

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICKY S. STORMS and DEPARTMENT OF THE AIR FORCE,
EIELSON AIR FORCE BASE, Eielson, AK

*Docket No. 00-1721; Submitted on the Record;
Issued April 24, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on January 2, 2000 due to his April 25, 1999 employment injury.

On May 3, 1999 appellant, then a 41-year-old coal and rail equipment operator, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained an injury to his lower back while he was bending over and shoveling coal. The Office of Workers' Compensation Programs accepted that appellant sustained an employment-related low back strain.¹ He did not stop work.

Accompanying appellant's claim was an attending physician's report dated April 28, 1999; physical therapy notes dated May 11, 1999; a narrative statement prepared by appellant dated June 15, 1999 and a position description. The attending physician's report was prepared by a physician's assistant and indicated appellant was bending and shoveling and sustained a lower back strain. He noted appellant was disabled from April 29 to May 2, 1999 and could return to regular duty at that time. Appellant's narrative statement provided a history of his employment duties and his employment injury.

On July 7, 1999 the Office accepted appellant's claim for a low back strain. Appropriate compensation was paid.

Thereafter, appellant submitted various medical records including an x-ray report of the lumbosacral spine dated April 28, 1999; physician's assistant reports dated April 28, May 6 and June 2, 1999; physical therapy notes from May 4 to June 2, 1999; a magnetic resonance imaging (MRI) scan of the lumbar spine performed July 26, 1999; an off work status note dated January 11, 2000; and a workers' compensation report dated January 11, 2000. The x-ray report

¹ On April 26, 1999 appellant submitted a notice of traumatic injury alleging that he sustained an injury to his lower back on April 25, 1999 as a result of prolonged bending and shoveling. The Office accepted the claim as an occupational disease and determined no traumatic injury was identified.

dated April 28, 1999 revealed mild levoscoliosis of the lumbar spine and degenerative spondylosis at the L4-5 level. The physician's assistant's note dated April 28, 1999 indicated a diagnosis of lumbar strain and noted an x-ray of the lumbar spine was performed which did not reveal any significant bony abnormalities. The note of May 6, 1999 indicated appellant's condition was improving and that he could return to work without restrictions. The June 2, 1999 note indicated appellant's condition was slowly resolving with a recommendation for an MRI scan. The MRI scan of the lumbar spine dated July 26, 1999 revealed a left-sided disc herniation at the L4-5 level. The status note dated January 11, 2000 noted appellant would be off work January 3 through 12, 2000. The workers compensation report dated January 11, 2000 indicated appellant injured his back on April 25, 1999 and noted he last worked on January 4, 2000.

By letter dated January 28, 2000, the Office advised appellant that it had evidence regarding a possible recurrence and requested additional factual and medical information from appellant.

On February 3, 2000 appellant filed a Form CA-2a, notice of recurrence of disability. He indicated a recurrence of back pain intermittently occurring since the employment-related injury of April 25, 1999. Appellant stopped work on January 3, 2000 and returned on January 16, 2000.

Appellant submitted procedure notes prepared by Dr. Randall K. McGregor, a Board-certified anesthesiologist, dated October 27 and December 16, 1999; a physician's assistant's report dated December 16, 1999; a duty status report dated January 19, 2000; and an attending physicians report dated January 19, 2000. Dr. McGregor's procedure note dated October 27, 1999 indicated a history of appellant's condition beginning April 1999. He noted the results of the MRI scan performed July 26, 1999 which revealed a left-sided disc herniation at L4-5. Dr. McGregor indicated appellant had experienced intermittent pain since the onset of his condition in April 1999. He noted the physical examination revealed normal lordosis of the lumbar spine, no tenderness to palpation and no overt muscle spasm. Dr. McGregor diagnosed appellant with lumbar radiculopathy and performed a lumbar epidural steroid injection. His December 16, 1999 procedure note indicated appellant continued to experience intermittent spasms of the low back; however, the radiating pain and numbness has resolved. Dr. McGregor noted appellant underwent a second lumbar epidural steroid injection. He noted that the second epidural injection was for prophylactic purposes to prevent appellant's symptoms from recurring. The December 16, 1999 physician's assistant note provided the history of treatment provided for appellant's condition and noted that appellant's job duties including bending, shoveling and lifting could precipitate and aggravate his condition. The note indicated appellant's symptoms intermittently flare-up; however, appellant has received significant improvement of symptoms with the epidural injections. The duty status report dated January 19, 2000 prepared by a physician's assistant indicated a date of injury as April 25, 1999 and a diagnosis of left disc herniation with spinal stenosis. The report indicated appellant was to work under a lifting and carrying restriction of 50 pounds. The attending physicians report dated January 19, 2000 prepared by a physician's assistant indicated a diagnosis of degenerative spondylosis at the L4-5 level with a corresponding disc herniation at the L4-5 level with moderated spinal stenosis. The assistant indicated with a checkmark "yes" that the condition was caused or aggravated by an employment activity.

By decision dated February 29, 2000, the Office denied appellant's claim for recurrence of disability on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or about January 2, 2000 which was causally related to the accepted employment injury sustained April 25, 1999.

The Board finds that the evidence fails to establish that appellant sustained a recurrence of disability on January 2, 2000 as a result of his April 25, 1999 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.² This burden includes the necessity of furnishing evidence from a qualified 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.³ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁴

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁵ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁶ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁷

The Office accepted that appellant sustained an injury in the performance of duty on April 25, 1999. It therefore remains for appellant to establish that his claimed recurrent condition is causally related to that injury.

The medical record in this case lacks a well-reasoned narrative from appellant's physicians relating appellant's claimed recurrent condition to the April 25, 1999 employment injury. Dr. McGregor, in a procedure report dated October 27, 1999, diagnosed appellant with lumbar radiculopathy and noted appellant had experienced intermittent pain since the onset of his condition on April 25, 1999. He noted that an MRI scan performed July 26, 1999 revealed a disc herniation at L4-5. Dr. McGregor's December 16, 1999 procedure note indicated appellant

² *Robert H. St. Onge*, 43 ECAB 1169 (1992).

³ Section 10.104(b)(z) of the Code of Federal Regulations provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. 20 C.F.R. § 10.104(b)(z) (1999).

⁴ *See Robert H. St. Onge supra* note 2.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁶ For the importance of bridging information in establishing a claim for a recurrence of disability, *see Robert H. St. Onge, supra* note 2; *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 738 (1986).

⁷ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

continued to experience intermittent spasms of the low back; however, the radiating pain and numbness had resolved. He noted appellant underwent a second lumbar epidural steroid injection. Dr. McGregor noted that the second epidural injection was for prophylactic purposes to prevent appellant's symptoms from recurring. However, these medical records are of no value in establishing the claimed recurrence as of January 2, 2000 since they predate the time of the claimed recurrence of disability.

Also submitted a status note dated January 11, 2000 and a worker's compensation report prepared by appellant dated January 11, 2000. The status note indicated appellant would be off work January 3 through 12, 2000. However, the note did not indicate why appellant would be out of work nor did it note that appellant had a recurrence of his April 25, 1999 employment-related injury. The worker's compensation report dated January 11, 2000 indicated appellant injured his back on April 25, 1999 while bending over and shoveling. Appellant noted that his claim was work related and indicated he last worked on January 4, 2000. However, the note did not mention that appellant experienced a recurrence of an earlier employment-related condition. Therefore, this evidence fails to support that appellant sustained a recurrence of disability beginning January 2, 2000 attributable to the April 25, 1999 employment injury.

The Board also notes appellant submitted various reports from a physician's assistant including notes dated April 28, May 6, June 2 and December 16, 1999; a duty status report dated January 19, 2000; and an attending physician's report dated January 19, 2000. However, such reports are not considered medical evidence as a physician's assistant is not considered a physician under the Federal Employees' Compensation Act.⁸

For these reasons, appellant has not met his burden of proof in establishing that he sustained a recurrence of disability or a medical condition beginning on or about January 2, 2000 causally related to his accepted April 25, 1999 employment injury.⁹

⁸ See 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law). See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

⁹ With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; see 20 C.F.R. § 501.2(c).

The February 29, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 24, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member