

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**CHRISTY A. LOBELL, Appellant**

**and**

**U.S. POSTAL SERVICE, MAIN POST OFFICE,  
Geisimar, LA, Employer**

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**Docket No. 05-301  
Issued: August 11, 2005**

*Appearances:*  
*Kathryn Landry, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
A. PETER KANJORSKI, Alternate Judge

**JURISDICTION**

On November 15, 2004 appellant, through her attorney, filed a timely appeal from an October 7, 2004 decision denying modification of the denial of her recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established that she sustained a recurrence of disability on and after September 4, 2001 causally related to her accepted February 17, 2000 employment injury. On appeal, appellant's counsel argues that her current lumbar problems are a natural consequence due to the weakening of her back due to her February 17, 2000 employment injury and that a September 2002 nonindustrial motor vehicle accident was not an independent intervening cause of her current disability.

## **FACTUAL HISTORY**

On February 22, 2000 appellant, a 25-year-old rural carrier, filed a traumatic injury claim alleging that she injured her back on February 17, 2000 while lifting a series of telephone books. Appellant stopped work on February 22, 2000, returned to work on March 6, 2000 and stopped work again on March 15, 2000. The Office accepted the claim for lumbar sprain and authorized physical therapy. Appellant was paid wage-loss compensation and was cleared to return to restricted work on April 9, 2001. Appellant was released to unrestricted work on August 31, 2001.

On April 5, 2000 the Office received a March 28, 2000 lumbar spine magnetic resonance imaging (MRI) scan from Dr. Roger G. West, a Board-certified diagnostic radiologist, who diagnosed "L5-S1 degenerative desiccation with a small paracentral disc herniation."

In a November 14, 2000 progress note, Dr. Thomas P. Perone, a treating neurological surgeon, reported a normal cervical spine and "about a 1-2 m[illi]m[eter] bulge of the L5, S1 disc to the right side but this is clearly not causing any nerve root compression." Dr. Perone found that her pains were strictly on a muscular basis and there was no evidence of any nerve root compression or disc herniations or bone spurs. Dr. Perone indicated that appellant could return to work on December 4, 2000 with restrictions.

In a January 25, 2001 progress note, Dr. Perone reported that appellant had full lumbar range of motion and a normal gait. He noted that appellant was only capable of performing light-duty work at that time.

In a March 9, 2001 report, Dr. John E. Nyboer, a treating Board-certified physiatrist, diagnosed "L5-S1 disc herniation with intermittent right lower extremity radiculopathy" and mild joint dysfunction at left SI. He reported that the November 7, 2000 myelogram revealed a "very small right paracentral disc bulge or protrusion is noted at L5/S1" and "a conjoined nerve root at L5/S1 on the right side."

On April 6, 2001 Dr. Nyboer released appellant to return to work no more than 30 hours per week on April 9, 2001.

In a June 21, 2001 progress note, Dr. Nyboer indicated that appellant "has seen some improvements with her back pain with the therapy," but was unable to work full duty at that time. Diagnoses included disc herniation at L5, S1 and "[c]hronic low back pain with right lower extremity radicular pain."

In a July 10, 2001 progress note, Dr. Nyboer reported that appellant was still performing light-duty work and he did "not find any new neurologic changes on her exam[ination] today to warrant any new investigations."

Dr. Nyboer reported that appellant continued to progress and recommended four more weeks of work conditioning in a July 19, 2001 progress note.

In an August 31, 2001 progress note, Dr. Nyboer released appellant to unrestricted duties as appellant "has shown she can tolerate lifting up to 70 pounds in her physical therapy

program.” A physical examination showed “good strength in her extremities,” no muscle atrophy, “[re]flexes are 2+ and symmetric,” and “some mild tenderness of the lumbar paravertebral muscles, but it is not severe.”

In a report dated October 5, 2001, Dr. Nyboer noted that appellant was involved in a motor vehicle accident shortly after her last doctor’s appointment, which caused low back pain and an aching sensation. In reports dated October 5, 23 and 26, 2001, Dr. Nyboer recommended physical therapy to treat her low back pain caused by the automobile accident.

In an October 26, 2001 progress note, Dr. Nyboer noted that appellant “states the tightness in her back continues to persist” and that she continued to undergo physical therapy for her nonemployment-related automobile injuries. He reported that “[h]er neck and back complaints that I have treated her for seem to be fairly stable.” Dr. Nyboer noted appellant’s history of a disc herniation at L5-S1 and he did “not appreciate any reflex changes in the extremities.”

In a November 11, 2002 status report, Dr. John A. Thomas, a treating Board-certified orthopedic surgeon, diagnosed lumbar disc disease syndrome secondary to degenerative disc disease at L4-S1 and a long history of lumbar back pain. Dr. Thomas opined that appellant continued to have severe disability due to her lower extremity pack pain.

On November 25, 2002 the Office received an October 10, 2002 report from Dr. Nyboer, who diagnosed low back pain due to L5-S1 disc herniation and lumbar degenerative disc disease.

On January 14, 2004 the Office received appellant’s recurrence of disability claim commencing September 4, 2001 due to her accepted February 17, 2000 employment injury. The employing establishment noted that appellant was in a nonemployment-related automobile accident the day before she was scheduled to return to full-duty work. The employing establishment also noted that appellant stopped work on September 4, 2001 and had not returned.

By decision dated January 23, 2004, the Office denied appellant’s recurrence of disability claim, finding that the medical evidence failed to establish that the claimed recurrence was the result of the accepted injury or progression of the accepted condition.

In a letter dated March 23, 2004, appellant’s counsel requested reconsideration and submitted a March 22, 2004 report by Dr. Nyboer who noted that appellant’s work-related condition was actually a lumbar disc herniation with right lower extremity radiculopathy and not a lumbar strain. In support of this opinion, he stated:

“She may have initially been diagnosed with a lumbar strain on the initial medical report; however, a lumbar disc herniation was the condition for which I was treating her, which is indeed work related. She had the lumbar disc herniation and was doing well with treatment before she had the motor vehicle accident. I had released her to attempt to return to work prior to her motor vehicle accident....”

Dr. Nyboer stated that appellant began “developing increasing back pain, which again, appeared to be radicular in nature” and which he concluded “was directly related to the L5-S1 disc herniation.” Next, he opined that he did “not believe the motor vehicle accident caused her a

disc herniation, but clearly may have aggravated her back pain and caused her low back symptoms to be symptomatic again.”

By decision dated May 25, 2004, the Office denied modification of the denial of her recurrence claim on the grounds that an intervening automobile accident was the cause of her disability.

On September 20, 2004 the Office received appellant’s September 17, 2004 request for reconsideration. In support of her request, she submitted an August 31, 2004 report by Dr. Nyboer, who stated:

“[Appellant] had a prior injury to the automobile accident which involved her lower back. Specifically, she had an L5-S1 disc herniation. I do believe that the automobile accident caused some aggravation to her back pain, but is not the cause of the lumbar disc herniation that [appellant] had as a result of a work injury. The pain from the automobile accident would have probably aggravated her back pain only for a six- to eight-week period. She had more neck and upper back problems as a result of the automobile accident. The persistent symptoms [appellant] has complained of is related to her work injury and not the automobile accident.”

Dr. Nyboer further opined that appellant’s persistent leg and low back complaints were not caused by the automobile accident and that these complaints were due to her employment injury of an L5-S1 disc herniation.

By decision dated October 7, 2004, the Office denied modification of the May 25, 2004 decision.

### **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.”<sup>1</sup>

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he or she 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.<sup>2</sup> 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

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<sup>1</sup> 20 C.F.R. § 10.5(x). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1) (May 1997).

<sup>2</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992).

causally related to the employment injury.<sup>3</sup> Moreover, the physician's conclusion must be supported by sound medical reasoning.<sup>4</sup>

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

It is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. If a member weakened by an employment injury contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury.<sup>8</sup> An employee who asserts that a nonemployment-related injury was a consequence of a previous employment related one has the burden of proof to establish that such was the fact.<sup>9</sup> In this case, appellant's burden includes submitting rationalized medical opinion evidence, showing that her claimed recurrence of disability was the direct and natural result of the accepted February 17, 2000 work-related injury. She has the burden to establish that his recurrence is directly attributable to federal employment factors.

### ANALYSIS

The Office accepted that appellant sustained a lumbar sprain on February 17, 2000. Appellant was cleared to return to restricted work on April 9, 2001 and was released to unrestricted work on August 31, 2001. In this case, appellant's burden includes submitting

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<sup>3</sup> Section 10.104(a), (b) 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. The physician's report should include the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions and the prognosis. 20 C.F.R. § 10.104.

<sup>4</sup> *Robert H. St. Onge, supra note 2.*

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

<sup>6</sup> 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 748 (1986).

<sup>7</sup> See *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>8</sup> *Sandra Dixon-Mills*, 44 ECAB 882 (1993).

<sup>9</sup> *Margarette B. Rogler*, 43 ECAB 1034 (1992).

rationalized medical opinion evidence, showing that her claimed recurrence of disability was the direct and natural result of the accepted work-related injury on February 17, 2000. She has the burden to establish that her recurrence is directly attributable to federal employment factors and not factors of her nonindustrial motor vehicle accident. The Office procedure manual states: “A recurrence of disability differs from a new injury in that with a recurrence, no event other than the previous injury accounts for the disability.”<sup>10</sup> The Board finds that the medical evidence of record fails to demonstrate that the claimed recurrence of disability of September 4, 2001 is causally related to the February 17, 2000 employment injury.

The medical evidence relevant to appellant’s claimed recurrence includes reports dated October 5, 2001, October 10, 2002, March 22 and August 31, 2004 by Dr. Nyboer and a status report dated November 11, 2002 by Dr. John A. Thomas.

The Board finds that Dr. Nyboer’s reports are insufficient to establish that appellant’s claimed recurrence is a direct result of the 2000 employment injury and not due to the independent, intervening factor of the nonindustrial September 2001 motor vehicle accident. Dr. Nyboer noted an employment injury date of February 17, 2000, physical findings, the automobile accident and then concluded that appellant’s disability is due to her employment injury. However, Dr. Nyboer did not provide an opinion supported by medical rationale explaining why appellant’s current disability is related to her employment injury rather than the September 2001 motor vehicle accident. On August 31, 2001 Dr. Nyboer released appellant to unrestricted work and reported mild tenderness in the muscles of the lumbar spine, but concluded it was not severe.

In his October 5, 2001 report, he noted the nonemployment-related automobile accident caused low back pain and recommended physical therapy to treat the pain. The Board has held that a rationalized opinion is one in which the physician’s opinion is based on a complete factual and medical background with an accurate history of the claimant’s employment injury and must explain from a medical perspective how the current condition is related to the injury.<sup>11</sup> Dr. Nyboer provided no explanation on how appellant’s current condition was related to the employment injury particularly in light of the fact that appellant had been released to full duty on August 31, 2001 and she was subsequently found disabled following the September 2001 automobile accident. Prior to releasing appellant to full-duty work, Dr. Nyboer stated he did “not find any new neurologic changes” in his examination on July 10, 2001. At the time he released appellant to full-duty work on August 31, 2001, he noted good strength in her extremities, no muscle atrophy and while the lumbar paravertebral muscles showed some tenderness it was not severe. Furthermore, Dr. Nyboer opined that the automobile accident aggravated her back pain in his March 22 and August 31, 2004 reports. On August 31, 2004 he concluded that the automobile accident would only have aggravated appellant’s condition for a six-to-eight-week period. Dr. Nyboer’s reports are of limited probative value on the issue of causal relationship as they contain a conclusion regarding causal relationship that is unsupported by medical rationale.<sup>12</sup> Although Dr. Nyboer concluded that appellant’s claimed recurrence was

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<sup>10</sup> *Robert W. Meeson*, 44 ECAB 834 (1993).

<sup>11</sup> *Tomas Martinez*, 54 ECAB \_\_\_\_ (Docket No. 03-396, issued June 16, 2003).

<sup>12</sup> *Conard Hightower*, 54 ECAB \_\_\_\_ (Docket No. 02-1568, issued September 9, 2003).

due to the original February 17, 2000 employment injury, he did not support his conclusion with adequate medical rationale. He did not address Dr. Perone's opinion that there was no nerve root compression due to the small herniated disc at the time of the initial diagnosis. Dr. Nyboer did not provide sufficient explanation regarding his physical findings of no new neurological changes in his July 10, 2001 report and his releasing appellant to full-duty work with no restrictions on August 31, 2001 and the increase of low back pain noted after the nonemployment-related accident in his October 5, 2001 report. The Board has held that medical opinions which are not supported by medical rationale are of little probative value.<sup>13</sup> This is particularly important in the instant case where there is evidence of a nonindustrial motor vehicle accident. The evidence of record supports that appellant had a worsening of her back condition unrelated to her February 17, 2000 employment injury. Dr. Nyboer noted that appellant sustained nonindustrial motor vehicle accident in September 2001 and stated that her condition was aggravated by the motor vehicle accident. Dr. Nyboer reported that appellant sustained a herniated disc on February 17, 2000. However, the Board notes that this condition was not accepted by the Office as employment related. Dr. Nyboer provided no explanation on how appellant's current condition was related to the employment injury in light of the September 2001 nonindustrial motor vehicle accident and Dr. Perone's opinion that the herniated disc was not causing any nerve root compression. Appellant had the burden of proof to establish that her herniated disc resulted from the employment-related injury.<sup>14</sup> This she has failed to do due to the deficient rationale contained in the several medical reports of Dr. Nyboer.

The Board also finds the report by Dr. Thomas insufficient to support appellant's claim. In a November 11, 2002 status report, Dr. Thomas, diagnosed lumbar disc disease syndrome secondary to degenerative disc disease at L4-S1 and a long history of lumbar back pain. He opined that appellant continued to have severe disability due to her lower extremity pack pain. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>15</sup> As Dr. Thomas offered no opinion as to the cause of appellant's disability, his opinion is of diminished probative value and insufficient to support appellant's burden that her recurrence of disability on and after September 4, 2001 was due to her accepted February 17, 2000 injury.

Appellant has not provided any rationalized medical evidence either establishing that she sustained a recurrence of disability causally related to the February 17, 2000 employment injury or that her current back problems are a natural consequence thereof and thus has failed to meet her burden of proof.

### **CONCLUSION**

The Board finds that appellant has not established that she sustained a recurrence of disability due to her February 17, 2000 employment injury.

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<sup>13</sup> *Brenda L. DuBuque*, 55 ECAB \_\_\_\_ (Docket No. 03-2246, issued January 6, 2004).

<sup>14</sup> *See Charlene R. Herrera*, 44 ECAB 361 (1993).

<sup>15</sup> *Ellen L. Noble*, 55 ECAB \_\_\_\_ (Docket No. 03-1157, issued May 7, 2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 7, 2004 is affirmed.

Issued: August 11, 2005  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

A. Peter Kanjorski, Alternate Judge  
Employees' Compensation Appeals Board