

On December 1, 2003 appellant, then a 41-year-old clerk, filed a traumatic injury claim alleging that on November 17, 2003 she sustained an injury to her middle back while lifting mail. The employing establishment controverted the claim. By letter dated December 24, 2003, the Office accepted appellant's claim for thoracic sprain/strain. On July 15, 2004 the Office

upgraded appellant's claim to accept it for lumbar sprain/strain. Appellant stopped work on November 30, 2003 and was released to full-time limited duties on December 1, 2003. Appellant had a prior low back injury in 1994.

In a medical report concerning a September 13, 2004 visit, Dr. Bill E. Weldon, an osteopath, noted that appellant was currently under his treatment for injuries sustained on November 17, 2003 when she was injured while lifting mail. He explained that appellant's current diagnosis included thoracic and lumbar strain/sprain and lumbar disc disruption with spinal foraminal stenosis. Dr. Weldon noted that appellant has not recuperated from her injuries and continues to experience severe disabling pain in her thoracic and lumbar spines as a result of the accident and has very limited range of motion in her spine as well as weakness and paraesthesias in her lower extremities. He noted that appellant was working with restrictions, but that she does experience times when she cannot perform her restricted duties and that she would be taken off work intermittently as a result. In a September 13, 2004 duty status report, Dr. Weldon indicated that appellant could return to work eight hours a day five days a week with restrictions.

A note indicated that Dr. Weldon treated appellant on September 27, 2004.

In an October 6, 2004 note, Dr. Weldon indicated that appellant was incapacitated from October 4 through 6, 2004, due to her job injury of November 17, 2003 and could work a maximum of four hours a day for five days a week.

In an October 8, 2004 note, a physician from the Weldon Medical Clinic indicated that appellant was incapacitated on October 7, 2004 due to injuries sustained on November 17, 2003.

On October 9, 2004 appellant filed a recurrence of disability claim alleging a recurrence of the November 17, 2003 employment injury on October 8, 2004. In an accompanying note, received by the Office on October 14, 2004, she indicated that she has tried to work to the best of her ability on limited duty but that her back is hurting. She noted that it was hard to keep lifting the mail from the ergo cart for eight hours when her back was hurting.

In a statement dated October 10, 2004, appellant's supervisor indicated that since appellant's injury of November 17, 2003 appellant has been working in a limited-duty capacity on the "flat sorter prep[aration] belt" and that she does not do any lifting other than a few pieces of mail at a time.

On October 16, 2004 appellant filed a claim for compensation for the period September 3 to October 7, 2004. On October 28, 2004 appellant filed a claim for compensation from October 8 through 15, 2004.

On October 15, 2004 appellant accepted a limited-duty offer. In a duty status report dated October 20, 2004, Dr. Weldon indicated that appellant could only work four hours a day with restrictions.

In a medical report dated October 18, 2004, Dr. J. John Stasikowski, a Board-certified orthopedic surgeon, indicated that he saw appellant on October 15, 2004, at which time she was

complaining of low back pain. However, he deferred any medical opinion until he saw the films of the magnetic resonance imaging (MRI) scan conducted on March 9, 2004.

In an October 20, 2004 attending physician's report, Dr. Weldon indicated that appellant was under his treatment for injuries she received while lifting mail on November 17, 2003. He noted:

"[Appellant] has had extensive evaluation and treatment for her injuries and she does have radiographic evidence for disc disruption in her lumbar spine. Her current diagnosis includes lumbar intervertebral disc syndrome with spinal stenosis.

"[Appellant] has not recuperated fully from her injuries and she continues to experience severe disabling pain and rigidity in her thoracic and lumbar spines. [She] has very limited range of motion in her back as well as weakness and paraesthesias in her lower extremities. [Appellant] has been able to return to work, however, she is working very specific restrictions and reduced work hours. [She] reports an increase in symptoms with prolonged activity, therefore she was returned to work with a four[-]hour daily restrictions. This will allow [appellant] to perform her job duties and also reduce the risk of further injury due to instability of her spine. [She] is advised to work a maximum of four hours daily and to follow her most recent restrictions. [Appellant] is to continue intermittent evaluation to monitor her condition and also continue medications and physical therapy."

On October 28, 2004 appellant filed a claim for compensation from October 8 to 15, 2004. By letter dated October 29, 2004, the Office requested that appellant submit further information. In response thereto, appellant submitted a report dated October 25, 2004, wherein Dr. Stasikowski, indicated that appellant continued to have low back pain and was unable to perform the full duties of a mail processing clerk. He noted that appellant had not reached maximum medical improvement. He noted the following objective findings: paralumbar muscular tightness, equivocal foraminal compression test, diminished range of motion and abnormalities on MRI scans.

In a report dated December 17, 2004, Dr. Weldon noted that appellant had not fully recuperated from her injuries and that she continued to experience severe disabling pain and rigidity in her back as a result of her injuries. He stated:

"[Appellant] continues to need medical care and treatment of her injuries. [She] was able to continue working, however, on October 8, 2004 was partially disabled and was released to work with restrictions and [four] hours a day maximum. [Appellant] worked under restrictions and limited hours until November 20, 2004 when she was no longer able to do even light duty. Her symptoms worsened and she had constant severe pain in her lower back with the pain radiating to her lower extremities causing weakness and difficulty ambulating. As a result of increase in symptoms and for prevention of further injury, appellant was taken off work completely and has been totally disabled since November 20, 2004 and will

remain so for a minimum of three months until further treatment and evaluation is performed.

Dr. Weldon noted that appellant's MRI scan showed findings consistent with a traumatic and acute injury as sustained by appellant on November 17, 2003. He noted that appellant has indications of spinal stenosis in her spine, which is expected after one year from the injury date. He stated:

"Therefore, the findings of spinal stenosis, facet hypertrophy and ligamentum flavum thickening are a direct result of the disc disruption in her lumbar spine. The MRI [scan] findings also indicated that these findings are due to disc protrusion. Therefore, [appellant] did sustain a traumatic injury and her findings are a direct result of her injuries and are not a result of an occupational injury."

In an attending physician's report of the same date, Dr. Weldon indicated that appellant was partially disabled from October 8 through November 19, 2004 and totally disabled from November 20, 2004 until February 15, 2005.

By decision dated January 4, 2005, the Office denied appellant's claim for a recurrence of disability commencing September 30, 2004 as it found that appellant had not established that the claimed recurrence resulted from the accepted work injury.

On January 12, 2005 appellant requested a review of the written record by an Office hearing representative.

In a decision dated May 27, 2005, the Office hearing representative modified the Office's decision in that he found that appellant was entitled to compensation for four hours per day for time lost for medical appointments on September 3 and 27, 2004. He also found that the evidence was insufficient to establish that appellant was disabled from work commencing September 3, 2004, for other than medical appointments on October 4, 2004 from November 19, 2004. Accordingly, the Office's decision was affirmed as modified.<sup>1</sup>

### **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 injury or illness without an intervening injury or new exposure to the work environment.<sup>2</sup>

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

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<sup>1</sup> The Office hearing representative noted that appellant filed the claimed recurrence of disability commencing November 20, 2004 subsequent to the January 4, 2005 Office decision, which was the subject of the oral hearing.

<sup>2</sup> 20 C.F.R. § 10.5(x) (2002).

the employee must show 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.<sup>3</sup>

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.<sup>4</sup>

### ANALYSIS

The Office initially accepted that appellant sustained an employment-related thoracic/sprain strain on November 17, 2003 and later expanded the acceptance of her claim to include a lumbar strain/sprain. Following the November 17, 2003 employment injury, appellant returned to limited-duty full-time work December 1, 2003. She has claimed compensation for an increase in disability for the period commencing September 3, 2004.

In modifying the Office's decision, the hearing representative found that appellant was entitled to four hours' compensation for the time she lost for each medical appointment on September 3 and 27 and from October 4 to November 19, 2004, as the treatment was for the employment-related conditions.<sup>5</sup>

The Board finds, however, that the Office properly found that appellant was not entitled to increased disability beginning October 8, 2004 from the accepted work injury of November 17, 2003, as the medical evidence of record failed to support causal relationship. Appellant returned to work full-time limited duty on December 4, 2003 and continued in this position until October 8, 2004. Dr. Weldon indicated that appellant was partially disabled from October 8 through November 19, 2004 and totally disabled commencing November 20, 2004. In his report of October 20, 2004, Dr. Weldon indicated that appellant had lumbar intervertebral disc syndrome with spinal stenosis. He noted that appellant had not recuperated fully from her work injuries. He advised appellant to work four hours a day limited duty. In his report of December 17, 2004, Dr. Weldon found that the findings of spinal stenosis, facet hypertrophy and ligamentum flavum thickening are a direct result of the disc disrupt in her lumbar spine. Dr. Weldon advised appellant to limit and then stop work as a result of the increase in symptoms and to prevent further injury. However, Dr. Weldon does not indicate that appellant's current disability was related to a thoracic or lumbar strain/sprain, which is the condition for which the Office accepted the claim. He does not adequately explain why appellant can no longer do her limited-duty job. Furthermore, Dr. Weldon listed his reason to limit appellant's working hours as "to reduce the risk of further injury due to instability of her spine." These restrictions were

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<sup>3</sup> *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>4</sup> *James H. Botts*, 50 ECAB 265 (1999).

<sup>5</sup> The Office's obligation to pay for medical expenses and other expenses incidental to obtaining medical care, such as wage loss, extends only to expenses incurred for treatment of the effects of any employment-related condition. See *John W. Montoya*, 54 ECAB 306 (2003); *Dorothy J. Bell*, 47 ECAB 624 (1996).

prophylactic in nature and fear of future injury is not compensable under the Federal Employees' Compensation Act.<sup>6</sup>

Dr. Stasikowski also indicated that appellant could only work four hours a day as of his appointment with appellant on October 15, 2004. He indicated that the accepted conditions had not resolved and were permanent. He also indicated that appellant was incapable of currently performing the full duties of a mail processing clerk. However, he did not clearly indicate in a rationalized medical report why appellant was no longer able to perform her full-time limited-duty position. The issue is not whether appellant still has residuals from her injury or whether she is able to perform the full duties of a clerk, but rather whether she is able to continue her limited-duty assignment. Dr. Stasikowski provides no reason that she cannot perform this assignment that is linked to her November 17, 2003 job-related injury.

The Board finds that appellant has not submitted sufficiently rationalized medical evidence establishing an increase in disability commencing September 3, 2004 due to her accepted work injury. Further, appellant has not alleged and there is no evidence of record establishing a change in the nature and extent of her limited-duty work commencing September 3, 2004. Therefore, the Board finds that she has not met her burden of proof in this case.<sup>7</sup>

### **CONCLUSION**

The Board finds that appellant has not established that she sustained a recurrence of total disability beginning September 3, 2004 causally related to her November 17, 2003 employment injury.

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<sup>6</sup> See *Mary Geary*, 43 ECAB 300, 309 (1991); *Pat Lazzara*, 31 ECAB 1169, 1174 (1980) (finding that appellant's fear of a recurrence of disability upon return to work is not a basis for compensation).

<sup>7</sup> Appellant's claim for total disability commencing November 20, 2004 was filed subsequent to the January 4, 2005 decision and, accordingly, is not a subject of this appeal. See 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 27 and January 4, 2005 are affirmed.

Issued: January 23, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board