

The medical records after appellant's fall show that she primarily complained of left wrist, right hip and knee pain. She stopped work after her fall and returned to regular-duty work at the employing establishment on September 7, 2005.

Appellant stopped work on January 9, 2006 and later filed a claim alleging that she sustained a recurrence of disability on that date due to her July 6, 2005 employment injury.¹ In a November 15, 2005 letter, she argued that the July 6, 2005 fall aggravated her preexisting spinal stenosis condition. On January 18, 2006 Dr. Jeffrey Sumner, an attending Board-certified orthopedic surgeon, performed an anterior corpectomy from C4-6, anterior fusion from C3-7 and posterior fusion from C3-7 with iliac crest bone graft and fibular strut graft. The surgery was not authorized by the Office.²

In January 12 and August 8, 2007 letters, the Office requested that appellant submit additional factual and medical evidence in support of her claim.

In an October 18, 2006 report, Dr. Babu Kumar, an attending Board-certified internist, stated that appellant "had a fall on July 6, 2005 at work, which required for her to have surgery." He indicated that since appellant's January 18, 2006 surgery she reported experiencing neck, back and leg pain and recommended that she be restricted from pushing, pulling, lifting and overhead work.

In a November 22, 2006 report, Dr. Sumner mentioned appellant's July 6, 2005 employment injury and stated:

"Shortly thereafter I evaluated [appellant] for continued numbness and burning after a workup by Dr. Kumar revealed cervical stenosis of a significant degree. The fall in July 2005 did not cause the stenosis but may have aggravated it by causing her spine to be placed in a more extended position with more stress and strain being put upon it. Therefore this is a situation of an incident aggravating a preexisting condition."

On August 7, 2008 Dr. Barry W. Levine, a Board-certified orthopedic surgeon serving as an Office medical adviser, described appellant's July 6, 2005 injury and January 6, 2005 neck surgery. He indicated that there was no mention of neck problems prior to the surgery and stated, "Spinal stenosis is an arthritic condition which takes many years to develop. There is no evidence in the record that the work-related fall aggravated this condition. Spinal stenosis is a degenerative process and unrelated to trauma. The fall on July 6, 2005 had nothing to do with the subsequent cervical surgery."

In an August 8, 2008 decision, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after January 9, 2006 due to her July 6, 2005 employment injury.

¹ Appellant indicated that she had neck pain after her July 6, 2005 injury.

² In a November 11, 2005 note, Dr. Sumner indicated that appellant was scheduled for surgery and could only perform light-duty work. In a January 9, 2006 note, he stated that appellant was "totally disabled until further notice."

In an August 31, 2008 letter, appellant requested reconsideration of her claim. She stated that her spinal stenosis was diagnosed on May 13, 1998 and noted that she had worked with spinal stenosis for years with no problem until she fell. Appellant also noted that she went to physical therapy and that the Office paid for her physical therapy from July 27 to August 29, 2005.

In a November 4, 2008 decision, the Office denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.³ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁴ Where no such rationale is present, medical evidence is of diminished probative value.⁵

ANALYSIS -- ISSUE 1

The Office accepted that on July 6, 2005 appellant sustained a left wrist sprain/strain and bilateral knee contusions due to a fall at work. Appellant stopped work on January 9, 2006 and alleged that she sustained a recurrence of disability on January 9, 2006 due to her July 6, 2005 employment injury. On January 18, 2006 Dr. Sumner, an attending Board-certified orthopedic surgeon, performed an anterior corpectomy from C4-6, anterior fusion from C3-7 and posterior fusion from C3-7 with iliac crest bone graft and fibular strut graft. Appellant contends that the July 6, 2005 fall aggravated her preexisting spinal stenosis condition and necessitated her neck surgery with resultant disability.

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after January 9, 2006 due to her July 6, 2005 employment injury.

Appellant submitted an October 18, 2006 report in which Dr. Kumar, an attending Board-certified internist, stated that she "had a fall on July 6, 2005 at work, which required for her to have surgery." Dr. Kumar indicated that since her January 18, 2006 surgery she reported

³ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986). Pursuant to 20 C.F.R. § 10.5(x), a recurrence of disability is defined, in part, as "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."

⁴ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁵ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

experiencing neck, back and leg pain and recommended that she be restricted from pushing, pulling, lifting and overhead work. This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Kumar did not provide adequate medical rationale in support of his conclusion on causal relationship.⁶ He did not provide any medical rationale in support of his opinion that appellant's July 6, 2005 employment injury, accepted for knee contusions and left wrist pain, necessitated her January 18, 2006 neck surgery. Appellant's claim has only been accepted for a left wrist sprain/strain and bilateral knee contusions. Such medical rationale is necessary in the present case because the medical evidence reveals that she did not complain of neck symptoms in the months after her July 6, 2005 fall.

In a November 22, 2006 report, Dr. Sumner mentioned appellant's July 6, 2005 employment injury and stated that he evaluated her after Dr. Kumar's workup revealed cervical stenosis of a significant degree. He stated, "The fall in July 2005 did not cause the stenosis but may have aggravated it by causing [appellant's] spine to be placed in a more extended position with more stress and strain being put upon it. Therefore this is a situation of an incident aggravating a preexisting condition." This report is of limited probative value on causal relationship because it is equivocal on the issue of causal relation and it does not contain sufficient medical rationale in support of Dr. Sumner's opinion.⁷ Dr. Sumner did not describe appellant's July 6, 2005 fall at work in any detail or explain the medical process by which it could have contributed to her need for neck surgery six months later. The medical record is devoid of bridging evidence concerning appellant's neck condition between the July 6, 2005 fall and the January 18, 2006 surgery and he has not adequately explained this circumstance.

Appellant did not submit sufficient medical evidence to show that her July 6, 2005 fall necessitated her January 18, 2006 neck surgery and caused disability. Moreover, other evidence of record shows that her neck condition was not employment related. On August 7, 2008 Dr. Levine found no employment-related recurrence of disability. He indicated that there was no mention of neck problems prior to appellant's surgery and stated, "Spinal stenosis is an arthritic condition which takes many years to develop. There is no evidence in the record that the work-related fall aggravated this condition." For these reasons, appellant did not show that she sustained a recurrence of disability on or after January 9, 2006 due to her July 6, 2005 employment injury.⁸

⁶ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

⁷ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal or speculative is of limited probative value regarding the issue of causal relationship).

⁸ On appeal appellant asserted that her original injury occurred due to employer negligence, but it is unclear how this assertion would be relevant to her claim for recurrence of disability.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁹ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹⁰ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹¹ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹² The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹³ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁴ While a reopening of a case may be predicated solely on a legal premise not previously considered such reopening is not required where the legal contention does not have a reasonable color of validity.¹⁵ The Board has held that the mere fact that the Office authorized and paid for some medical treatment does not establish that the condition for which the claimant received treatment was employment related.¹⁶

ANALYSIS -- ISSUE 2

In support of appellant's reconsideration request, she argued that she had preexisting spinal stenosis and did not have significant problems with her neck until after her July 6, 2005 fall. This argument would not require reopening of her claim for merit review because she had previously made a similar argument.¹⁷ The Office previously considered and rejected appellant's argument that the July 6, 2005 fall aggravated her preexisting spinal stenosis condition and necessitated the January 18, 2006 neck surgery. Appellant also argued that her recurrence claim should be accepted because she went to physical therapy and that it paid for her physical therapy from July 27 to August 29, 2005. This does not constitute an argument with a reasonable color

⁹ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. § 10.606(b)(2).

¹¹ *Id.* at § 10.607(a).

¹² *Id.* at § 10.608(b).

¹³ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

¹⁴ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁵ *John F. Critz*, 44 ECAB 788, 794 (1993).

¹⁶ *Dale E. Evans*, 48 ECAB 692 (1997).

¹⁷ *See supra* note 12 and accompanying text.

of validity that would require merit review because the mere fact that it authorized and paid for some medical treatment does not establish that the condition for which the claimant received treatment was employment related.¹⁸

Appellant has not established that the Office improperly denied her request for further review of the merits of its August 8, 2008 decision under section 8128(a) of the Act, because the evidence and argument she submitted did not show that it erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on or after January 9, 2006 due to her July 6, 2005 employment injury. The Board finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 4 and August 8, 2008 decisions are affirmed.

Issued: September 1, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

¹⁸ See *supra* notes 14 and 15 and accompanying text.