

FACTUAL HISTORY

On May 2, 2005 appellant, then a 47-year-old education specialist, sustained a lower back muscle strain.¹ His car was blocked in by a tractor and front loading bucket and he injured himself while pushing and pulling the bucket in order to move his car. On July 18, 2005 the Office accepted his claim for lumbar strain. Appellant did not stop work.²

On March 28, 2008 appellant filed a claim for an August 1, 2007 recurrence of medical condition. He noted that he continually experienced muscular pain related to the original May 2, 2005 work injury and that his low back pain never resolved. Appellant noted that after the work injury he sustained an injury to his cervical spine due to an automobile accident. The employing establishment controverted the claim. By letter dated April 1, 2008, the Office requested that appellant submit additional evidence to support his recurrence claim.

In an undated statement, appellant noted that, on August 1, 2007, at the time of the recurrence, he was engaged in physical therapy sessions for a cervical spinal injury related to a January 2006 automobile accident. He claimed that his physical therapist noted an unusual gait due to intermittent lower back pain. A follow-up appointment revealed motor deficits and muscle issues. Appellant previously underwent a lumbar discectomy in February 1997 due to a separate work injury.

In a medical report dated April 15, 2008, Dr. William Drew Wagner, an osteopath, reported that appellant sustained a recurrence of low back pain in 2007. Appellant experienced low back pain since May 2005 but it was not very intense until the motor vehicle accident in 2006. Dr. Wagner diagnosed chronic lumbar back pain with muscle spasms with an onset date of May 2, 2005. He stated that a magnetic resonance imaging (MRI) scan revealed moderate degenerative disc disease at L3-4 and L4-5 with facet arthropathy with left neuroforaminal narrowing and degenerative disc disease at L1-2. Dr. Wagner initially saw appellant on May 3, 2005 for a lumbar back spasm. Appellant's back pain symptoms were improved but not resolved at a June 2005 follow-up appointment. In July his back pain was stable but still present. Dr. Wagner stated that, in his experience, patients that suffer an acute back injury may have a recurrence of back pain intermittently for several years. The back pain may also be masked by pain from another portion of the spine. Dr. Wagner opined that the motor vehicle accident in January 2006 exacerbated appellant's existing lower back problems, which was masked by the intensity of the cervical muscle spasm. He noted that the low back pain did not manifest itself until after the neck pain decreased.

In an August 21, 2007 medical report, Connie K. Morgan, a physical therapist, opined that appellant's symptoms in his lumbar area and the malalignment of the pelvis were hindering further progress with the neck and upper back. She diagnosed neurological motor deficits in the lower extremity and possible spondylolisthesis or disc involvement.

¹ Appellant previously filed a claim for a December 22, 1996 work injury for which he underwent a lower lumbar discectomy (File No. xxxxxx021). The claim was closed as a no time lost case.

² The Office denied a separate occupational disease claim (File No. xxxxxx415) filed in August 2007, where appellant alleged that he sustained a back injury due to the May 2, 2005 work injury.

By decision dated June 25, 2008, the Office denied the recurrence claim on the grounds that the medical evidence was insufficient to establish that appellant's current medical condition was causally related to the May 2, 2005 work injury. It noted that Dr. Wagner's diagnosis of degenerative disc disease was not an accepted employment-related condition.

On July 9, 2008 appellant, through his representative, filed a request for a hearing before an Office hearing representative.

In a December 10, 2007 medical report, Ms. Morgan reiterated that she treated appellant for cervical and upper thoracic injury due to a motor vehicle accident but, during the course of treatment, it became apparent that his low back issues were affecting his neck and upper back pain. She opined that it was unlikely that the lower back deficits occurred from the motor vehicle accident and that her findings were consistent with the on-the-job injury, as described. Ms. Morgan noted that it was unusual for a patient to have a strength deficit in one leg unless there was neurological damage to the spine and that she regularly saw patients with these types of deficits from pushing and pulling equipment at work.

In an October 16, 2007 medical report, Dr. Wagner stated that appellant had prior back problems but that his low back pain was well controlled before the 2005 work injury. Physical examination at the time of the work injury revealed paraspinal muscle fullness and tightness in the lumbar region. Appellant's symptoms were improved at a June 2, 2005 follow-up appointment, although he continued to experience intermittent back pain. On July 31, 2006 he returned for treatment following a January 19, 2006 motor vehicle accident resulting in cervical muscle strain and requiring physical therapy. Dr. Wagner opined that the 2006 motor vehicle accident appeared to exacerbate appellant's chronic lumbar back pain. At a June 27, 2007 appointment appellant reported that he was responding well to physical therapy but that he was still experiencing low back pain. Appellant continued to complain of muscle and lumbar back spasm at an August 30, 2007 follow-up appointment. Dr. Wagner ordered an MRI scan, which revealed moderate degenerative disc disease at L3-4 and L4-5 with facet arthropathy, which resulted in mild-to-moderate left neuroforaminal narrowing with minimal spinal canal stenosis. It also showed degenerative disc disease at L1-2 without significant neuroforaminal or spinal canal stenosis. Dr. Wagner opined that appellant continued to have intermittent low back pain since his May 2, 2005 injury and that he should continue physical therapy.

A telephonic hearing before an Office hearing representative took place on October 16, 2008. Appellant testified that he did not injure his low back in the January 2006 automobile accident and that his injury was limited to his cervical spine. He requested authorization for continuing physical therapy for treatment of his low back.³

Appellant subsequently submitted an October 29, 2008 medical center record indicating that he was treated for a backache. He submitted a November 14, 2008 statement disagreeing with the Office's finding that his back pain from the May 2, 2005 employment injury had ever

³ In an October 16, 2008 memorandum, appellant's representative stated that he enclosed medical records dated June 27, 2007 through September 17, 2008 and surgery reports from January 24, 1997. His memorandum was not accompanied by any medical records.

resolved. Appellant argued that Dr. Wagner had submitted sufficient medical evidence to support his recurrence claim.

By decision dated December 16, 2008, the Office hearing representative found that appellant did not submit probative medical evidence to establish that his accepted lumbar strain spontaneously recurred without an intervening cause or how the current diagnosis of chronic lumbar back pain with moderate degenerative disc disease and facet arthropathy was medically connected to the May 2, 2005 work injury accepted for a muscle sprain.

LEGAL PRECEDENT

A recurrence of a medical condition is defined in the Office's procedure manual as "the documented need for further treatment of the accepted condition when there has been no work stoppage."⁴ When a claim for a recurrence of medical condition is made more than 90 days after release from medical care, an employee is responsible for submitting a medical report that contains a description of objective findings and supports causal relationship between the employee's current condition and the previous work injury.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁶

ANALYSIS

The Office accepted that on May 2, 2005 appellant sustained a lumbar strain while attempting to push and pull a front loading bucket. The issue is whether he established that he sustained a recurrence of this injury on August 1, 2007. The Board finds appellant has not met his burden of proof.

In an October 16, 2007 report, Dr. Wagner noted that he had treated appellant in 2005 for chronic back pain. Examination on May 3, 2005 revealed muscle tightness in the lumbar region. Appellant was treated with medication and by June 2, 2005 his symptoms were improving. Dr. Wagner next treated appellant on July 31, 2006. He opined that the January 19, 2006 nonwork-related motor vehicle accident, which resulted in a cervical muscle strain, also appeared

⁴ *J.F.*, 58 ECAB ___ (Docket No. 06-186, issued October 17, 2006); *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(a) (January 1998).

⁵ *J.F.*, *supra* note 4; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003).

⁶ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

to exacerbate appellant's chronic lumbar back pain. Dr. Wagner diagnosed chronic lumbar back pain with muscle spasms. He stated that appellant continued to have intermittent low back pain since the May 2, 2005 employment injury and that he should continue physical therapy. In an April 15, 2008 medical report, Dr. Wagner opined that appellant sustained a recurrence of low back pain in 2007. Even though appellant experienced back pain since May 2005, the pain was not very intense until the 2006 motor vehicle accident. Dr. Wagner stated that, in his experience, patients that suffer an acute back injury may have a recurrence of back pain intermittently for several years. He opined that the January 2006 accident exacerbated appellant's existing lower back problems, which was initially masked by the intensity of the cervical muscle spasm. Dr. Wagner's medical reports are insufficient to support appellant's claim for an August 1, 2007 recurrence. His records reflect a gap of almost one year following treatment of appellant in May and June 2005 for muscle tightness of the low back to when appellant returned for treatment on July 31, 2006 following the January 19, 2006 motor vehicle accident. Treatment at that time pertained to appellant's cervical repair. Dr. Wagner did not provide an adequate opinion explaining the cause of appellant's low back pain or how it was related to the May 2, 2005 work injury accepted for muscle sprain. He did not indicate a current diagnosis of lumbar strain after August 2007, which was the only condition accepted by the Office as related to the May 2, 2005 employment injury.⁷ Because Dr. Wagner did not provide a current diagnosis or explain with medical rationale the relationship between the current low back pain and the employment injury, his reports are insufficient to establish the recurrence claim.⁸

Connie Morgan, a physical therapist, provided reports dated August 21 and December 10, 2007. On October 29, 2008 a medical center admission record indicated that appellant was admitted for a backache. A physical therapist is not a physician as defined under the Act.⁹ Thus, Ms. Morgan's reports are of no probative value. Further, the medical admission record does not address the May 2, 2005 employment injury thereby rendering it of diminished probative value.¹⁰ Therefore, the Board finds that appellant did not establish that he sustained a recurrence of medical condition related to his employment injury.

The Board notes that the January 2006 automobile accident constitutes an independent, intervening cause, breaking the chain of causation between appellant's May 2, 2005 low back sprain and his subsequent lumbar degenerative condition diagnosed in August 2007.¹¹ Once the work-connected character of any condition is established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by

⁷ The Board notes that, although Dr. Wagner also diagnosed disc disease with facet arthropathy and neuroforaminal narrowing, he did not provide a rationalized medical opinion relating this condition to the employment injury. Moreover, appellant contends on appeal that the degenerative disc disease is a separate condition and unrelated to his claim.

⁸ See *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁹ Under section 8101(2), the definition of a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2).

¹⁰ See *Donald T. Pippin*, 54 ECAB (2003).

¹¹ See *Raymond A. Nester*, 50 ECAB 173 (1998).

an independent, nonindustrial cause.¹² This case is similar to that of *Robert W. Meeson*,¹³ where the Board denied the employee's recurrence claim. The employee sustained an exacerbation of his employment-related lumbar condition after he was involved in a nonwork-related automobile accident. The Board found that the automobile accident constituted an intervening cause of his subsequent back condition and denied the recurrence claim.

In the instant case, Dr. Wagner repeatedly stated that the January 2006 automobile accident exacerbated appellant's lumbar condition and observed that his pain intensified after the accident. Based on his reports, the triggering episode for appellant's increased low back pain was the January 2006 nonemployment-related automobile accident and not the natural progression of his accepted muscle sprain. The Board finds that the automobile accident was an intervening cause such that his August 1, 2007 medical condition is not compensable under the Act.¹⁴

On appeal, appellant contends that Dr. Wagner's December 4, 2008 medical report supports his recurrence claim. However, this report was not submitted prior to the December 16, 2008 decision. Therefore, the Board may not review this evidence for the first time on appeal.¹⁵

CONCLUSION

The Board finds that appellant did not establish that he sustained a recurrence of medical condition on August 1, 2007 causally related to his May 2, 2005 employment injury.

¹² See *Bernitta L. Wright*, 53 ECAB 514 (2002).

¹³ 44 ECAB 834 (1993).

¹⁴ See *id.*

¹⁵ See 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the December 16 and June 25, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 9, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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