United States Department of Labor
Employees' Compensation Appeals Board

N.R., Appellant	)	
and	)	**Docket No. 07-1149**
	)	**Issued: December 27, 2007**
U.S. POSTAL SERVICE, EAST CLEVELAND FACILITY, East Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 22, 2007 appellant, through counsel, filed a timely appeal from a February 27, 2007 decision of the Office of Workers' Compensation Programs' hearing representative affirming the denial of his recurrence claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that he sustained a recurrence of disability beginning January 4, 2006.

FACTUAL HISTORY

On June 21, 2005 appellant, then a 34-year-old letter carrier, sustained a lumbar strain while bending down to pick up a letter which had blown under a postal vehicle. The Office accepted the claim for a lumbar strain and paid compensation for the period June 21 to 24, 2005. Appellant was released to work with restrictions on June 30, 2005.

In a report dated January 4, 2006, Dr. Daniel Breitenbach, a treating physician, diagnosed lumbosacral strain with spasm. He reported that appellant stated that "he coughed last night and threw his back and it spasmed over the spot that he has been injured." In an accompanying disability report, Dr. Breitenbach diagnosed lumbar strain and stated that appellant was totally disabled for the period January 4 to 9, 2006.

In reports dated January 16 and 23, 2006, Dr. Breitenbach diagnosed lumbosacral strain with spasm. Appellant reported pain in his back. In accompanying disability reports dated January 16 and 23, 2006, Dr. Breitenbach diagnosed lumbar strain and stated that appellant was totally disabled for the period January 16 to February 6, 2006.

On February 6, 2006 appellant filed a claim for compensation (Form CA-7) for the period January 21 to February 3, 2006.

On February 6, 2006 Dr. Breitenbach noted that appellant continued to have complaints of pain in his lower back and diagnosed lumbar strain with spasm. He concluded that appellant was totally disabled for the period February 6 to 27, 2006 on an accompanying disability form.

In a February 10, 2006 letter, the Office noted that it had received his claim for lost wages and informed him that the evidence was insufficient to support his claim. The Office advised him of the medical and factual evidence required to support his claim for lost wages. Appellant was also informed of the evidence required if he had been working in a light-duty job at the time of his work stoppage.

In a January 19, 2006 report, Dr. Jerome B. Yokiel, an examining Board-certified anesthesiologist, noted that appellant was referred due to his "chronic low back pain with radiation to the buttock which he has had since [June] 21, [20]05" and that he has had back problems since a 2003 injury. Dr. Yokiel diagnosed lumbar sprain. A physical examination revealed lumbosacral tenderness, no lumbosacral triggers or spasms and increased pain with lumbosacral range of motion and straight leg raising.

In a February 15, 2006 report, Dr. Breitenbach noted that he had been treating appellant for a lumbosacral sprain which had occurred about five months previously. He stated that appellant saw him on January 4, 2006 due to complaints "of increased pain in his back as a result of him coughing on the previous night, January 3, 2006, and had thrown his back into spasm." Appellant reported a pain rating of 8 out of 10. Dr. Breitenbach related that since January 3, 2006 appellant has been disabled from working due to his being "unable to carry mail due to the palpable paralumbar muscle spasm that he has had since that time." A March 13, 2006 chart note by Dr. Breitenbach diagnosed lumbosacral strain with spasm.

By decision dated March 22, 2006, the Office denied appellant's claim for a recurrence of disability. It found that the medical evidence submitted by appellant supported that his disability beginning January 3, 2006 was due to an intervening event, appellant's coughing which he stated aggravated his condition. The Office also found the record was devoid of any medical opinion explaining how appellant's condition had worsened such that he was totally disabled from performing his light-duty job.

The Office subsequently received appellant's claim for compensation (Form CA-7) for the period February 25 to March 17, 2006.

On March 27, 2006 Dr. Juna Tsao, a treating Board-certified family medicine practitioner, diagnosed lumbosacral strain with spasm. He noted that appellant continued to have complaints of pain in the lower back "causing a band and it does shoot down into his left buttock at times." A physical examination revealed "some minimal tenderness to palpitation of the paralumbar musculature." Under the "plan" portion of the report, the physician recommended medication and physical therapy continue and that appellant remain off work. In a March 27, 2006 duty status report (Form CA-17), Dr. Tsao diagnosed lumbosacral strain and indicated that appellant was totally disabled from working.

By letter dated April 4, 2006, appellant's counsel requested an oral hearing before an Office hearing representative which was held on January 22, 2007.

On April 10, 2006 Dr. Breitenbach noted that appellant had been hospitalized the previous week with pneumonia. Appellant continued to have "some spasms in his back and tightness that radiate into his buttock." Dr. Breitenbach diagnosed lumbosacral strain with spasm and recommended appellant continue with his physical therapy and medication. In an April 10, 2006 duty status report (Form CA-17), Dr. Breitenbach diagnosed lumbosacral strain and concluded that appellant was totally disabled from working.

Dr. Breitenbach, in May 1, 2006 chart notes, diagnosed lumbosacral strain with spasm and recommended that appellant continue with his medication and physical therapy. In a May 1, 2006 duty status report (Form CA-17), Dr. Breitenbach diagnosed lumbosacral strain and concluded that appellant was totally disabled from working.

In chart notes dated May 12 and 19 and June 5, 2006, Dr. Breitenbach diagnosed lumbosacral strain with spasm and recommended appellant continue with his medication and physical therapy. In a May 12, 2006 duty status report, Dr. Breitenbach released appellant to return to work effective May 15, 2006 for four hours per day with restrictions.

In a May 31, 2006 report, Dr. Breitenbach noted that appellant had returned to work with restrictions for four hours per day on May 15, 2006. He opined that appellant continued to require physical therapy due to the continued "palpable muscle spasm in his lower back."

On April 26, 2006 the Office referred appellant for a second opinion evaluation to determine whether he continued to have residuals of his accepted lumbar strain and whether his current disability was due to his accepted employment injury. In a June 3, 2006 report, Dr. Alan Wilde, a second opinion Board-certified orthopedic surgeon, diagnosed a lumbar strain which he opined had resolved. In support of this conclusion, he noted that he "expected a lumbar strain to have resolved within a period of six to eight weeks" and that "disc bulges are common in the general population." Dr. Wilde also concluded that appellant was capable of working eight hours per day with no lifting more than 30 pounds. He opined that the January 3, 2006 coughing episode did not cause or aggravate his accepted lumbar strain. Dr. Wilde noted that it was "not uncommon for a patient to experience periodic back spasms even several times a year with such minimal activity as coughing or sneezing."

On June 19, 2006 appellant filed a claim for compensation for lost wages for the periods May 15 to 26, 2006 and May 27 to June 9, 2006. Appellant submitted a time analysis form for the period May 15 to June 9, 2006 claiming 71.94 hours.

In a June 19, 2006 chart note, Dr. Breitenbach diagnosed lumbosacral strain with spasm. He noted that a recent magnetic resonance imaging (MRI) scan revealed "a L5-S1 dis[c] desiccation with left posterior lateral protrusion" which caused "only mild dorsal displacement of the traversing left S1 nerve root."

Dr. Breitenbach, in chart notes dated July 17, August 9 and September 6, 2006, diagnosed lumbosacral strain. In a July 21, 2006 duty status report, he released appellant to work eight hours per day with restrictions.

In an August 10, 2006 addendum, Dr. Wilde responded to the Office's request regarding appellant's condition and restrictions. He stated that the restriction on lifting he noted in his prior report was a preventative measure and that continued physical therapy was not needed.

In an August 26, 2006 progress note, Dr. Yokiel diagnosed lumbar strain and noted that appellant continued to have low back pain complaints.

By decision dated February 27, 2007, the Office hearing representative affirmed the denial of appellant's recurrence claim.[1] He found that the coughing incident on January 3, 2006 was an intervening incident and, thus, insufficient to establish a recurrence of disability.

LEGAL PRECEDENT

Section 10.5(x) of the Office regulations defines recurrence of disability 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.[2] If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken, and an appropriate new claim should be filed.[3] 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, (except when such

[1] The Board notes that, following the February 27, 2007 hearing representative's decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. *See* 20 C.F.R. §§ 501.2(c); *Donald R. Gervasi*, 57 ECAB ___ (Docket No. 05-1622, issued December 21, 2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

[2] 20 C.F.R. § 10.5(x). *See R.S.*, 58 ECAB ___ (Docket No. 06-1346, issued February 16, 2007).

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997); *Donald T. Pippin*, 54 ECAB 631 (2003).

withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[4]

This burden of proof requires that a claimant 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 medical reasoning.[5] Where no such rationale is present, the medical evidence is of diminished probative value.[6]

ANALYSIS

The Office accepted that appellant sustained a lumbar sprain resulting from bending down to pick up a letter on June 21, 2005. He was released to limited duty working eight hours as of June 30, 2006. Appellant filed claims for wage-loss compensation which the Office treated as a claim for a recurrence of disability beginning January 3, 2006 due to his accepted June 21, 2005 injury. Appellant thus, has the burden of providing rationalized medical evidence to establish the causal relationship asserted.[7]

The Board finds the medical opinion evidence insufficient to show that appellant's recurrence of disability was causally related to his accepted June 21, 2005 employment injury. The record contains no rationalized medical opinion evidence addressing the alleged recurrence and appellant's accepted lumbar strain. Dr. Wilde, a second opinion Board-certified orthopedic surgeon, opined that appellant's lumbar strain had resolved. He also concluded that the coughing incident did not cause or aggravate appellant's accepted lumbar condition. Dr. Tsao's March 27, 2006 duty status report does not mention the alleged recurrence of appellant's disability or contain any medical rationale. Similarly, the February 10, 2006 report and April 26, 2006 progress notes by Dr. Yokiel diagnose a lumbar strain, but do not mention appellant's alleged recurrence of disability or contain any medical rationale. In a report dated January 4, 2006, Dr. Breitenbach diagnosed lumbosacral strain with spasm, which he attributed to appellant's coughing the night before.[8] In an accompanying disability report, he diagnosed lumbar strain and stated that appellant was totally disabled for the period January 4 to 9, 2006. The patient progress notes from Dr. Breitenbach, dated January 4 to September 6, 2006, do not discuss the alleged injury beyond noting the injury date of June 21, 2005. Dr. Breitenbach diagnosed a lumbosacral strain, but failed to explain how appellant's condition was causally related to the

[4] *J.F.*, 58 ECAB ___ (Docket No. 06-186, issued October 17, 2006); *see also Terry R. Hedman,* 38 ECAB 222 (1986).

[5] *Ronald A. Eldridge*, 53 ECAB 218, 221 (2001).

[6] *Mary A. Ceglia*, 55 ECAB 626 (2004).

[7] *Ricky S. Storms*, 52 ECAB 349 (2001).

[8] The Board notes that appellant's coughing would not, by itself, exclude the possibility that his disability on and after January 4, 2006 was due to a natural, progressive worsening of his accepted employment injury. *See Mary A. Wright*, 48 ECAB 240, 243 (1996). However, the medical evidence is insufficient to establish a causal relationship between the claimed total disability and the accepted employment injury.

accepted employment injury. None of his reports contain any medical rationale for his opinion that appellant was totally disabled due to his employment injury. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[9] Thus, the Board finds that, in the absence of relevant medical evidence, appellant has not met his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability on or after January 4, 2006 causally related to his June 21, 2005 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 27, 2007 is affirmed.

Issued: December 27, 2007
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

[9] *See A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006).