United States Department of Labor
Employees' Compensation Appeals Board

BRYANT F. BLACKMON, Appellant	)	
and	)	**Docket No. 04-564**
	)	**Issued: September 23, 2005**
U.S. POSTAL SERVICE, HIGHLAND PARK STATION, Chattanooga, TN, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 23, 2003 appellant, through his attorney, filed a timely appeal from the October 10, 2003 merit decision of the Office of Workers' Compensation Programs' hearing representative which affirmed the termination of compensation on the grounds that he abandoned suitable work. The hearing representative also affirmed the finding that appellant failed to establish that he sustained a recurrence of disability on October 11, 2002 causally related to his September 20, 1976 employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation on the grounds that he abandoned suitable work; and (2) whether appellant sustained a recurrence of disability on October 11, 2002 causally related to his September 20, 1976 employment injury.

FACTUAL HISTORY

This case has previously been before the Board. In an August 26, 1981 decision, the Board found that the Office did not meet its burden of proof to terminate appellant's compensation benefits.[1] The facts and the history of the case are set forth in the Board's prior decision and incorporated by reference. As germane to this appeal, appellant, then a 29-year-old letter carrier, sustained injury to his low back on September 20, 1976 while lifting parcels off the workroom floor. He came under treatment by Dr. Earl R. Campbell, Jr., an orthopedic surgeon, who reported that examination on September 24, 1976 exhibited a full range of motion of the lower extremities, a negative neurological examination and no evidence of lumbar paravertebral muscle spasm or tenderness over the lumbar spinous processes. Dr. Campbell noted that x-rays obtained on September 20, 1976 were normal and diagnosed an acute lumbar strain. The Office accepted the claim for a lumbar strain and aggravation of lumbar facet syndrome.

Appellant was treated on June 7, 1977 by Dr. Lonnie R. Boaz for complaints of low back pain. He was hospitalized from June 19 to 27, 1977 and a neurological consultation was obtained with Dr. Walter M. Boehm, a Board-certified neurosurgeon. In a June 22, 1977 report, Dr. Boehm noted an impression of chronic low back pain syndrome with no evidence of nerve root compression. He advised that appellant would be treated conservatively and recommended work restrictions for appellant's return to duty. Appellant received compensation from June 19 to September 7, 1977. Appellant stopped work on July 8, 1978 and received compensation for total disability. He continued under treatment by Dr. Boehm for periodic exacerbations of his low back pain.[2] The record indicates that appellant returned to modified limited-duty work on March 5, 1995 for approximately four hours a day. He stopped work again on or about September 25, 1998, when found totally disabled by Dr. Boehm, who recommended that appellant retire.[3]

By letter dated May 24, 2000, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions, to Dr. S. Craig Humphreys, a Board-certified orthopedic surgeon, for a second opinion medical examination to determine appellant's capacity for work. Dr. Humphreys submitted a June 22, 2002 report, noting on examination that appellant complained of pain in his low lumbar back and buttocks with numbness into the left buttock. He reviewed diagnostic studies of the lumbar spine, noting degenerative changes at

[1] Docket No. 81-1418 (issued August 26, 1981).

[2] An April 18, 1978 lumbosacral myelogram was reported as negative for any abnormality. Dr. Boehm noted that appellant was not a candidate for any surgical procedure. On March 16, 1979 a facet rhizotomy was performed but did not alleviate appellant's low back pain. A consultation with Dr. Stanley Payne, an orthopedic surgeon, found no evidence of a ruptured lumbar disc.

[3] The record reflects that appellant was the subject of an investigation by postal inspectors during 1999. The human resource specialist at the employing establishment noted on March 9, 1999 that, although appellant underwent a functional capacity evaluation in 1998 which showed a capacity for limited-duty work, Dr. Boehm would not provide job restrictions and submitted CA-20's reflecting total disability for work. Appellant was referred for a fitness-for-duty evaluation on March 27, 1999 which found that his lumbar strain had resolved and made recommendations for limited duty starting at four hours a day and increasing to eight hours a day over a four-week period.

L4-5 and L5-S1, which did not appear severe. Dr. Humphreys noted no real radicular symptoms, equal lower extremity motor strength, negative Waddell's examination, no atrophy and symmetrical neurological findings. He recommended conservative medical treatment.

In an August 9, 2000 letter, the Office requested a supplemental report from Dr. Humphreys as to appellant's capacity for work. In an undated response, Dr. Humphreys noted that appellant should undergo a functional capacity evaluation (FCE). By letter dated September 12, 2000, the Office authorized Dr. Humphreys to perform the FCE. An October 5, 2000 FCE performed for Dr. Humphreys found that appellant could perform medium-type work subject to specified physical restrictions. On May 4, 2001 the Office requested that Dr. Humphreys determine whether appellant could resume work for eight hours a day with the restrictions as outlined in the FCE report. Dr. Humphreys responded that appellant could return to work within the restrictions outlined in the FCE and was considered as having reached maximum medical improvement.

On June 8, 2001 the employing establishment offered appellant a full-time modified distribution clerk position. This position required lifting floor to shoulder 41 pounds occasionally and 21 pounds frequently, overhead lifting of 31 pounds occasionally and 21 pounds frequently, pushing/pulling 40 pounds occasionally and 24 pounds frequently, carrying 41 pounds occasionally and 21 pounds frequently up to 50 feet, change of positions from sitting to standing to walking frequently, stooping on a limited to occasional basis and forward bending, twisting at the trunk and squatting that should be limited to a frequent versus a constant basis. In a June 22, 2001 letter, the Office advised appellant that the offered position was found suitable and provided notice of his procedural rights pursuant to 5 U.S.C. § 8106(c) that he had 30 days to accept the job or explain his reasons for refusing it.

In a July 20, 2001 letter, appellant's attorney objected to the job offer and submitted medical evidence from Dr. Boehm, who reiterated his opinion that appellant was unable to return to gainful employment. In a July 24, 2001 response letter, the Office provided counsel with a copy of the offered position, the October 5, 2000 FCE report and the reports of Dr. Humphreys.

The Office found a conflict of medical opinion between Dr. Boehm, who found appellant totally disabled for work, and Dr. Humphreys, who found appellant capable of modified limited duty. The Office initially referred appellant to Dr. Walter H. King, Jr., a Board-certified orthopedic surgeon, for an impartial medical examination.[4] Counsel for appellant notified the Office of improper contact between Dr. King and the employing establishment. In a December 12, 2001 letter, the employing establishment advised the Office that it had sought clarification of appellant's work restrictions from Dr. King at the recommendation of appellant's attorney as appellant showed up for work on December 5, 2001 using a cane. In a January 3, 2002 letter, the Office informed the employing establishment that based on strict guidelines concerning contact with a referee specialist, Dr. King's opinion could not be considered

[4] On November 1, 2001 Dr. King found that appellant could perform the modified duties of the job offer. Appellant accepted the job offer and returned to work on December 5, 2001. On December 6, 2001 he stopped work.

impartial and would be excluded. As the issue of whether appellant could resume work was still outstanding, the Office would reschedule a referee examination.[5]

By letter dated May 8, 2002, the Office referred appellant to Dr. R. Warner Wood, a Board-certified orthopedic surgeon, for an impartial medical examination to determine whether appellant could perform the duties of the modified distribution clerk position.[6] In a May 13, 2002 letter, appellant's attorney objected to the selection of Dr. Wood as the impartial medical examiner on the grounds that the physician was located more than 100 miles from appellant's home and contended that the Office failed to follow proper procedures in selecting Dr. Wood. On May 24, 2002 the Office advised counsel that he had not established that the referral of appellant to Dr. Wood was improper as the remaining Chattanooga physicians in the directory system refused to see appellant.

Dr. Wood submitted a May 29, 2002 report which reviewed appellant's September 20, 1976 employment injury and medical treatment, noting his complaint of low back pain and pain to both legs. On examination, the physician noted that, when asked to walk without his cane, appellant demonstrated the ability to do this without any limp. Forward bending and all bending movements were stopped voluntarily with the complaint of back pain. Range of motion in the lumbosacral area was reported as full, except for forward flexion which was self-limited. Appellant complained of tenderness from T7-8 to L2-3 and soreness from L3-4 to the sacrum. Sacroiliac compression testing was negative and no tenderness demonstrated along the sciatic nerve. Appellant professed a decreased sensation in both lower extremities. Dr. Wood found no muscle weakness or atrophy. Diagnostic studies of the lumbosacral spine revealed normal disc space heights without evidence of hyperthrophic spondylosis or spur formation, with a mild one to two millimeter retrolisthesis of L5 on S1. The 1998 MRI scan was reviewed, which revealed some concavity of the posterior body of L4 and L5 with no disc lesions that indented the dural sac. There was evidence of some annular bulges at the levels of L4-5 and L5-S1, but no evidence of disc protrusion or extrusion.

Dr. Wood diagnosed a chronic low back strain based on appellant's mild limitation in forward bending, tender areas, decreased sensation in both lower extremities, cogwheeling movements when hip flexion was tested, the fact that he carried a cane in his right hand and early degenerative changes noted on the MRI scan. He stated that his diagnosis was not supported by objective findings and that appellant's self-limited behavior was suggestive of symptom magnification. Dr. Wood opined that there was nothing preventing appellant from returning to his regular-duty job or to the offered modified-duty position. He noted that appellant had reached maximum medical improvement with only subjective residuals of his September 20, 1976 employment injury. Dr. Wood reported that appellant did not require surgery or further medical treatment noting, however, if appellant returned to regular duty, he might have to go through a conditioning program. In addition, he stated that appellant's ability to perform outside activities suggested fraudulent behavior. Dr. Wood indicated that a further FCE study was not

[5] The Office paid compensation from December 2 to 4 and December 6 to 29, 2001, at which time appellant was reinstated on the periodic rolls.

[6] Appellant was referred to Dr. Howard G. Miller, a Board-certified orthopedic surgeon, who declined evaluation of appellant.

necessary due to appellant's behavior in his office, but stated that he would gladly perform one. He concluded that appellant's subjective complaints were not in line with his objective findings and that appellant could perform the duties of the offered modified distribution clerk position based on his review of a description of this position.

In a June 6, 2002 letter, the Office requested that Dr. Wood submit a supplemental report addressing the discrepancies in his diagnosis of chronic lumbar strain without the support of objective findings and whether appellant could perform the offered position with or without a work conditioning program. In a June 7, 2002 letter, Dr. Wood explained that his diagnosis of chronic lumbar strain was made based on appellant's subjective complaints and the diagnosis by prior physicians of record. He noted that subjective complaints without objective findings did not result in physical impairment and, thus, nothing would be expected to prevent appellant from returning to work. Dr. Wood stated that, since there were no objective findings and the results of an earlier FCE report indicated that appellant was performing at a level even better than that required for his regular job, there was no reason for appellant to have work restrictions. He stated that no new objective findings or orthopedic conditions had been identified to change this capability. Because appellant had not worked in some time and his daily activities were unknown, Dr. Wood generally recommended a conditioning program prior to appellant's return to work.

In a June 24, 2002 letter, the Office proposed to terminate appellant's compensation on the grounds that Dr. Wood's opinion established that he did not have any continuing disability due to his September 20, 1976 employment injuries. In response, appellant's attorney submitted a July 23, 2002 letter reiterating his previous objections to the selection of Dr. Wood noting that he was located 100 miles from appellant's home. Further, he contended that Dr. Wood's report could not be used to resolve a conflict regarding causal relation when one did not exist. Counsel further contended that Dr. Wood's report was insufficient to terminate appellant's compensation because it was based on a statement of accepted facts that was never updated to reflect all of appellant's accepted conditions and objective findings and it demonstrated improper bias by containing reference to the employing establishment's investigation of appellant since no finding of wrongdoing was made. Counsel argued that Dr. Wood did not mention the statement of accepted facts and that the Office improperly asked Dr. Wood about appellant's ability to perform outside activities and ignored the objective findings of other physicians of record in finding no objective evidence to support a diagnosis. He submitted Dr. Boehm's July 15, 2002 letter critiquing Dr. Wood's report. Dr. Boehm stated that the Office disregarded the fact that he had been appellant's treating physician for over 20 years and highlighted his experience in the evaluation and treatment of spinal injuries. Dr. Boehm submitted a statement dated August 17, 1999 regarding a conference he had with an employing establishment inspector's fraud investigation of appellant.

By letter dated August 2, 2002, the Office advised counsel that it would not proceed with the proposed termination of benefits. It found that there was no evidence of error in the referral to Dr. Woods as the impartial medical specialist and that the statement of accepted facts was not erroneous. The Office noted that the medical evidence of record established that appellant was capable of performing the modified distribution clerk position offered to him and that use of a cane was not established. The Office advised counsel that the position was still available and

that appellant had 30 days in which to accept the offered position or provide further explanation for refusing the job offer pursuant to section 8106 of the Act.

The Office received a July 30, 2002 report from Dr. Boehm, who opined that appellant was incapable of returning to gainful employment. He recommended that appellant see a psychiatrist for an emotional condition. Appellant submitted an August 29, 2002 narrative statement indicating that he could not accept the offered position due to chronic back pain. The Office also received duplicates of April 15 and October 29, 1998 letters and the physician's July 30, 2002 medical report. The Office also received medical records from the Department of Veterans Affairs (VA) hospital, laboratory test results, medical records concerning appellant's heart condition and back surgery and correspondence between appellant, the Office and his attorney regarding his claim.

Appellant refused the employing establishment's offer of modified work by letter dated August 31, 2002, contending that the Office disregarded the concerns of Dr. Boehm regarding appellant's heart and emotional conditions. He contended that Dr. Wood's opinion was not well rationalized and that the Office failed to follow its procedures in determining the suitability of the offered position.

In a September 11, 2002 response letter, the Office found the reasons provided by appellant unacceptable. The Office afforded appellant 15 days to accept the offered position or be subjected to termination of compensation benefits.

On September 26, 2002 appellant's attorney advised the Office that appellant accepted the offered position. On October 10, 2002 the employing establishment informed the Office that appellant returned to work on October 9, 2002.

On October 11, 2002 appellant filed a traumatic injury claim alleging that on that date he sustained an acute exacerbation of his chronic low back pain. He submitted Dr. Boehm's October 15, 2002 report stating that appellant was "forced" back to work and that he should be on bed rest and an October 24, 2002 report stating that appellant was incapable of performing duties of a clerk without a significant increase in his back pain and he should remain off work.

In a January 15, 2003 decision, the Office found the evidence of record insufficient to establish that appellant sustained an injury in the performance of duty on October 11, 2002.[7] By letter dated January 19, 2003, appellant, through his attorney, requested an oral hearing before an Office hearing representative.

On the same date, appellant's attorney filed a claim alleging that appellant sustained a recurrence of disability on October 11, 2002. Counsel stated that appellant was never fit to perform the modified job that he was forced to return to by the Office.

By letter dated February 24, 2003, the Office advised appellant about the type of factual and medical evidence he needed to submit to establish his recurrence of disability claim. On the

[7] The Board notes that the Office's January 15, 2003 decision denying appellant's traumatic injury claim was issued under a separate claim number and is not in the record.

same date, the Office received a February 12, 2003 report from Dr. Boehm addressing appellant's complaints of back pain. Dr. Boehm opined that appellant was incapable of performing the duties of a clerk and that he should remain off work.

In a February 27, 2003 letter to the Office, the employing establishment responded to appellant's allegation that he was "forced" back to work. The employing establishment stated that appellant was released to work and he was offered a rehabilitation job that he accepted on October 9, 2002.

On February 27, 2003 appellant's attorney stated that appellant's physician did not release him to resume working. Rather, appellant was forced to resume working or lose his monetary benefits based upon the biased opinion of Dr. Wood. Counsel further stated that appellant was unable to perform his assigned work duties due to his physical condition. He noted that appellant did not have any other employment or sports activities and that he had not sustained an injury other than the alleged recurrence.

In a March 28, 2003 letter, the Office advised appellant that the modified clerk position was still available and that he had 30 days to either accept the offered position and return to work or provide his reasons for abandoning the position.

By decision of the same date, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on October 11, 2002 causally related to his September 20, 1976 employment injury. The Office noted, however, that "the evidence demonstrates that you had a separate new injury that is the cause of your supposed current disability for work … as evidenced by the contemporaneous medical report from the emergency room and your actions in filing a new claim for benefits." The Office found that this new injury "broke the chain of causation" between his accepted employment injury and his disability for work. The Office also found that there was no change in the duties of appellant's limited-duty job. Accordingly, the Office denied appellant's claim. The Office indicated that appellant's entitlement to medical treatment was not affected by its decision.

Subsequently, appellant submitted hospital records and medical treatment notes and reports from a VA medical center indicating that he was treated for several conditions including back pain, depression, heart disease and carpal tunnel syndrome.

In an April 28, 2003 letter, appellant's counsel questioned the Office's ability to issue a notice of suitability of work when appellant was not receiving compensation and it had determined that he was not entitled to compensation. Counsel contended that appellant was shopped from one physician to another and that he was ultimately sent to a Board-certified physician located hundreds of miles from his home. He noted that appellant experienced difficulty in filing his retirement papers but that his papers were finally completed and he retired from the employing establishment in March 2003. Counsel argued that he had submitted medical evidence establishing that appellant suffered from subsequently acquired medical conditions that prevented him from working. He concluded that appellant was unable to resume working for the employing establishment at that time. Further, counsel cited to provisions in the Office's procedure manual regarding a claimant's election of compensation benefits from the Office or the Office of Personnel Management (OPM) and argued that since appellant had retired

and he was not receiving compensation benefits from the Office, the Office could not properly conclude that he had refused suitable work.

On May 5, 2003 the employing establishment advised the Office that the modified position was still available. By letter of the same date, the Office addressed the concerns raised in appellant's counsel's April 28, 2003 letter and determined that appellant's reasons for refusing the position offered by the employing establishment were unacceptable. The Office noted that the issue of electing benefits between the Federal Employees' Compensation Act and OPM did not apply since appellant was not receiving compensation from the Office. The Office advised appellant's attorney on how to request benefits from OPM. The Office stated that the medical evidence submitted by appellant and his retirement from the employing establishment were not sufficient to establish that he could not perform the offered position. The Office concluded by informing appellant that he had 15 days to resume working or his compensation would be terminated and stating that "we will not consider any further reasons for refusal." Appellant did not respond.

On May 22, 2003 the Office issued a decision terminating appellant's compensation on the grounds that he abandoned suitable work. The Office found that appellant failed to submit sufficient medical evidence to establish that he was unable to perform the duties of the modified distribution clerk position. The Office noted that appellant's medical benefits would continue for his accepted lumbar strain condition. In a May 27, 2003 letter, appellant, through his attorney, requested a review of the written record by an Office hearing representative.

The Office received Dr. Boehm's August 6, 2003 report indicating that appellant retired from the employing establishment on April 3, 2003. He reviewed appellant's medical records. On neurological examination, Dr. Boehm found that no acute distress was present, appellant used a cane and appellant had a moderately severe paravertebral muscle spasm, definite limitation of range of motion of the back on forward flexion, the absence of deep tendon reflexes on the knees and ankles and positive straight leg raising.

By decision dated October 10, 2003, the hearing representative affirmed the termination of appellant's compensation on the grounds that he refused an offer of suitable work. She stated that appellant's case would remain open for medical treatment of his employment-related back condition. Further, the hearing representative found that appellant failed to establish that he sustained a recurrence of disability on October 11, 2002 causally related to his September 20, 1976 employment injury.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation, including cases in which the Office terminates compensation under section 8106(c) for abandonment of suitable work.[8]

[8] 5 U.S.C. § 8106(c); *Henry W. Sheperd, III*, 48 ECAB 382, 385 (1997); *Shirley B. Livingston*, 42 ECAB 855, 861 (1991).

Under section 8106(c)(2) of the Federal Employees' Compensation Act,[9] the Office may terminate compensation of an employee who refuses or neglects to work after suitable work is offered to, procured by or secured for the employee.[10] However, to justify such termination, the Office must show that the work offered was suitable[11] and must inform the employee of the consequences of a refusal to accept employment deemed suitable.[12]

Once the Office establishes that the work offered was suitable, the burden of proof shifts to the employee who refuses to work to show that such refusal was reasonable or justified.[13] An employee who returns to work but then abandons such employment must prove through reliable medical evidence that he is unable to continue working because of a work-related disability.[14] The issue of whether an employee has the physical ability to perform the duties of the position offered is a medical question that must be resolved by medical evidence.[15]

ANALYSIS -- ISSUE 1

The record reflects that appellant returned to modified-duty work on October 9, 2002 based on the recommendation of Dr. Wood, the impartial medical specialist. Although counsel has raised numerous arguments contesting the basis for the referral to the impartial medical specialist and the quality of the opinion rendered by Dr. Wood, the Board notes that these contentions are not pertinent to the disposition of this case.

The termination decision of May 22, 2003 was premised on the basis that appellant abandoned suitable work on October 11, 2002 because he failed to submit medical evidence sufficient to establish that he was unable to perform the duties of the modified distribution clerk position. Appellant submitted a traumatic injury claim that date, which was apparently denied under a different claim number. However, in the March 28, 2003 decision denying the subsequent claim for a recurrence of disability on October 11, 2002, the Office in point of fact found that appellant sustained a traumatic injury that date. In denying the recurrence claim, the Office stated that "the evidence demonstrates that you had a separate new injury" that was the cause of his claimed disability for work. The decision goes on to state: "the evidence does not indicate that you had a recurrence as alleged as you identified new work-related factors that caused your alleged disability…. In fact this new injury broke the chain of causation regarding your disability for work due to the original work factors under this 1976 claim."

[9] 5 U.S.C. § 8106(c)(2).

[10] *Martha A. McConnell*, 50 ECAB 129, 131 (1998).

[11] *Marie Fryer*, 50 ECAB 190, 191 (1998).

[12] *Ronald M. Jones*, 48 ECAB 600, 602 (1997).

[13] *Deborah Hancock*, 49 ECAB 606, 608 (1998).

[14] *Robert M. O'Donnell*, 48 ECAB (1997).

[15] *Marilyn D. Polk*, 44 ECAB 673, 680 (1993).

In this case, appellant provided a reason for stopping work on October 11, 2002 in that he sustained a new traumatic injury on that date. The evidence of record reflects that the Office has accepted that appellant sustained injury that date, although the issue of his disability due to such injury remains unresolved. The Office adjudicated and denied the traumatic injury claim under a separate claim number, but subsequently accepted in the March 28, 2003 decision that a new injury had occurred and precluded the recurrence of disability claim. Having accepted the new traumatic injury, the Office was also precluded from adjudicating the termination of benefits for abandonment of suitable work without first determining the extent of disability related to such injury.[16] In proceeding with the termination for abandonment of suitable work, the Office did not appropriately follow its procedures. Therefore, the Board finds that the Office did not properly terminate appellant's compensation pursuant to section 8106(c).

LEGAL PRECEDENT -- ISSUE 2

When an employee who is disabled from the job he held is injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that he 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 he 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.[17]

A recurrence of disability is defined under the Office's implementing federal regulations as the 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.[18]

ANALYSIS -- ISSUE 2

In this case, appellant has neither shown a change in the nature and extent of his employment-related condition nor a change in the nature and extent of the limited-duty requirements. The record shows that, following the September 20, 1976 employment-related lumbar strain and aggravation of his lumbar facet syndrome, appellant returned to modified-duty work as a distribution clerk. As noted, however, the Office accepted that appellant was exposed to new employment factors on and after October 9, 2002 which broke the chain of causation and caused his alleged disability for work. Thus, the circumstances of this case do not involve a spontaneous change in his accepted medical condition arising from his 1976 employment injury. For this reason, the Board will affirm the Office's March 28, 2003 decision to the extent that it found that appellant did not sustain a recurrence of disability due to the 1976 employment injury.

[16] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.10(c)(2) (December 1995).

[17] *Terry R. Hedman*, 38 ECAB 222 (1986).

[18] 20 C.F.R. § 10.5(x).

The medical evidence pertaining to the October 11, 2002 employment injury has not been developed in this case. The Office's March 28, 2003 decision makes reference to the traumatic claim being adjudicated under a different claim number. There is medical evidence pertaining to appellant's treatment at a local emergency room on October 11, 2002 for an exacerbation of low back pain and subsequent evaluation by Dr. Boehm on October 15, 2002, who reported findings of paravertebral muscle spasms and limitation in range of motion of the back. Upon return of the case record, the Office should consolidate the claims and further develop the October 11, 2002 traumatic injury claim.

CONCLUSION

The Board finds that the Office did not establish that appellant abandoned suitable work on October 11, 2002. The Board further finds that appellant failed to establish that he sustained a recurrence of disability on October 11, 2002 causally related to his September 20, 1976 employment injury. The case is remanded to the Office for further development on appellant's claim of disability related to the October 11, 2002 traumatic injury.

ORDER

IT IS HEREBY ORDERED THAT the October 10, 2003 decision of the Office of Workers' Compensation Programs is affirmed, in part, in finding that appellant did not sustain a recurrence of disability on October 11, 2002, and reversed with respect to finding that the Office properly terminated appellant's compensation for abandoning suitable work. The case is returned to the Office for further action in conformance with this decision.

Issued: September 23, 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