



of duty on December 11, 1986, February 22, 1988 and March 10, 1989. Her employment history, as reported by the employing establishment in a January 31, 2002 memorandum, began in 1980 as a nursing assistant. After the March 10, 1989 injury, appellant was placed on permanent light duty and worked as a messenger. Pursuant to the March 10, 1989 claim, the Office accepted a recurrence of disability on September 21, 1993. Appellant began working as a triage clerk in 1994 and as of 2002 she was working as a patient service assistant. She retired from federal employment in July 2004.

On June 26, 2006 appellant filed a notice of recurrence of disability (Form CA-2a). She identified the date of the original injury as March 10, 1989. As to the date of the recurrence, appellant listed both September 21, 1993 and June 25, 1997. She stated that she had never stopped receiving treatment for her back since March 10, 1989. In a narrative statement, appellant reported that she had spinal stenosis with degenerative arthritis. She stated that she had taken leave without pay (LWOP) in 2003, for which she had never been paid. Appellant stated that she was “requesting consideration of my LWOP [and] reinstatement of my back problems so I can continue treatment for my back.”

The record contains reports from Dr. Paul Papanek commencing in July 2001. The diagnoses for the back included chronic mechanical back pain due to L5-S1 disc disease. In a report dated March 13, 2003, Dr. Papanek stated that he was puzzled that the Department of Labor had denied authorization for treatment, as he had submitted reports since June 2002 and these reports had discussed causal relationship. He stated that it appeared the basis for appellant’s ongoing pain was her disc disease and her condition dates from the original injury in 1997 with intermittent flare-ups. On January 13, 2004 Dr. Papanek began diagnosing L4-5 disc herniation and lumbar stenosis.

The Office referred appellant for a second opinion examination by Dr. Ghol Ha’Eri, an orthopedic surgeon. In a report dated January 9, 2007, Dr. Ha’Eri provided a history of the June 25, 1997 injuries and results on examination. He opined that the accepted employment injuries had resolved. Dr. Ha’Eri found that appellant had preexisting mild L5-S1 disc degeneration that was not employment related.

Pursuant to the June 25, 1997 claim, the Office issued a January 16, 2007 decision denying the claim for a recurrence of disability. The Office found that the medical evidence was insufficient to establish a recurrence of disability causally related to the June 25, 1997 employment injuries. With respect to the March 10, 1989 claim, the Office issued a February 14, 2007 decision denying the claim for a recurrence of disability.

Appellant requested a review of the written record regarding the January 16, 2007 Office decision. By decision dated June 25, 2007, the Office hearing representative affirmed the January 16, 2007 decision.

## LEGAL PRECEDENT

The Office's regulation defines the term recurrence of disability as follows:

“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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.”<sup>1</sup>

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-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 show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>2</sup> To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.<sup>3</sup>

## ANALYSIS

The evidence from the employing establishment indicated that appellant had been working in light-duty positions since March 10, 1989. Appellant filed a notice of recurrence of disability (Form CA-2a) on June 26, 2006.<sup>4</sup> The Form CA-2a does not clearly indicate the period of disability claimed. Appellant stated that on appeal she was not claiming a recurrence of disability in 2006, as she had retired in 2004. As to the date of a recurrence of disability on the claim form, she listed September 21, 1993 and June 25, 1997. Neither of these dates is relevant since appellant already had an accepted recurrence on September 21, 1993 and June 25, 1997 represented the date of an accepted lumbar strain in the performance of duty. In a narrative statement, she referred to using LWOP in 2003, but she did not clearly indicate the specific dates

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<sup>1</sup> 20 C.F.R. § 10.5(x).

<sup>2</sup> *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>3</sup> *Maurissa Mack* 50 ECAB 498 (1999).

<sup>4</sup> The Office issued decisions on the recurrence of disability claim pursuant to both the March 10, 1989 injury (OWCP File No. 130883749) and the June 25, 1997 injury (OWCP File No. 131144363). The Board has reviewed all decisions with respect to the June 26, 2006 CA-2a issued within one year of the filing of the appeal.

claimed.<sup>5</sup> Appellant appeared also to seek medical benefits, without identifying a date of a recurrence of a medical condition. She provided only a general statement that she had never stopped treatment for her back.

To the extent that appellant was claiming a recurrence of disability for periods in 2003, she must establish that she had a continuing employment-related condition or that there was a change in the condition causing disability for specific periods claimed. She did not submit probative medical evidence on this issue. Dr. Papanek, for example, diagnosed L5-S1 disc disease, L4-5 disc herniation and spinal stenosis. None of these conditions has been accepted as employment related. A physician must provide a rationalized medical opinion, based on a complete background, on causal relationship between a diagnosed condition and appellant's federal employment.<sup>6</sup> In a March 13, 2003 report, Dr. Papanek suggested that he had discussed causal relationship in prior reports, but the record does not contain a rationalized medical opinion in the prior reports of record. On March 13, 2003 he noted that appellant's condition dated from the original injury in 1997, without providing a complete factual and medical history or a rationalized medical opinion on causal relationship between L5-S1 disc disease and the employment injuries. With respect to appellant's current condition, the second opinion physician, Dr. Ha'Eri, opined in his January 9, 2007 report that residuals of the June 25, 1997 employment injury had resolved and appellant's symptoms were related to a preexisting degenerative L5-S1 condition.

The Board finds that appellant did not submit sufficient factual and medical evidence to establish a recurrence of disability in this case. Appellant did not identify the specific period of compensation claimed or submit probative medical evidence sufficient to meet her burden of proof.

### **CONCLUSION**

Appellant did not meet her burden of proof to establish a recurrence of disability.

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<sup>5</sup> The record contains information from the employing establishment regarding intermittent dates from June 1 to August 9, 2003 with entries such as LWOP, absent without leave (AWOL) and "called in late," but it is not clear what periods are applicable to the claim for a recurrence of disability.

<sup>6</sup> See *Donald Wenzel*, 56 ECAB 390 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 25, February 14 and January 16, 2007 are affirmed.

Issued: April 25, 2008  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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