

FACTUAL HISTORY

On April 12, 2001 appellant, then a 39-year-old clerk, filed a traumatic injury claim alleging that on that date she hurt her right side while casing mail.¹ She stopped work on April 13, 2001. The Office accepted appellant's claim for a lumbar strain and she received appropriate compensation.

Dr. Scott T. Gray, appellant's treating Board-certified orthopedic surgeon, found that she was totally disabled for work. On May 25, 2002 Dr. Stephen F. Latman, a Board-certified orthopedic surgeon and Office referral physician, noted there were no objective findings that appellant continued to have residuals of her employment-related back strain and that she could work full time in a sedentary position. Thereafter, the employing establishment offered appellant a limited-duty position.

Appellant accepted the job offer and returned to work on September 7, 2002 for six hours a day. On May 12, 2003 she filed a claim alleging that she sustained a recurrence of disability beginning April 18, 2003, the day she stopped work.

The Office received two medical reports from Dr. Gray. In an April 28, 2003 duty status report, he listed her physical restrictions and that appellant had a herniated nucleus pulposus (HNP) of the lumbar spine. He noted that appellant was not able to resume her regular work duties. In an attending physician's report of the same date, Dr. Gray reiterated that appellant had a HNP and indicated with an affirmative mark that her condition was caused by the April 12, 2001 employment injury. Dr. Gray's May 12, 2003 medical treatment notes indicated that she had not been back to work since April 18, 2003 due to the worsening of pain and sciatica. He noted that appellant had pain around her right hip, she demonstrated flicking in her hip and she experienced some pain shooting down her leg. Dr. Gray reported his range of motion findings on physical examination and stated that appellant needed to continue with conservative treatment. In his June 9, 2003 treatment notes, Dr. Gray noted appellant's back pain and stiffness and his range of motion findings and recommended that appellant continue conservative medical treatment.

By letter dated July 14, 2003, the Office advised appellant that the evidence of record was insufficient to establish her recurrence of disability. The Office informed appellant about the type of medical evidence she needed to submit to establish her claim.

The Office received a request from Dr. Gray for physical therapy. The Office also received Dr. Gray's July 25 and August 18, 2003 duty status reports finding that appellant sustained a low back injury on April 12, 2001 and noting her physical restrictions. In attending physician's reports dated July 25, August 18 and September 26, 2003, Dr. Gray indicated that appellant sustained an injury at work on April 12, 2001 and he diagnosed HNP. The treatment notes listed appellant's complaints of pain in her lower back, right hip and leg and his finding that her neurological examination and treatment plan remain unchanged.

¹ The record reveals that at the time of appellant's April 12, 2001 injury she was working in a limited-duty position due to a previous injury assigned claim number A2-720064.

By decision dated November 5, 2003, the Office denied appellant's recurrence of disability. The Office found the medical evidence of record insufficient to establish that appellant sustained a recurrence of disability beginning April 18, 2003 that was causally related to her April 12, 2001 employment injury.²

LEGAL PRECEDENT

When an employee who is disabled from the job she held is injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability and that she cannot perform the light-duty position. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.³

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her April 12, 2001 employment injury.⁴ This burden includes the necessity of furnishing 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 employment factors and supports that conclusion with sound medical reasoning.⁵

ANALYSIS

In this case, appellant has not shown a change in the nature and extent of her employment-related condition or a change in the nature and extent of the limited-duty job requirements. Following the April 12, 2001 employment-related lumbar strain, appellant returned to work in a limited-duty capacity. The record does not establish nor did appellant allege that the claimed recurrence of total disability was caused by a change in the nature or extent of her limited-duty job requirements. Rather, she has alleged that her accepted condition has materially changed or worsened since she returned to work and rendered her totally disabled.

Appellant has not submitted sufficient medical evidence to establish that she sustained a recurrence of disability beginning April 18, 2003 causally related to her April 12, 2001 employment injury. Dr. Gray's April 28, 2003 duty status report noted that appellant had a herniated disc of the lumbar spine, her physical restrictions and finding that she was unable to

² The Board notes that, subsequent to the Office's November 5, 2003 decision, the Office received additional medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952); 20 C.F.R. § 501.2(c).

³ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139, 142 (1993); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁵ *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

resume her regular work duties. However, the physician failed to address whether her back condition was causally related to the April 12, 2001 employment injury. Dr. Gray did not explain how his diagnosis of a herniated disc in 2003 was caused or aggravated by the 2001 lumbar strain injury. Similarly, Dr. Gray's treatment notes dated May 12, June 9, July 25, August 18 and September 26, 2003 noted that appellant continued to experience back pain and stiffness and pain in her right hip and leg but failed to address whether her pain was causally related to the April 12, 2001 employment injury. Dr. Gray failed to explain the causal relationship between appellant's current back condition and her accepted employment injury in his duty status reports. The attending physician's reports dated July 25, August 18 and September 26, 2003 which provided a diagnosis of HNP do not discuss whether this condition was caused by the April 12, 2001 employment injury.

In an April 28, 2003 attending physician's report, Dr. Gray reiterated that appellant had a herniated disc and indicated with an affirmative mark that her condition was caused by the April 12, 2001 employment injury. Form reports indicating with an affirmative mark that a condition was caused or aggravated by employment activity are insufficient to discharge a claimant's burden of proof because such forms lack the necessary medical discussion explaining the basis of the physician's opinion.⁶ As Dr. Gray's April 28, 2003 report did not provide any medical rationale explaining how or why appellant's current back condition was caused by the April 12, 2001 employment injury, it is insufficient to establish her claim.

As appellant has not submitted rationalized medical evidence supporting a causal relationship between her accepted employment injury and a recurrence of disability beginning April 18, 2003, she has failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a recurrence of disability commencing April 18, 2003 causally related to her April 12, 2001 employment injury.

⁶ *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 18, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member