

**United States Department of Labor  
Employees' Compensation Appeals Board**

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M.S., Appellant )

and )

**FEDERAL BUREAU OF PRISONS, FEDERAL  
CORRECTIONAL INSTITUTION,  
Yazoo City, MS, Employer** )

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**Docket No. 07-1082  
Issued: October 23, 2007**

*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 March 15, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated February 14, 2007 which denied his recurrence claim. Pursuant to C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>1</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on or after September 20, 2006 causally related to his accepted January 4, 2006 employment injury.

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<sup>1</sup> The record includes medical evidence received after the Office issued the February 14, 2007 decision. The Board cannot consider new evidence for the first time on appeal. 20 C.F.R. § 501.2(c) (2004).

## **FACTUAL HISTORY**

On January 4, 2006 appellant slipped and fell at work hitting his head on the floor. On February 7, 2006 his claim was accepted for concussion and contusion of right hip. The claim was later also accepted for headache. On March 23, 2006 appellant was awarded wage-loss compensation for his lost time from work. He returned to work for a brief period of time on September 20, 2006, full-time work on September 26, 2006 but stopped working again on or about October 2, 2006.

On December 6, 2006 appellant filed a recurrence of disability claim alleging that on September 20, 2006 and October 13, 2006 he sustained recurrences when he passed out due to his previous injury and sustained fractures of his legs. Appellant noted that he had only returned to work for a short time on September 20, 2006 when he experienced constant headache, backache and right side pain.

On January 8, 2007 the Office requested additional medical information from appellant. In response, the Office received a disabled parking application dated January 10, 2007 and a January 26, 2007 progress note from Dr. Cornelious O'Neill who stated that appellant has had several syncopal episodes resulting in bone fractures in his left leg on September 20, 2006, right leg on October 13, 2006 and right hip on December 22, 2006. Dr. O'Neill also relayed appellant's accepted event, that he fell at work on January 4, 2006 and hit his head, hip and back which resulted in a loss of consciousness.

On February 14, 2007 the Office denied appellant's recurrence claim on the grounds that the evidence did not establish that the claimed disability was due to the accepted work injury.

## **LEGAL PRECEDENT**

Office regulations provide that 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 a new or intervening injury.<sup>2</sup>

A claimant seeking compensation under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.<sup>4</sup> In this case, appellant has the burden of establishing that he sustained a recurrence of a medical condition<sup>5</sup> on September 20, 2006 causally related to his January 4, 2006 traumatic injury. This burden includes the necessity of furnishing medical

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<sup>2</sup> *Hubert Jones, Jr.*, 57 ECAB \_\_\_\_ (Docket No. 05-603, issued March 10, 2006).

<sup>3</sup> 5 U.S.C. §§ 8101-8193

<sup>4</sup> *Edward W. Spohr*, 54 ECAB 806 (2003).

<sup>5</sup> Recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment. 20 C.F.R. § 10.5(y) (2002).

evidence from a physician who, on the basis of a complete and accurate factual and medical history concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>6</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<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 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.<sup>8</sup>

### ANALYSIS

The Office accepted appellant's January 4, 2006 claim for concussion, contusion of the right hip and headache. Appellant returned to work on September 20, 2006 and ceased working on October 2, 2006. He filed a recurrence of disability alleging that after his return to work he broke his legs when he passed out due to his accepted employment injury.

Appellant bears the burden to establish that his claim for consequential injuries, bone fractures in the right leg, left leg and right hip, are due to his accepted injuries of concussion, contusion and headache. As part of this burden, appellant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship between the claimed consequential injuries and the accepted injuries.<sup>9</sup>

The medical evidence is insufficient to establish that appellant sustained a consequential injury. Appellant submitted two documents in support of his claim, a disabled parking application and a progress note from Dr. O'Neill. The disabled parking application is not relevant as it is not medical evidence from a physician. The progress note from Dr. O'Neill provided an accurate factual history of appellant's work place injury and diagnosed bone fractures. However, the note was insufficient as it failed to provide the necessary conclusion and supporting explanation that appellant's current conditions are causally related to his employment injuries. Dr. O'Neill opined that appellant's bone fractures resulted from syncopal episodes but he did not explain how appellant's employment injuries caused or contributed to the fainting episodes which resulted in the bone fractures. Dr. O'Neill's report is of limited probative value as it does not contain the requisite medical rationale to support causal relationship.<sup>10</sup>

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<sup>6</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>7</sup> *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>8</sup> *Larson, The Law of Workers' Compensation* § 13.00; see *Charles W. Downey*, 54 ECAB 313 (2003).

<sup>9</sup> *Charles W. Downey*, *supra* note 8.

<sup>10</sup> A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship that is unsupported by medical rationale. *Robert Winchester*, 54 ECAB 191 (2002).

As appellant failed to submit sufficient probative medical evidence to establish that his current condition is a consequence of his accepted employment injuries, he has failed to establish the requisite causal relationship and the Office properly denied his claim.

**CONCLUSION**

The Board finds that appellant failed to establish that he sustained a recurrence of disability.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 14, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 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