the accepted injury of 1992. The Office found that appellant submitted her resignation from the employing establishment on August 18, 1993 due to personal reasons and that it would have continued to employ her had she not resigned. The Office further found that appellant did not submit any contemporaneous medical evidence at the time of her claimed recurrence in August 1993, indicating that she was totally disabled at that time due to an injury causally related to the August 7, 1992 employment injury.

By letter dated April 2, 2003, appellant's attorney requested a hearing, which was held on November 18, 2003. Appellant submitted a November 7, 2003 report from Dr. Kvien, who stated:

"I have been involved with [appellant's] treatment as a primary care provider for [appellant] off and on over the past 17 years. Her most significant medical problem over this time has been low back pain for which [appellant] first sought care in August 1992 -- at that time she stated that she had injured her back in the course of her duties as a fire fighter for the [employing establishment] when she was lifting and twisting with some heavy equipment. After this initial injury, [appellant] did return (I believe the next year) to light[-]duty work, but was not able to return to full duties due to persistent back pain. I do not believe that there were any preexisting conditions which might have caused or exacerbated this condition. The patient has had ongoing symptoms of back pain, along with weakness and spasm in both legs, fairly continuously since the original injury. [Appellant] does report an exacerbation in these symptoms caused by stepping in a pothole in March 2001.... I consider her current symptoms to be related to her initial injury, perhaps exacerbated by the above-noted incident in which she stepped in a pothole. Her diagnosis remains low back and leg pain with broad based central disc herniation at L4-5 level. I feel her prognosis is rather poor for return to full functions given the long-standing nature of her symptoms without significant improvement with medications and epidural steroids."

At the hearing, appellant testified that Dr. Kvien released her to full duty on December 28, 1992. She agreed to return to work only because her supervisor had advised her that she would be released before the upcoming fire season if she did not immediately return. Her supervisor stated that she would receive a pay raise if she returned to work. Appellant worked at this job until July 7, 1993, when she reinjured her lower back while running a mile and a half requirement for her position. Although she continued to experience pain in her lower back, appellant continued to perform the requirements of her job, including strenuous duties such as sharpening chain saws, cleaning chain saws, bucking up woods and stacking fire wood. Appellant continued to perform the duties of this job, with assistance from her coworkers, until August 2, 2003. On August 18, 2003 appellant advised her supervisors that as a result of the back injury she sustained during the July 7, 2003 performance run, she was no longer able to perform her job duties. She resigned from the employing establishment voluntarily, but only because her supervisors advised her that this would be preferable to being terminated.

By decision dated February 9, 2004, an Office hearing representative affirmed the March 4, 2003 decision.

### **LEGAL PRECEDENT**

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a 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 who supports that conclusion with sound medical reasoning.<sup>2</sup>

Where a claimant alleges a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which she claims compensation is causally related to the accepted injury.<sup>3</sup> In addition, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.<sup>4</sup>

### **ANALYSIS**

In the instant case, appellant has failed to submit sufficient medical opinion which relates her back condition or disability as of August 18, 2003 to her accepted lower back injury. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment condition.

Appellant submitted Dr. Kvien's January 22 and November 7, 2003 reports and Dr. Sue's March 2001 hospital reports. However, the record contains no medical evidence during the period from August 18, 1993, the date of the alleged recurrence of disability, until March 2, 2001, when Dr. Sue examined appellant at the hospital emergency room after her roadside incident and administered diagnostic tests. On January 22, 2003 Dr. Kvien reported that he was not aware of any significant recurrent injury. He described a history in which appellant had returned to work following her August 1992 employment injury but was unable to work for more than a few months due to low back and leg pain with weakness, which had not resolved since the original injury. Dr. Kvien opined that these symptoms were longstanding as a result of her original August 1992 employment injury. His report provided a diagnosis of appellant's current condition and indicated generally that her lower back symptoms were related to the accepted injury. However, he did not provide an explanation which included a history of appellant's back condition from 1993 to 2003 or fully state the basis for concluding that appellant's disability as of August 18, 2003 was causally related to her accepted 1992 injury. There is no "bridging

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<sup>2</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. §10.121(a).

<sup>3</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

<sup>4</sup> For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 738 (1986).

evidence” which addresses appellant’s back condition to her accepted employment injury. An opinion that a work-related injury in 1992 causes or contributes to disability in 2003 must be based on medical opinion addressing the period between the injury and the disability.<sup>5</sup> Dr. Kvien’s January 22, 2003 report did not discuss a worsening of appellant’s condition over the time period nor explain how the accepted injury contributed to her present condition. Although Dr. Sue diagnosed a disc herniation at L4-5, there was no evidence of record pertaining to this diagnosed condition until March 4, 2001, the date of her report. Dr. Sue did not address how the diagnosed herniated disc was caused or contributed by the accepted 1992 employment injury. Appellant failed to submit evidence to show that she sustained a worsening of her original injuries or became totally disabled as of August 18, 1993 due to residuals of her accepted condition. As appellant has not submitted medical evidence sufficient to establish that she sustained a recurrence of her work-related lower back condition, the Office properly denied compensation in its October 21, 2003 decision.

Following the October 21, 2003 decision, appellant submitted Dr. Kvien’s November 7, 2003 report. He reiterated his opinion that her most significant medical problem since the August 1992 employment injury were lingering lower back and leg symptoms. Dr. Kvien again ruled out any preexisting conditions, which might have caused or exacerbated her condition as of August 18, 1993, when she stopped working for the employing establishment. While he did relate an exacerbation in these symptoms caused by appellant’s stepping in a pothole in March 2001, he considered her current symptoms to be related to the initial injury. Dr. Kvien concluded that her diagnosis remained low back and leg pain, with a broad-based central disc herniation at the L4-5 level.

Dr. Kvien’s November 7, 2003 report did not constitute sufficient medical evidence addressing the causal connection between appellant’s employment-related condition and her alleged recurrence of disability. Causal relationship must be established by rationalized medical opinion evidence. Dr. Kvien’s report failed to provide sufficient explanation for relating the disc herniation at L4-5 to the 1992 employment injury. The reports do not provide a full history of appellant’s back condition or treatment during the years after 1993. As noted, there is no medical evidence pertaining to appellant’s lower back condition between August 18, 1993 and March 2001, when Dr. Sue examined appellant and the first diagnosed herniated disc at L4-5. The Board finds that appellant failed to submit rationalized medical evidence sufficient to establish that her current condition is causally related to her August 7, 1992 employment injury.

### **CONCLUSION**

The Board finds that appellant has not met her burden to establish that she was entitled to compensation for a recurrence of disability as of August 18, 2003 causally related to her accepted lower back condition.

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<sup>5</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 9, 2004 decision of the Office of Workers' Compensation Programs be affirmed.<sup>6</sup>

Issued: February 16, 2006  
Washington, D.C.

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

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>6</sup> Willie T.C. Thomas, who participated at oral argument and in the preparation of this decision, retired from the Board as of January 3, 2006.