

report, signed by a physician whose signature is illegible, listed an impression of a mild loose tooth and a lip abrasion. The physician indicated that appellant could return to work without restrictions. In an October 2, 2000 report, Dr. R. Tim Morris, an attending occupational medicine specialist, noted that appellant fell at work and hit both her tooth and the right side of her body. He noted an assessment of right hip, shoulder and right incisor injuries. On October 13, 2000 Dr. Morris noted that appellant reported low back and right hip pain when she bent over to scoop mail. He diagnosed right lumbar and hip strain and recommended work restrictions for eight days. The case was dormant from January 2001 until June 24, 2005.

On June 24, 2005 the Office received a recurrence of disability claim signed by appellant on June 17, 2004. Appellant alleged that on June 19, 2003 she slipped and fell out of the shower and sustained back and right hip pain. She stated that she returned to full duty after her original injury on September 26, 2000 and received two days of physical therapy. Appellant stopped work on July 28, 2003 and returned to part-time work on May 17, 2004.

Appellant forwarded various medical records and reports. On August 5, 2003 Dr. N. Karol Anderson, a staff physician, noted appellant's June 19, 2003 fall and her reported history of immediate subsequent right hip pain. She diagnosed suspected lumbar radiculopathy. On August 26, 2003 Dr. Anderson noted that an August 11, 2003 magnetic resonance imaging (MRI) scan revealed mild disc bulge at L5-S1 without visible neural impingement and diagnosed lumbago. She explained that appellant injured herself in the line of active military duty when she fell out of the shower while on Reserve duty. On November 5, 2003 Dr. Arthur L. Calimaran, an anesthesiologist, noted appellant's history of injury when she fell out of the shower and diagnosed bilateral sacroiliac joint dysfunction, right greater than left and myofascial spasms. In a November 8, 2003 report, Dr. Calimaran reiterated his diagnoses and also diagnosed morbid obesity. He indicated that he was "not certified" to "evaluate physical disability for 'work-related' purposes."

In a February 27, 2004 report, Dr. Narayana Swamy, a Board-certified internist, stated that appellant's lumbago was caused by a fall out of the shower while she served active duty in June 2003. Appellant had localized back and hip pain, with occasional radicular symptoms in her thigh. Dr. Swamy diagnosed chronic lumbago.

On March 9, 2004 Dr. Anderson stated that appellant's June 19, 2003 injury occurred in the line of active military duty but that the etiology of her subsequent back pain was "unclear." In an April 4, 2004 report, she stressed that her examinations of appellant and associated recommended work restrictions were strictly related to appellant's military injury. Dr. Anderson explained that her treatment of appellant "does not have anything to do with her civilian job and the military does not pay for her to be assessed for and work restrictions evaluated for her civilian job." Although she had previously provided work restrictions for appellant's federal civilian job, this was merely a courtesy, as she was retained only to evaluate and treat appellant's active duty injury. On May 4, 2004 Dr. Anderson reiterated that her evaluation and treatment of appellant was restricted to the active duty injury.

On December 30, 2004 Dr. A. Gordon Lyons, a pain management specialist, noted appellant's stated history of increasing pain "after a fall coming out of the shower at summer camp in Fort Benning." He reviewed a March 30, 2004 MRI scan report which revealed

degenerative disc disease from L3-4 through L5-S1 with a posterior disc bulge at the L5-S1 level and diagnosed multilevel lumbar spine degenerative disc disease with disc bulge, low back pain and right leg radicular pain as well as exogenous morbid obesity. In a February 10, 2005 progress note, he stated that appellant reported temporary pain relief following epidural injections and repeated his diagnoses.

On August 12, 2005 the Office accepted appellant's claim for lumbago, lumbar sprain/strain and face and lip contusions. On August 19, 2005 appellant filed a claim for compensation for intermittent leave without pay and intermittent other leave taken between August 1, 2003 and 2005. An accompanying employing establishment leave analysis noted that appellant claimed compensation through April 2, 2005.

By correspondence dated September 19, 2005, the Office requested additional information concerning appellant's claim for recurrence of disability. Appellant provided an October 9, 2003 return to duty form from Dr. Anderson, indicating that she returned to light duty following her service-connected injury, on October 10, 2003. In a September 30, 2005 report of MRI scans of appellant's lumbar spine, hips and pelvis, Dr. Phillip Lucas, a Board-certified radiologist, recorded normal studies.

In an October 28, 2005 statement, appellant indicated that the employing establishment told her that there was no work for her within her restrictions.¹

By decision dated November 25, 2005, the Office denied appellant's claim for compensation for the period June 28, 2003 to April 2, 2005.

On December 5, 2005 appellant requested an oral hearing.² In a January 23, 2006 statement, she reiterated that the employing establishment did not have a light-duty position available for her. Appellant also provided a January 14, 2004 report from Dr. Anderson, who noted that appellant's recommended work restrictions remained unchanged and that she was still unsure of the etiology of appellant's symptoms.

A telephone hearing was conducted on July 10, 2006. Appellant acknowledged that she had a military-related accident on June 19, 2003 but she asserted that, when she fell in 2003, "they said it wasn't a fall because it was due to a previous trauma that I had already sustained." She contended that picking up trays in 2000 brought on her symptoms.

In a July 17, 2006 report, Dr. Morris noted that he had treated appellant for chronic lumbar pain in 2000. He indicated that he had last treated appellant on October 13, 2000. Dr. Morris recommended that appellant continue her present treatments and undergo a functional capacity evaluation to determine her work restrictions. Appellant also submitted a July 31, 2003 MRI scan report from Technologist Harold K. Purvis, who noted that appellant complained of

¹ Appellant also provided a traumatic injury claim form referring to her September 25, 2000 injury but dated September 28, 2005. The form was marked "duplicate."

² In an undated request received by the Office on February 8, 2006, appellant also requested reconsideration. By correspondence dated February 16, 2006, the Office requested that appellant clarify the appeal method she intended to pursue. On March 27, 2006 she confirmed that she preferred an oral hearing.

“intermittent pressure on the rectum after falling and landing on the buttocks” and that the scan revealed mild disc space narrowing between L5 and S1.

In an August 3, 2006 statement, appellant indicated that although she slipped and fell on June 19, 2003 she did not believe she sustained a new trauma. Rather, she stated that in 2002 she was required to work on “the 100-pound machine,” which she believed had caused a recurrence of disability that she was not aware of before her June 19, 2003 fall.

By decision dated September 13, 2006, the hearing representative affirmed the Office’s November 25, 2005 decision, finding that appellant failed to meet her burden of proof in establishing that she sustained a recurrence of disability on June 19, 2003, as the evidence did not support that her current disability was related to her original work injury.

In an April 5, 2004 report, Dr. Elbert A. White, IV, a neurosurgeon, noted appellant’s complaints of back pain and diagnosed lumbago. On January 23, 2007 Dr. Howard T. Katz, a Board-certified physiatrist, explained that appellant initially injured her back at work for the employing establishment in 2000 and then aggravated her condition in 2003 while doing military training at Fort Benning, when she slipped in the shower. He noted that MRI scans revealed multilevel degenerative disease of both the facets and discs. Dr. Katz diagnosed lumbar degenerative disc disease and trochanteric bursitis.

On February 3, 2007 appellant requested reconsideration. She explained that she began noticing aggravated symptoms after falling in her room on June 19, 2003. Appellant also provided a May 16, 2005 report from Dr. James R. Hagler, an aerospace medicine and family practice physician, who explained that she injured herself on June 19, 2003 while doing military training.

By decision dated May 4, 2007, the Office denied modification of the September 13, 2006 decision. The Office concluded that appellant had not provided sufficient evidence to establish that she was “totally disabled from June 28, 2003 through April 2, 2005, due to [her] September 25, 2000 work injury.”

LEGAL PRECEDENT

Section 10.5(x) of the Office’s regulations provides, in pertinent part:

“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.”³

The Board has held that, in order to establish a claim for a recurrence of disability, appellant must establish that she suffered a spontaneous material change in the employment-related condition without an intervening injury.⁴ Appellant has the burden of establishing that

³ 20 C.F.R. § 10.5(x) (2002).

⁴ *Carlos A. Marrero*, 50 ECAB 117 (1998).

she sustained a recurrence of a medical condition⁵ that is causally related to her accepted employment injury. To meet her burden, appellant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁶ Where no such rationale is present, the medical evidence is of diminished probative value.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of employment-related disability on or after June 19, 2003. The record reflects that on that date appellant was performing an active military-duty assignment at Fort Benning, Georgia, and experienced a slip-and-fall incident in her shower. She submitted several reports from physicians who indicated that her subsequent symptoms were related to this new traumatic incident; none of appellant's medical reports support that her symptoms were caused by a spontaneous worsening of her accepted injury of September 25, 2000. In a March 9, 2004 report, Dr. Anderson explained that she was retained to treat appellant for her "active-duty injury," namely, her June 19, 2003 fall at Fort Benning. She explained that appellant's fall and her subsequent treatment of appellant were not related in any way to appellant's federal civilian employment. Dr. Anderson also noted that the etiology of appellant's symptoms was unclear. She did not support appellant's contention that her recurrence of disability was due to the prior accepted employment injury. Rather, Dr. Anderson specifically stated that appellant's injury was service connected.

In a January 23, 2007 report, Dr. Katz supported that appellant initially injured herself in 2000 at the employing establishment and then aggravated the same condition during her service-connected injury in 2003. However, he did not present specific rationale explaining how appellant's June 19, 2003 fall aggravated the particular condition the Office accepted in connection with her September 25, 2000 employment injury. Dr. Katz noted the results of diagnostic testing, including MRI scan evidence of multilevel degenerative disc disease, but did not specifically explain how the condition worsened due to appellant's service-connected injury or how it was related to her 2000 federal civilian employment injury from which appellant returned to her regular duties. The Board finds that his January 23, 2007 report is insufficient to establish that appellant's June 19, 2003 injury constituted a recurrence of disability causally related to her September 25, 2000 federal civilian employment injury rather than the unrelated intervening injury arising during her military training in 2003. The medical evidence supports that appellant's increasing symptoms were caused by an intervening injury and not related to her federal civilian employment on June 19, 2003. The Board finds that she did not meet her burden

⁵ Recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment. 20 C.F.R. § 10.5(y) (2002).

⁶ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁷ *Albert C. Brown*, 52 ECAB 152 (2000).

of proof in establishing that she sustained a recurrence of disability.⁸ Other medical evidence does not specifically address whether appellant's September 25, 2000 employment injury caused recurrent disability in June 2003.

Appellant also asserted that the employing establishment withdrew her light-duty assignment. In a January 23, 2006 statement, she indicated that the employing establishment did not have a light-duty assignment for her to do. On August 3, 2006 she stated that when she returned to work in 2002, following her initial employment injury, the employing establishment assigned her to work on the "100-pound machine." The Board finds that the record does not reflect that the employing establishment withdrew light duty from appellant following her September 25, 2000 employment injury nor is there any medical evidence explaining how any incident involving such a machine in 2002 caused a recurrence of disability attributable to the September 25, 2000 employment injury. Rather, the record reflects that appellant returned to her regular duties and did not commence light duty until after her intervening military injury on June 19, 2003. There is no evidence to suggest that she performed a light-duty assignment, necessitated by her employment injury,⁹ prior to her military injury. Thus, any withdrawal of light duty would not be compensable since no light duty was assigned to accommodate a work-related condition.¹⁰ The Board finds that appellant has not submitted sufficient evidence to establish that she experienced a recurrence of disability.

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she sustained a recurrence of disability on June 19, 2003, causally related to her September 25, 2000 employment injury.

⁸ *Carlos A. Marrero, supra* note 4.

⁹ *See Terry R. Hedman*, 38 ECAB 222 (1986).

¹⁰ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1)(c) (May 1997) (for a work stoppage to be compensable where light duty has been withdrawn, the light-duty assignment must have been made specifically to accommodate the claimant's condition due to the work-related injury).

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2007 and September 13, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 26, 2007
Washington, DC

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

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

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