

The Office accepted that, on February 8, 2003, appellant, then a 47-year-old security screener, sustained an abdominal wall strain while lifting luggage weighing up to 80 pounds in

the performance of duty. Appellant returned to full duty on approximately March 10, 2003. She took sick leave on April 28 and 29, and May 13, 2003. The Office accepted that appellant sustained a second abdominal wall strain on May 17, 2003 due to lifting heavy luggage at work.¹ Appellant was off work from May 29 to August 25, 2003 and then returned to full duty.

Appellant submitted medical records noting a history of abdominal surgery prior to the accepted February 8, 2003 injury. In April 30 and May 13, 2002 reports, Dr. Timothy W. Noveroske, an attending Board-certified general and vascular surgeon, noted that appellant “had some serous drainage” from a punctum at the mid-incision.

Appellant submitted periodic reports from Dr. Noveroske dated February 25 to August 19, 2003. He noted intermittent episodes of right periumbilical pain on May 17, June 19 and August 5, 2003, diagnosed as probable muscle injuries. Dr. Noveroske noted no evidence of a recurrent hernia even with Valsalva’s maneuver. He related that appellant’s symptoms improved when off work and not doing any heavy lifting. In an August 19, 2003 report, Dr. Noveroske noted an August 15, 2003 onset of nausea, vomiting and increased pain. An emergency room evaluation and laboratory tests were “consistent with a partial small bowel obstruction.” Dr. Noveroske found appellant’s abdomen unchanged from the August 5, 2003 examination, with no palpable hernia.

On October 3, 2003 appellant filed a claim for recurrence of disability commencing September 17, 2003, at which time she was on full duty. She was absent from work on September 21, 22, 23 and 29 and from October 6 to 13, 2003. Appellant returned to full-duty work on October 14, 2003.

In an October 6, 2003 letter, the Office advised appellant of the deficiencies in the evidence of record and of the type of evidence needed to establish her claim for a recurrence of disability commencing September 17, 2003. The Office explained that appellant’s physician must submit a “complete narrative report” describing his objective findings and explaining why they necessitated the work stoppage. The Office afforded appellant 30 days in which to submit such evidence.

In an October 27, 2003 report, Dr. Noveroske diagnosed a recurrent small bowel obstruction, requiring hospitalization from October 6 to 9, 2003. He released appellant to full duty as of October 14, 2003.

By decision dated November 17, 2003, the Office denied appellant’s claim for a recurrence of disability on the grounds that she submitted insufficient evidence to establish a

¹ On May 31, 2003 appellant filed a claim for a recurrence of disability commencing May 17, 2003 while lifting luggage weighing up to 80 pounds in the performance of duty. She stopped work on May 29, 2003. In a July 25, 2003 letter, the Office advised appellant that her claim for recurrence of disability had “been administratively changed to a traumatic injury claim” and accepted for an abdominal wall strain.

causal relationship between her condition on and after September 17, 2003 and the accepted abdominal wall strains.²

Appellant then requested a review of the written record. She submitted additional evidence.

In a November 8, 2003 surgical report, Dr. Noveroske described his November 6, 2003 repair of an incarcerated recurrent incisional hernia with a secondary partial small bowel obstruction. Dr. Noveroske noted a preexisting subumbilical midline scar, sutures in the bowel and reconstruction with mesh from a prior surgery. He found a loop of small bowel incarcerated in “a long slit-like hernia” 10 cm in length and 3 cm wide. Throughout the procedure, Dr. Noveroske noted disruption of the fascial and peritoneal surfaces resulting from prior surgical intervention.³

In a December 5, 2003 report, Dr. Noveroske noted appellant’s intermittent episodes of abdominal pain beginning on May 17, 2003. A small bowel obstruction was diagnosed on August 15, 2003 and resolved several days later. Appellant’s symptoms increased in late October to early November 2003, with several emergency room visits culminating in admission on November 3, 2003. Dr. Noveroske operated on November 6, 2003, revealing “a recurrent incisional hernia along the edge of a prior piece of mesh that had been placed for her hernias in the past with an incarcerated loop of small intestine in this area, which was repaired.” Dr. Noveroske opined that appellant’s “abdominal wall pain and partial small bowel obstruction was all related to the same recurrent incisional hernia. At the time of surgery, this appeared to be present for” longer than several weeks. Dr. Noveroske stated that although there was “no way to pin down an exact day upon which this hernia occurred or the loop of bowel incarcerated into this area, [appellant’s] symptomatology all seemed to begin with her day of reported injury on May 17, 2003.”

Appellant submitted February 15 and 24, 2004 letters, asserting that she was in perfect health before she began work at the employing establishment and that a preemployment physical did not reveal an abdominal hernia.

By decision dated and finalized April 1, 2004, the Office hearing representative affirmed the November 17, 2003 decision, finding that the medical evidence was insufficiently rationalized to establish causal relationship.

In an April 29, 2004 letter, appellant, through her authorized attorney representative, requested reconsideration. She asserted that Dr. Noveroske’s reports were “credible evidence that her injury was more than likely caused by her work.” Appellant submitted a May 1, 2004 affidavit stating that on May 17, 2003 while performing heavy lifting at work, she noticed a “bulge in her abdominal area.” She asserted that she did not experience symptoms other than

² In the November 17, 2003 decision, the Office used language applicable to circumstances where an injured worker returns to a light-duty position and then claims a recurrence of disability. However, in this case, appellant returned to full duty following both the February 8 and May 17, 2003 injuries. The Board finds that the Office’s reference to a return to light duty is harmless error.

³ It is not clear from the record as to whether appellant returned to work following the November 6, 2003 surgery.

while working at the employing establishment and did not “fall, stretch or engage in any strenuous activity outside of work.” Appellant submitted additional evidence.

In a May 2, 2004 report, Dr. Noveroske opined that appellant’s “small bowel had intermittently incarcerated the hernia for several weeks to months, with symptoms dating back to early 2003.” However, “[d]ue to the abnormal anatomy caused by her multiple prior abdominal wall surgeries, even the CT [computerized tomography] scan had not detected this” prior to the November 6, 2003 surgery. Dr. Noveroske explained that “[h]ernias do not occur spontaneously -- they occur due to a combination of forces and certainly in [appellant’s] type of work, there is a significant amount of increased strain involved on the abdominal wall and a previously operated on abdominal wall is particularly vulnerable to a recurrent incisional hernia due to this type of activity.” He opined that appellant’s “incisional hernia had most likely recurred at the time of his symptomatology beginning in early 2003 and due to the abnormal changes in her abdominal wall, it was undetectable until the surgical exploration as noted above.”

By decision issued June 8, 2004, the Office denied modification, finding that the medical evidence did not establish a causal relationship between the accepted abdominal wall strain and the claimed recurrence of disability. The Office found that Dr. Noveroske provided insufficient rationale explaining how her “current condition, or the work stoppage of September 17, 2003, [was] due to the lifting incident of May 17, 2003.” The Office further found that Dr. Noveroske’s opinion was of diminished probative value as he did not provide a complete medical history of her preexisting abdominal condition and prior surgeries.

LEGAL PRECEDENT

A recurrence of disability is defined by Office regulations as an inability to work, caused by a spontaneous change in a medical condition resulting from a previous injury or illness without an intervening injury or new exposure to the work factors that caused the original injury or illness.⁴ 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.⁵

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury. 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.⁶ An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant’s unsupported belief of causal relation.⁷

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB __ (Docket No. 03-205, issued June 19, 2003).

⁵ *Id.*

⁶ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *see Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁷ *Patricia J. Glenn*, 53 ECAB 159 (2001); *Ausberto Guzman*, 25 ECAB 362 (1974).

ANALYSIS

Appellant established that she sustained abdominal wall strains on February 8 and May 17, 2003 due to heavy lifting at work. On October 3, 2003 she claimed a recurrence of disability commencing on September 17, 2003, asserting that a recurrent incisional hernia incarcerating a loop of small intestine was causally related to the accepted February 8 and May 17, 2003 abdominal wall strains. In order to prevail, appellant must submit sufficient rationalized medical evidence to support a causal relationship between her condition on and after September 17, 2003 and the accepted abdominal wall strains.⁸

In support of her claim for recurrence of disability, appellant submitted several reports from Dr. Noveroske, an attending Board-certified vascular surgeon. A preliminary difficulty with his opinion is its lack of medical rationale explaining how and why appellant had to stop work on September 17, 2003 due to the accepted injuries. In an October 27, 2003 report, Dr. Noveroske attributed appellant's recurrent abdominal symptoms to a recurrent small bowel obstruction. He revised this opinion in a December 5, 2003 report, explaining that the obstruction was caused by the incarceration of a small loop of bowel in a recurrent incisional hernia. Dr. Noveroske noted that while there was no way to determine the date of this incarceration, appellant's symptoms began on May 17, 2003 so were likely due to the accepted May 17, 2003 abdominal wall strain. Thus, Dr. Noveroske's reasoning rests solely on a temporal sequence of events, which by itself is insufficient to explain from a medical point of view how the accepted injuries contributed to the diagnosed incarcerated bowel.⁹ The mere fact that a condition manifests itself or worsens during a period of federal employment raises no inference of causal relationship between the two.¹⁰

A second difficulty with Dr. Noveroske's opinion is the lack of a complete medical history. Dr. Noveroske's April 30 and May 13, 2002 chart notes mention serous drainage from an apparently recent abdominal incision. His November 8, 2003 surgical report mentions a prior procedure with sutures in the bowel, reconstruction of the abdominal wall with mesh and disruption of the peritoneal and fascial surfaces. In a May 2, 2004 report, Dr. Noveroske explained that hernias were caused by external forces such as the heavy lifting appellant performed at work. He asserted that appellant's abnormal anatomy resulting from this surgery made her vulnerable to a recurrent incisional hernia and prevented him from diagnosing the hernia prior to the November 6, 2003 procedure. Thus, Dr. Noveroske explained that he changed his initial diagnosis from a muscle injury to a recurrent small bowel obstruction to a recurrent incisional hernia based on the effects of a surgical procedure for which he did not provide a date, diagnosis or complete description. The basis for Dr. Noveroske's opinion on causal relationship is thus predicated on an unknown surgical procedure performed on an unknown date for unknown reasons. These basic facts are necessary for a complete understanding of Dr. Noveroske's opinion on causal relationship. The Office advised appellant in an October 6, 2003 letter that her physician must submit a "complete narrative report" explaining how and why

⁸ *Ronald A. Eldridge, supra* note 6.

⁹ *Thomas D. Petrylak*, 39 ECAB 276 (1987).

¹⁰ *Joe T. Williams*, 44 ECAB 518 (1993).

the accepted injuries would cause the claimed recurrence of disability. As Dr. Noveroske's reports are based on an incomplete medical history, they are of diminished probative value and therefore insufficient to meet her burden of proof.¹¹

On appeal, appellant contended that because Dr. Noveroske's opinion supporting causal relationship is uncontroverted, it is sufficient to meet her burden of proof. Appellant is correct that there is no medical opinion of record opposing Dr. Noveroske's. However, this does not overcome the lack of rationale expressed in support of causal relationship or the lack of a complete medical history. The fact that Dr. Noveroske's reports are uncontroverted does establish that the medical evidence is sufficient to meet her burden of proof.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability commencing September 17, 2003 causally related to factors of her federal employment, as she submitted insufficient rationalized medical evidence to establish causal relationship.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 8 and April 1, 2004 and November 17, 2003 are affirmed.

Issued: August 2, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹¹ *Kenneth R. Love*, 50 ECAB 193 (1998).