

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

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**JIMMY L. McLEMORE, Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE, TINKER  
AIR FORCE BASE, OK, Employer**

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**Docket No. 05-733  
Issued: June 13, 2005**

*Appearances:*  
*Jimmy L. McLemore, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On February 7, 2005 appellant filed a timely appeal from a November 12, 2004 merit decision of the Office of Workers' Compensation Programs finding that he did not sustain a recurrence of disability beginning June 18, 1981 causally related to his August 30, 1977 employment injury. 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 he sustained a recurrence of disability beginning June 18, 1981 causally related to his August 30, 1977 employment injury.

**FACTUAL HISTORY**

On March 14, 1978 appellant, then a 42-year-old mechanic, filed a traumatic injury claim alleging that on August 30, 1977 he hurt his lower back while lifting a box that contained a turbine up onto a rack which was about shoulder high. The Office accepted appellant's claim for a herniated disc.

On August 13, 1981 appellant filed a claim alleging that he sustained a recurrence of disability beginning June 18, 1981. By decision dated October 6, 1981, the Office denied appellant's claim on the grounds that the evidence of record did not establish that he sustained a recurrence of disability beginning June 18, 1981.

On April 28, 1982 appellant filed another claim alleging that he sustained a recurrence of disability due to his August 30, 1977 employment injury. After further development of appellant's claim, the Office, in a June 17, 1982 letter, accepted that he sustained a recurrence of disability causally related to his August 30, 1977 employment injury.

On September 13, 2004 appellant again filed a claim alleging that he sustained a recurrence of disability beginning June 18, 1981. He stated that he continued to have back pain that radiated from his back down into his right leg after the 1981 back surgery. Appellant noted that the Office accepted his 1982 recurrence of disability and that he was filing a new recurrence of disability claim in 2004. In an accompanying letter dated September 13, 2004, appellant stated that recent tests performed on March 26, 2004 showed disc space narrowing at L5-S1 and chronic hypertrophic osteophyte formation at several levels. He stated that the Office failed to consider his physician's finding that he had a 25 percent impairment of his back. In an April 18, 1982 letter, appellant provided a history of his August 30, 1977 employment injury, symptoms and medical treatment.

Appellant submitted several unsigned medical reports which contained the typed name of Dr. Ralph E. Payne, a Board-certified orthopedic surgeon. A July 8, 1981 report provided a history that appellant experienced low back pain when he drew his knees up while in bed, appellant's medical background and findings on physical and neurological examination. A July 22, 1981 report noted that appellant was discharged from the hospital on July 22, 1981 with a final diagnosis of recurrent herniated intervertebral disc at L5-S1 on the right side. An August 4, 1981 report related a history of appellant's back problems and medical treatment beginning July 7, 1981. The report found that appellant was temporarily totally disabled for approximately three months from the date of the report or approximately four months from the time he was seen. An August 27, 1981 operative report provided a preoperative and postoperative diagnosis of recurrent herniated intervertebral disc at L5-S1 and described appellant's July 14, 1981 back surgery. A September 28, 1981 report revealed that appellant's back had markedly improved and x-rays showed good early fusion of the lumbosacral joint. The report found that appellant could return to work on October 5, 1981 and that he had a 25 percent permanent impairment of the body based on Oklahoma workers' compensation laws as a result of reinjury to his back which caused the need for a fusion of the lumbosacral joint. An October 20, 1981 report indicated that appellant's chronic L5-S1 herniated disc condition was a recurrence of the disc that was removed on October 19, 1977 and it was a continuation of the problem he had at that time.

Appellant submitted unsigned treatment notes and other medical reports. Treatment notes which covered intermittent dates from October 3 through 19, 1977 indicated that appellant had a degenerative disc in his low back and that he underwent back surgery on October 19, 1977. A treatment note dated October 18, 1977 revealed that appellant underwent a lumbar myelogram to treat his disc herniation. An October 19, 1977 operative report contained the typed name of Dr. David R. Brown, a Board-certified orthopedic surgeon, and noted a preoperative and

postoperative diagnosis of a herniated disc of the lumbosacral joint on the right side and described the excision of the disc. A discharge summary report dated October 26, 1977 contained the typed names of Dr. Tom A. Shurley, a Board-certified orthopedic surgeon, and Dr. Brown. This report provided an admitting and discharge diagnosis of a herniated disc at L5-S1 on the right and a history of appellant's August 30, 1977 employment injury and medical treatment. A March 26, 2004 x-ray report contained the typed name of Dr. Howard G. Daniel, a Board-certified radiologist, and revealed normal lumbar vertebral body heights, chronic L5-S1 disc space narrowing, mild hypertrophic osteophyte formation at several levels, intact pedicles and open sacroiliac joints. No other significant abnormalities were seen.

By letter dated October 6, 2004, the Office advised appellant that the evidence submitted was insufficient to establish that he sustained a recurrence of disability causally related to his August 30, 1977 employment injury. The Office requested that he provide additional information including why he believed his current disability or medical treatment was causally related to the August 30, 1977 employment injury and whether he had seen a physician for his displacement of intervertebral disc condition since 1981. The Office requested that he submit a rationalized narrative medical report from his treating physician to establish his claim.

In response, appellant submitted an October 18, 2004 letter in which he noted his two back surgeries and the documents previously submitted. He stated that he was seeking compensation for a recurring back condition which occurred in 2004 and was causally related to his August 30, 1977 employment injury and second surgery in October 1981 which resulted in a 25 percent impairment of his back.

By decision dated November 12, 2004, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability beginning June 18, 1981 causally related to his August 30, 1977 employment injury and denied the claim.

### **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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment.<sup>1</sup>

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which he claims compensation is causally related to the accepted employment injury.<sup>2</sup> Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.<sup>3</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 causally

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<sup>1</sup> 20 C.F.R. § 10.5(x) (2004).

<sup>2</sup> *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

<sup>3</sup> *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

related to the employment injury.<sup>4</sup> Moreover, the physician's conclusion must be supported by sound medical reasoning.<sup>5</sup>

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>6</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>7</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>8</sup>

### ANALYSIS

The Office accepted that appellant sustained a herniated disc at L5-S1. He retired from the employing establishment on March 31, 1993. Appellant sought compensation for his ongoing back problems in 2004.<sup>9</sup> The Board finds that appellant has failed to submit rationalized medical evidence establishing that the claimed recurrent back problems beginning June 18, 1981 are causally related to his accepted employment-related herniated disc at L5-S1 of August 30, 1977.

Appellant submitted unsigned several medical reports and a treatment note that contained the typed name of Dr. Payne regarding his back problems and medical treatment. He also submitted unsigned treatment notes that covered intermittent dates from October 3 through 19, 1977 and medical reports which contained the typed names of Dr. Brown, Dr. Shurley and Dr. Daniel regarding his back condition and medical treatment. These unsigned medical reports and treatment notes are insufficient to establish appellant's claim because it is not clear that they are from a physician.<sup>10</sup> Therefore, the Board finds that, as the reports and treatment notes lack proper identification, they do not constitute probative medical evidence sufficient to establish appellant's burden of proof.

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<sup>4</sup> *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

<sup>5</sup> *Alfredo Rodriquez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

<sup>6</sup> *See Ricky S. Storms*, *supra* note 4; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

<sup>7</sup> For the importance of bridging information in establishing a claim for a recurrence of disability, *see Robert H. St. Onge*, 43 ECAB 1169 (1992); *Shirloyn J. Holmes*, 30 ECAB 938 (1988); *Richard McBride*, 37 ECAB 748 at 753 (1986).

<sup>8</sup> *See Ricky S. Storms*, *supra* note 4; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>9</sup> Regarding appellant's claim for compensation for a 25 percent permanent impairment of his back, the Board notes that the Office has not issued a final decision relative to appellant's entitlement to a schedule award. This is not an issue presently before the Board on this appeal.

<sup>10</sup> *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sils*, 39 ECAB 572 (1988) (reports not signed by a physician lack probative value).

As appellant has failed to submit rationalized medical evidence establishing that he sustained a recurrence of disability beginning June 18, 1981 that was causally related to his August 30, 1977 employment-related herniated disc at L5-S1, he has not met his burden of proof.

**CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a recurrence of disability beginning June 18, 1981 causally related to his August 30, 1977 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 12, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member