United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 07-599**
	)	**Issued: May 23, 2007**
DEPARTMENT OF VETERANS AFFAIRS, AUDIE L. MURPHY MEMORIAL VETERANS HOSPITAL, San Antonio, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 27, 2006 appellant filed a timely appeal of the November 20, 2006 merit decision of the Office of Workers' Compensation Programs, which denied his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant sustained a recurrence of disability on June 7, 2006 causally related to his January 10, 2006 employment injury.

FACTUAL HISTORY

Appellant, a 57-year-old retired motor vehicle operator, injured his lower back on January 10, 2006 while attempting to put a patient into an ambulance. The gurney the patient had been lying on malfunctioned and appellant had to support the patient's weight. Appellant stopped work on January 11, 2006. He returned to part-time, limited duty on January 30, 2006

and resumed his regular full-time duties on February 13, 2006. The Office initially denied the claim, but on September 20, 2006 the Office vacated its earlier decision and accepted the claim for lumbar sprain.

At the time of his January 10, 2006 employment injury, appellant had preexisting degenerative disc disease of the lumbar spine.[1] A May 19, 2006 magnetic resonance imaging scan of the lumbar spine revealed severe degenerative disc disease at L5, with disc bulges at L4-5 and L5-S1.

On June 7, 2006 Dr. Dennis R. Gutzman, a Board-certified orthopedic surgeon, advised that appellant could no longer work due to a herniated disc. He explained that appellant had a collapsed disc at L5-S1. Dr. Gutzman also indicated that appellant was awaiting a disability retirement evaluation.[2] In a follow-up report dated July 18, 2006, he stated that appellant had chronic low back pain with right leg pain and numbness with muscle spasms. According to Dr. Gutzman, appellant was unable to perform heavy lifting, repetitive bending or stooping. He reiterated that appellant had a collapsed disc at L5-S1 and further noted that there were disc protrusions at L4-5 and L5-S1. Dr. Gutzman stated that appellant's disability was permanent and his condition prevented him from prolonged sitting or standing.

The Office also received a January 12, 2006 letter from appellant's primary care physician, Dr. Vance E. Zachary, a Board-certified family practitioner, who stated that appellant had chronic low back pain, has muscle spasms and loss of range of motion in the lumbar spine. Dr. Zachary also indicated that appellant experienced intermittent flare-ups of pain and disability that prevented him from lifting or carrying heavy objects. He diagnosed a collapsed lumbar disc at L4-5, with disc protrusion and some nerve root compression. Dr. Zachary further noted that appellant had osteoarthritis in his lumbar spine. He explained that appellant's disability was permanent and prevented him from prolonged sitting or standing. Dr. Zachary opined that appellant could no longer do the job that he was trained to do.

On September 7, 2006 appellant filed a claim for compensation (Form CA-7) alleging that he was totally disabled beginning June 7, 2006. He subsequently submitted two additional reports from Dr. Gutzman and Dr. Zachary. In an October 12, 2006 report, Dr. Gutzman diagnosed degenerative disc disease with disc protrusions at L4-5 and L5-S1. He again noted that appellant was unable to perform work that required repetitive bending, stooping, standing or lifting and he imposed a permanent lifting restriction of 20 pounds.

In an October 19, 2006 report, Dr. Vance indicated that he had treated appellant on January 10 and 12, 2006 for complaints of low back pain, numbness and tingling in both legs, which he attributed to the January 10, 2006 employment incident. He also stated that appellant had a previous work-related low back injury in 1997, but he had been relatively asymptomatic at the time of the January 10, 2006 injury. Appellant's current pain was reportedly of a different

[1] He had also previously filed a claim for an employment-related back injury occurring on May 22, 1998.

[2] When Dr. Gutzman initially examined appellant on May 17, 2006 he reported that appellant injured his lower back in 1998 when he was hit by an airplane jet blast and then reinjured himself by lifting a patient from a gurney in January 2006 while working at the employing establishment.

character than the pain associated with his prior injury. Dr. Vance noted that he had diagnosed appellant's January 2006 injury as a low back sprain and prescribed medication and physical therapy. He further noted that appellant felt well enough for a trial return to light duty beginning February 1, 2006. But after 10 physical therapy visits, appellant never felt well enough to resume full-duty work. Dr. Vance stated that, by June 2006, it was apparent that appellant had reached maximum medical improvement and his back disability would be permanent.

By decision dated November 20, 2006, the Office denied appellant's claim for a recurrence of disability.

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 that caused the illness.[3] This term also means an inability to work 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 (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[4]

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he 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.[5] This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.[6] The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[7]

ANALYSIS

Appellant's January 10, 2006 employment injury was accepted for lumbar sprain only. The medical evidence submitted in conjunction with appellant's claim for recurrence of disability does not include a current diagnosis of lumbar sprain. Instead, appellant has been diagnosed with numerous other back ailments including lumbar degenerative disc disease, osteoarthritis, multilevel disc protrusions and a collapsed disc at L5-S1. The record does not

[3] 20 C.F.R. § 10.5(x) (2006).

[4] *Id.*

[5] 20 C.F.R. § 10.104(b); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[6] *See Helen K. Holt, supra* note 5.

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

clearly establish that any of these conditions are related to appellant's accepted employment injury. X-ray evidence indicates that appellant's lumbar degenerative disc disease predated his January 10, 2006 employment injury by at least eight years. Both Dr. Gutzman and Dr. Zachary were of the opinion that appellant was permanently disabled due to his back condition. However, neither physician adequately explained how appellant's current condition was either caused or aggravated by the January 10, 2006 employment injury. In fact, Dr. Gutzman did not offer an opinion on causal relationship and Dr. Zachary, while acknowledging a prior back injury, merely indicated that appellant's prior injury was "relatively asymptomatic" at the time that he sprained his back in January 2006. Given appellant's history of preexisting degenerative disc disease, it was incumbent upon his physicians to provide adequate rationale to establish a relationship between appellant's claimed disability and his accepted employment injury. The current record fails to establish that the claimed recurrence of disability was caused, precipitated, accelerated or aggravated by the accepted injury.[8] Accordingly, the Office properly denied appellant's claim for wage-loss compensation beginning June 7, 2006.

CONCLUSION

Appellant failed to establish that his claimed recurrence of disability beginning June 7, 2006 was causally related to his January 10, 2006 employment injury.

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board