United States Department of Labor
Employees' Compensation Appeals Board

ANDRE BLACK, Appellant	)	
and	)	**Docket No. 06-138**
	)	**Issued: February 16, 2006**
DEPARTMENT OF THE ARMY, ARMY CORPS OF ENGINEERS, Philadelphia, PA, Employer	)	

Appearances:
Andre Black, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 28, 2005 appellant timely appealed an August 30, 2005 merit decision of the Office of Workers' Compensation Programs denying his recurrence of disability beginning April 12, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on April 12, 2005 causally related to his accepted September 6, 2004 work injury.

FACTUAL HISTORY

On September 9, 2004 appellant, then a 53-year-old deckhand, filed a traumatic injury claim alleging that, on September 6, 2004, he felt a shock in his left shoulder and back when he hit his left shoulder while in the performance of his duties. On December 15, 2004 the Office accepted the claim for a full thickness tear of the left supraspinatus tendon and a lumbar strain

and paid appropriate compensation. On or about September 9, 2004 appellant returned to restricted duty monitoring people on the ship and filing paperwork in the office. He stopped work on or about April 12, 2005.

A September 17, 2004 magnetic resonance imaging (MRI) scan of the lumbar spine showed multilevel lumbar spondylosis with evidence of degenerative endplate changes at L2-3 and L3-4, evidence of disc desiccation at T12-L1, L1-2, L2-3, L3-4 and L4-5, and mild bulges at T9-10 and T10-11. An October 11, 2004 lumbar spine x-ray showed multilevel degenerative changes, including dextroscoliosis of the upper lumbar spine, six lumbar-type vertebral bodies, and narrowing of the L3-4, L4-5 and L5-6 disc spaces with adjacent osteophytic spurring.

In an October 19, 2004 report, Dr. Matthew L. Ramsey, a Board-certified orthopedic surgeon, noted the history of injury, reviewed the MRI scan and provided physical examination findings. He advised appellant that he did not believe that the etiology of appellant's parascapular and global shoulder discomfort was due to his partial-thickness supraspinatus cuff tear. Rather, Dr. Ramsey opined that appellant's parascapular and global shoulder discomfort was originating from his cervical spine and parascapular muscles.

In a November 11, 2004 report, Dr. David A. Lenrow, Board-certified in physical medicine and rehabilitation, noted that appellant continued to complain of low back pain and intermittent left shoulder pain. He also noted Dr. Ramsey's opinion regarding the cause of appellant's shoulder pain. Dr. Lenrow provided an assessment of lumbar discogenic disease, questionable lumbar radiculopathy, left shoulder rotator cuff injury and questionable myofascial cervical pain causing appellant's shoulder symptoms.

A December 13, 2004 cervical MRI scan showed multilevel degenerative changes of the cervical spine with the most marked changes from C3-4 through C5-6, where there were moderate size posterior disc/osseous ridge complexes resulting in central canal stenosis and bilateral neural foraminal narrowing.

In a February 24, 2005 report, Dr. Lenrow addressed appellant's continued complaints of left shoulder, upper trapezius neck and low back pain. He noted that February 11, 2005 x-rays of appellant's cervical spine showed mild disc degenerative disease while lumbar films showed degenerative disease, most pronounced at L2-3 and L4-5, with six nonweight bearing vertebrae noted. X-rays of the shoulder also showed AC joint osteoarthritis on the left. Dr. Lenrow provided an assessment of persistent low back pain, lumbar spondylosis, cervical spondylosis, and cervical radiculopathy, C8 in nature by EMG. Appellant had no significant improvement from physical therapy. In a March 28, 2005 report, Dr. Lenrow provided an assessment of lumbar discogenic disease, questionable intermittent radicular symptoms, cervical spondylosis, C8 radiculopathy which seemed to have centralized and questionable shoulder etiology of pain.

On April 26, 2005 appellant filed a notice of recurrence of disability commencing April 12, 2005 causally related to his September 6, 2004 accepted work injury. Appellant advised that he had symptoms of upper and lower back spasms and numbness in his lower extremities.

In a May 27, 2005 letter, the Office advised appellant of the definition of a recurrence of disability and informed him that more information, including a physician's rationalized medical report with a diagnosis, was necessary to establish whether his current disability or medical treatment was related to the accepted injury.

In an April 12, 2005 medical note, Dr. Joel A. Griska, a Board-certified internist, stated that appellant could not return to work until his neck and back pain resolved. He also completed an April 26, 2005 work restriction evaluation report, noting that appellant was unable to work and that his prognosis for recovery was unknown.

In an April 18, 2005 report, Dr. Lenrow noted that appellant complained of left shoulder pain, low back and neck pain. Appellant was taken off work by Dr. Griska. Dr. Lenrow provided an assessment of lumbar discogenic disease, questionable intermittent radicular symptoms, cervical spondylosis, centralized radiculopathy in the cervical spine, and questionable shoulder pathology. He opined that appellant could pursue local spinal injections or a work hardening program to progress toward a return to work. Dr. Lenrow advised appellant to follow through with Dr. Ramsey for his shoulder and opined that appellant should be able to return to work after he started work hardening. In a May 31, 2005 report, he noted that appellant had not started in work hardening. He diagnosed lumbar discogenic disease, cervical spondylosis, questionable shoulder pathology and advised that there were no radicular symptoms present. Dr. Lenrow stated that the etiology of appellant's shoulder pain was not clear but opined that appellant's low back pain was due to degenerative disease, as noted on MRI scan. With respect to appellant's back pain, he opined that, after appellant had a course in work hardening, he would be able to return to work at his previous duty.

In a May 17, 2005 report, Dr. Ramsey noted that he had previously seen appellant in October 2004 for persistent left shoulder pain, which was diagnosed as parascapular muscle strain and paraspinal muscle strain. Dr. Ramsey provided the results of his examination and advised that the diagnosis continued to be paraspinal and parascapular muscle strain. He stated that there was no surgical option for management of those symptoms and recommended therapy and occasional trigger point injections.

Appellant also provided physical therapy notes dated April 29, May 3 and June 16, 2005, a June 13, 2005 work hardening evaluation, and copies of x-rays taken on October 11 and December 13, 2004, which were previously of record, and a cervical MRI scan of June 30, 2005. The June 30, 2005 cervical MRI scan provided an impression of degenerative osteoarthritis with foramina narrowing.

In an August 30, 2005 decision, the Office denied appellant's recurrence claim commencing April 12, 2005 as the factual and medical evidence provided did not establish that the claimed recurrence resulted from the accepted work injury.

LEGAL PRECEDENT

As used in the Federal Employees' Compensation Act,[1] the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[2] 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.[3] 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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[4] When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of his burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[5] The definition of a recurrence of disability also includes a work stoppage caused by withdrawal of a light-duty assignment made specifically to accommodate the claimant's condition due to the work-related injury. However, this withdrawal must have occurred for reasons other than misconduct or nonperformance of job duties.[6]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[7] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8]

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[1] 5 U.S.C. §§ 8101-8193.

[2] 20 C.F.R. § 10.5(f) (1999).

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB 631 (2003).

[4] 20 C.F.R. § 10.5(x).

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

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1) (May 1997). *See* 20 C.F.R. § 10.5(x).

[7] *See Michael E. Smith*, 50 ECAB 313 (1999).

[8] *Leslie C. Moore*, 52 ECAB 132 (2000).

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[9] 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.[10] 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.[11]

ANALYSIS

The factual and medical evidence does not establish a recurrence of disability beginning April 12, 2005 related to the accepted September 6, 2004 work injury. Appellant has not contended that his light-duty assignment changed nor is there evidence that his restricted duties were no longer available or that his duties no longer met the restrictions set by his doctor. Appellant based his recurrence claim on a worsening of his employment-related conditions of lumbar strain and a full thickness tear of the left supraspinatus tendon. In the Office's May 27, 2005 letter, appellant was advised about the necessity of his physician providing a rationalized medical report which described objective findings showing that his condition had worsened and which explained how he could no longer perform the duties he was performing when he stopped work. However, appellant did not submit sufficient rationalized medical evidence establishing that his claimed recurrence of disability beginning April 12, 2005 is causally related to the September 9, 2004 accepted employment injury.

Reports of diagnostic testing submitted by appellant, such as x-ray and MRI scan reports, do not offer any opinion on causal relationship between appellant's medical condition and his reported recurrence and, thus, are of no probative value. Furthermore, physical therapy reports cannot be used to establish an employment-related recurrence of disability as a physical therapist is not a physician within the meaning of the Act and therefore a physical therapist's opinion is of no probative.[12]

Dr. Griska found appellant to be disabled until his back and neck pain resolved. He also completed an April 26, 2005 work restriction evaluation report. However, Dr. Griska did not explain the etiology of appellant's neck and back pain nor provide any explanation as to how appellant's disability was causally related to the accepted employment injury. Therefore, these reports are insufficient to meet appellant's burden of proof.

Dr. Ramsey provided a diagnosis of paraspinal and parascapular muscle strain and, in a report of October 19, 2004, had opined that the etiology of appellant's parascapular and global

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship,* Chapter 2.805.2 (June 1995).

[10] 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,* 39 ECAB 938 (1988); *Richard McBride,* 37 ECAB 748 (1986).

[11] *See Ricky S. Storms,* 52 ECAB 349 (2001).

[12] *Thomas R. Horsfall,* 48 ECAB 180, 182 n.3 (1996).

shoulder discomfort originated from his cervical spine and parascapular muscles as opposed to the work-related partial-thickness supraspinatus cuff tear. The Office did not accept that appellant developed a paraspinal and parascapular muscle strain as a result of his September 9, 2004 work injury and there is insufficient medical rationalized evidence to support such a conclusion.[13] Dr. Ramsey neither explained how appellant's condition was a recurrence of the earlier injury of September 9, 2004 or otherwise provided medical reasoning explaining why any current condition or disability was due to the September 9, 2004 employment injury or to any other employment factors.[14] Therefore, these reports are insufficient to meet appellant's burden of proof.

Dr. Lenrow noted diagnoses and stated that he did not understand the etiology of appellant's shoulder pain but opined that the low back pain was a result of appellant's degenerative disease. He stated that appellant would be able to return to work at his previous duty after a course in work hardening. The Office did not accept the conditions of lumbar discogenic disease or cervical spondylosis as a result of appellant's September 9, 2004 work injury and there is no medical rationalized evidence to support such a conclusion.[15] Dr. Lenrow did not adequately address how appellant's current medical condition and need for a course in work hardening was causally related to his employment injury.

An award of compensation may not be based on surmise, conjecture or speculation or a claimant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between the condition and the employment factors. Neither the fact that a claimant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by the employment is sufficient to establish causal relationship.[16] Therefore, appellant has not submitted sufficient medical evidence to establish his claim.

As appellant failed to submit the necessary factual and rationalized medical evidence to establish that his claimed recurrence of disability is causally related to the accepted employment injury, the Office properly denied his claim for compensation.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish a recurrence of total disability as of April 12, 2005 causally related to his accepted work injuries.

[13] For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

[14] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[15] *Alice J. Tysinger*, *supra* note 13.

[16] *Thomas A. Faber*, 50 ECAB 566 (1999); *Samuel Senkow*, 50 ECAB 370 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated August 30, 2005 is affirmed.

Issued: February 16, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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