

On December 5, 1996 appellant, then a 43-year-old fire fighter, was sitting in a reclining chair when the fire alarm went off and he jumped to get the fire truck he was driving that shift. He noted that at that time he felt a sharp pain in his back, his left leg went numb and he collapsed

on the floor. Appellant indicated that he was helped into the truck so that he could drive. The Office accepted his claim for herniated lumbar disc L4-5 and authorized surgery. On December 9, 1996 appellant underwent a left L4-5 microdiscectomy. He returned to work.

On August 15, 2007 appellant filed a notice of recurrence alleging a recurrence of the December 5, 1996 accepted work injury on May 10, 2007. He stated that, after he returned to work from his initial injury, he was restricted to light duty for a period of about three months. Appellant contended that his condition became progressively worse over the last few years due to a job requirement of heavy lifting. He further indicated that he retired from his federal employment on December 30, 2006 and that from February 1, 2007 until the filing of the recurrence claim he had been working as a customer service agent for Northwest Airlines.

In a June 28, 2007 letter, the Office asked appellant to submit further information. In response appellant submitted documentation and medical reports concerning his initial injury. He also submitted a June 11, 2007 note from Dr. Gary R. Ott, attending physician, wherein he indicated that appellant was his patient and that he was unable to work due to an injury until further notice. Finally, appellant submitted a personal statement dated July 29, 2006 wherein he alleged that his current disability was directly related to his December 5, 1995 employment injury. He noted that his primary job at the employing establishment was that of firefighter/driver/pump operator. Appellant noted that, after he retired on December 30, 2006, he spent a month relaxing at his home and on February 1, 2007 he started working as a customer service agent for Northwest Airlines helping customers with tickets. He noted that he resigned on June 1, 2007 because his back was hurting.

By a September 18, 2007 decision, the Office denied appellant's claim for a recurrence of disability.

On October 1, 2007 appellant requested review of the written record by an Office hearing representative. In an accompanying note, he asked the Office to review the decision about his back injury. Appellant noted that the injury caused a serious change in the way he lived and attempted to work. He stated that he could not find an employer who was willing to give him a job that would allow him to sit and rest.

In further support of his request, appellant submitted a September 25, 2007 note electronically signed by Dr. Steven K. Goff, a Board-certified physiatrist, indicating that appellant returned for follow up of his July 24, 2007 visit. Dr. Goff noted that since that visit he has obtained a magnetic resonance imaging (MRI) scan which showed changes related to degenerative disc disease, particularly L3-4 level; spinal stenosis with multiple-level disease. He noted no acute herniations. Dr. Goff opined, "This does represent an extension of degenerative disc disease that he has been experiencing since the 1990s and represents an extension of the same medical condition for which he had the lumbar laminectomy. He noted that appellant was functional at a light sedentary level of activity.

In a January 24, 2008 decision, the hearing representative affirmed the September 18, 2007 decision.

On January 15, 2009 appellant, through his attorney, requested reconsideration. In support of his request, he submitted a May 27, 2008 report by Dr. Brett D. Lawlor, a Board-certified physiatrist, wherein he indicated that appellant suffered from diffuse lumbosacral pain, degenerative disc disease of the lumbar spine, spinal stenosis, diffuse low back pain and bilateral leg pain per his history. In discussing the history of present illness, Dr. Lawlor noted that in 1996 appellant indicated that “he blew out a disc” causing paralysis of the left lower extremity, had surgery and was able to return to work as the surgery was very successful. He noted that appellant reinjured himself last fall while working at the airport.

By decision dated April 20, 2009, appellant denied modification of the September 18, 2007 and January 24, 2008 decisions.

LEGAL PRECEDENT

Section 10(x) of the Office’s regulations provide that a recurrence of disability means any disability 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.¹ 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 work-related injury or illness is withdrawn (except when such withdrawal occurs for reason of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignments were altered so that they exceed his or her established physical limitations.²

A person who claims a recurrence of disability due to an accepted employment-related injury has the burden to establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury. The burden of proof requires that an employee furnish 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 reasoning.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

ANALYSIS

The Office accepted that on December 5, 1996 appellant sustained a work-related herniated lumbar disc L4-5. Appellant returned to work and continued working until he retired from his federal employment on December 30, 2006. He proceeded to obtain employment at Northwest Airlines as a customer service agent on February 1, 2007 a position he resigned on June 1, 2007.

¹ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

² *Id.*

³ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁴ See *Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

The Board finds that appellant has not established a recurrence of disability causally related to the December 5, 1996 employment injury. Appellant has not established that he suffered a spontaneous change in his medical condition which resulted from his previous injury without an intervening injury or new exposure to the work environment that caused the illness. He returned to work for the employing establishment and worked until December 30, 2006. There is a notation by Dr. Lawlor in his May 27, 2008 medical report that appellant reinjured himself "last fall while working at the airport." Dr. Lawlor does not establish appellant's recurrence claim as he implicated a new injury. Dr. Goff indicated that appellant suffered from an extension of degenerative disc disease and an extension of the same condition for which he had a lumbar laminectomy. The conclusion, however, did not provide any rationalized explanation as to how appellant's current condition was related to the injury that occurred over 10 years ago, especially in light of the fact that the Office never accepted his claim for degenerative disc disease. Although Dr. Ott indicated that appellant was unable to work due to an injury, he provided no details for that injury and did not link his condition to his work injury. Therefore, the evidence does not establish a spontaneous recurrence of appellant's accepted injury of December 5, 1996.

Appellant argues that the position at Northwest Airlines was a light-duty job. There is no indication that he was assigned to a light-duty job; he chose to work at Northwest after retiring from the employing establishment. The mere fact that a new position is not as physically demanding as the position appellant held when injured does not establish that he was working in a light-duty position. In fact, there is no indication that his position when he returned to work at the employing establishment was light duty. On his claim form appellant indicated that he was only on light duty for about three months after his December 5, 1996 employment injury. Therefore, his argument that he was working in a light-duty position is without merit.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability on May 10, 2007 causally related to his accepted work-related injury of December 5, 1996.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 20, 2009 is affirmed.

Issued: August 3, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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