

On May 6, 2003 appellant, then a 37-year-old airway transportation systems specialist, filed a traumatic injury claim (Form CA-1) alleging that on March 21, 2003 he slipped on back stairs that seemed “sticky wet” and sustained a lumbar strain. The Office accepted the claim for a lumbar strain. Appellant filed a notice of recurrence (Form CA-2a) on August 12, 2003 stating

that on April 25, 2003, while walking up a stairwell, he felt a “sharp pain in [his] groin and practically collapsed from pain.” On September 3, 2003 the Office accepted appellant’s recurrence claim.

On January 22, 2007 appellant filed a claim for disability compensation (Form CA-7) for the period October 18 through December 19, 2006.¹ The employing establishment indicated that appellant was absent without leave on October 19, 2006 and during the periods October 24 through November 1, 2006 and November 29 through December 8, 2006.

On January 29, 2007 appellant filed a second recurrence claim (Form CA-2a) alleging that on July 31, 2006 he experienced “frequent and chronic back pain and leg pain” related to his March 2003 employment injury and that he stopped work on October 14, 2006. He noted that his orthopedic surgeon warned him, due to the nature of the injury, that his back injury could worsen. He referred to an x-ray and magnetic resonance imaging (MRI) scan which demonstrated the deterioration of his condition.

Appellant submitted a January 11, 2007 consultation report from Dr. William Roberts, Board-certified in anesthesiology and pain medicine. He noted that appellant complained of “sharp and shooting” bilateral low back pain with some numbness, tingling and weakness. Dr. Roberts obtained a history of appellant’s account of his March 21, 2003 employment injury. Dr. Roberts stated that “[t]he above information was provided to us by the patient.” He found that appellant’s pain was “likely ... multifactorial” and recommended an epidural steroid injection.

In an April 5, 2007 decision, the Office denied appellant’s recurrence of disability claim. It found that he did not submit sufficient medical evidence to establish that his disability on or after July 31, 2006 was due to his accepted injury.

On April 24, 2007 appellant requested an oral hearing which took place on December 19, 2007. He testified that he had been “having back problems ever since I fell down the stairs. Off and on it gets to a point sometimes I can’t even walk. I can’t even move.” Appellant also attributed his back condition to the requirement that he walk up and down stairs frequently for fire drills during a training class.² He further testified that he had not returned to work since October 14, 2006.

In a decision dated March 20, 2008, the Office hearing representative denied appellant’s claim on the grounds that he did not meet his burden of proof to establish that he sustained a recurrence of disability causally related to his accepted employment injury of March 21, 2003.

¹ Appellant’s case is currently open for medical treatment and therefore the only issue is compensation pay for temporary total disability for the period October 18 through December 19, 2006.

² In a letter dated February 1, 2007, the Office informed appellant that his claim for temporary total disability was insufficient due to a lack of medical evidence. This letter was returned to the Office as undeliverable on February 26, 2007 and was subsequently resent on March 16, 2007.

LEGAL PRECEDENT

A 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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”³ A person 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 she claims compensation is causally related to the accepted injury. This 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.⁴ Where no such rationale is present, medical evidence is of diminished probative value.⁵

ANALYSIS

The Board finds that appellant has not established that he sustained a recurrence of disability on or after July 31, 2006 due to his accepted March 21, 2003 employment injury. Appellant failed to submit sufficient medical evidence to establish that his disability for work was due to the March 21, 2003 injury.

The report of Dr. Roberts fails to provide any medical rationale relating appellant’s disability for work on or after July 31, 2006 to his accepted injury in 2003. While he mentioned that appellant’s injury was “likely ... multifactorial,” Dr. Roberts did not address the possible factors causing appellant’s low back symptoms or explain how any disability for work was due to his 2003 injury. The only discussion of appellant’s accepted employment injury is contained in the history section of the report, which Dr. Roberts noted was provided by appellant. The physician did not address how appellant’s history of injury in 2003 was competent to cause disability for work in 2006. Moreover, Dr. Roberts’ report did not provide a firm diagnosis of appellant’s low back condition. These factors reduce the probative value of his medical opinion.

Appellant failed to submit any additional medical evidence containing medical rationale establishing that he experienced a recurrence of disability on or after July 31, 2006 causally related to his March 21, 2003 employment injury. Therefore, he has not met the required burden of proof to establish his claim.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his March 21, 2003 employment injury caused a recurrence of disability commencing July 31, 2006.

³ R.S., 58 ECAB ____ (Docket No. 06-1346, issued February 16, 2007); 20 C.F.R. § 10.5(x).

⁴ I.J., 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁵ See *Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated March 20, 2008 be affirmed.

Issued: November 26, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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