

received continuing medical treatment through January 1999. The Office also accepted that on January 23, 1999 she sustained an aggravation of sciatica.¹

Dr. Ralph Bushbacher, an attending Board-certified physiatrist, submitted reports from May 1998 through April 1999 diagnosing low back pain and sciatica due to the accepted injuries.² He noted permanent work restrictions. In an April 16, 1999 report, Dr. Bushbacher noted an increase in appellant's symptoms after prolonged sitting at a seminar.

In April 2000, appellant was assigned a permanent limited-duty position, performing sedentary clerical work. She received appropriate wage-loss compensation.³

The Office obtained a second opinion from Dr. Richard A. Hutson, a Board-certified orthopedic surgeon. In a January 3, 2002 report, Dr. Hutson characterized the March 19, 1998 injury as mechanical low back pain and a temporary aggravation of preexisting, age-related lumbar degenerative disc disease. He opined that Dr. Bushbacher's restrictions were primarily to prevent future injury.

The Office found a conflict of medical opinion between Dr. Bushbacher, for appellant, and Dr. Hutson, for the government, regarding the nature and extent of the accepted lumbar conditions. To resolve the conflict, it obtained an impartial medical opinion from Dr. Neil H. Levine, a Board-certified orthopedic surgeon, who noted in a September 28, 2004 report that, one week before, appellant had a flare-up of back pain with right-sided sciatica after "sitting on a different type chair" while not at work. Dr. Levine opined that the accepted injuries had resolved. He attributed appellant's current condition to underlying degenerative disc disease and mechanical lumbar pain aggravated by obesity.

On March 22, 2006 appellant claimed a recurrence of disability commencing January 7, 2006 while on light duty. She stopped work on January 12, 2006. Appellant described chronic lumbar pain since the 1998 injury, with periodic flare-ups. Chris Edwards, a coworker, noted that appellant complained of lumbar pain while at work.

In a March 21, 2006 letter, the Office advised appellant of the type of additional evidence needed to establish her claim, including documentation of a change either in her light-duty assignment or in the nature and extent of the accepted lumbar conditions.

Appellant submitted reports from Dr. Jeff C.C. Thomas, an attending Board-certified physiatrist. In a February 20, 2006 form report, Dr. Thomas noted a five- to six-year history of lumbar pain. He stated that appellant's employment contributed indirectly to her condition.

¹ Effective March 10, 1999, the Office combined the March 19, 1998 and January 23, 1999 back injuries into one file.

² A June 11, 1999 magnetic resonance imaging (MRI) scan showed arthritis at L3-4, bulging discs at L4-5 and L5-S1 and possible compression of the left L5 nerve root.

³ By decision dated May 14, 2001 and affirmed on September 5, 2001, the Office denied appellant's claim for wage-loss compensation in January 2000 as she submitted insufficient medical evidence to establish total disability for work. These decisions are not before the Board on the present appeal.

Dr. Thomas held appellant off work from January 16 through April 2006 due to lumbar pain and sciatica.

By decision dated May 31, 2006, the Office denied appellant's claim for recurrence of disability on the grounds that causal relationship was not established. It found that appellant's physicians provided insufficient medical rationale supporting that the accepted lumbar conditions affected her on and after January 7, 2006. The Office noted that Dr. Levine found that the accepted conditions ceased by September 2004.

Appellant requested a telephonic oral hearing held on July 19, 2007. During the hearing, she asserted that her back condition had deteriorated over time. Appellant could no longer perform activities of daily living. After the hearing, she submitted additional medical evidence.⁴

In June 14 and August 16, 2006 slips, Dr. Thomas held appellant off work due to sacroiliitis and chronic lumbar pain. In a January 29, 2007 report, he noted that, prior to stopping work in January 2006, appellant's pain was worsened by "prolonged sitting at work ... in a chair that was not conducive to her underlying back condition." Dr. Thomas stated that it was difficult to determine the etiology of the underlying conditions but that appellant's symptoms were exacerbated by workplace seating arrangements.

In a December 13, 2006 report, Dr. Lynette Green-Mack, an attending Board-certified physiatrist, diagnosed sacroiliitis and "lumbar post-lami[nectory] syndrome." She opined that the accepted injuries increased appellant's arthritis pain. In an August 12, 2007 report, Dr. Green-Mack stated that appellant's lumbar pain disabled her for work since September 2006. She opined that appellant's back and right buttock pain remained related to the May 19, 1998 injury.

In a July 27, 2007 report, Dr. Shashank Dave, an osteopath, Board-certified in physiatry and rehabilitative medicine, diagnosed bulging discs L3-4 and L5-S1 with lumbar degenerative disease, right-sided sacroiliac dysfunction, right piriformis syndrome, myofascial pain syndrome and chronic pain syndrome. He noted in an August 8, 2007 report that he concurred with Dr. Bushbacher's assessment that appellant's symptoms had not resolved as of 2000. Dr. Dave commented that, if Dr. Bushbacher determined that appellant's injury was work related, he would concur with that assessment.

By decision dated and finalized October 1, 2007, the Office hearing representative affirmed the May 31, 2006 decision, finding that appellant submitted insufficient rationalized medical evidence supporting a causal relationship between the accepted lumbar conditions and her condition on and after January 7, 2006. The hearing representative found that appellant was exposed to new work factors, including her seating arrangement, which "may have contributed to [her] current condition." The hearing representative further found that there was insufficient evidence supporting a material worsening of the accepted conditions.

⁴ Appellant also submitted copies of evidence previously of record.

LEGAL PRECEDENT

The Office's implementing regulations define a recurrence of disability as "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."⁵ When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this 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.⁶ An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.⁷

ANALYSIS

The Office accepted that appellant sustained mechanical low back pain and an aggravation of lumbago on or before March 19, 1998 and an aggravation of sciatica on or before January 23, 1999. She remained on light duty following the injuries. In her March 22, 2006 claim for recurrence of disability, appellant asserted that a spontaneous change in her accepted lumbar conditions disabled her for work on and after January 7, 2006. She did not assert or establish a change in her light-duty assignment. Appellant thus has the burden of providing sufficient evidence, including rationalized medical evidence, to establish the causal relationship asserted.⁸

The Board finds, however, that intervening incidents negated the causal relationship between the accepted lumbar conditions and appellant's condition as of January 7, 2006. Appellant's physicians attributed appellant's ongoing back pain and sciatica to new work factors and nonoccupational incidents. Dr. Bushbacher, a Board-certified physiatrist, stated that appellant experienced increased symptoms after prolonged sitting at a seminar in April 1999. Dr. Thomas, a Board-certified physiatrist, opined that prolonged sitting at work exacerbated appellant's back pain before she stopped work in January 2006. Also, Dr. Levine, a Board-certified orthopedic surgeon and impartial medical examiner, stated that appellant experienced increased back pain in September 2004 after sitting on a particular chair in a nonwork setting.

The exposure to new work factors and the nonoccupational September 2004 incident after appellant returned to light duty broke the legal chain of causation stemming from the accepted

⁵ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). *See also Philip L. Barnes*, 55 ECAB 426 (2004).

⁶ *Carl C. Graci*, 50 ECAB 557 (1999); *Mary G. Allen*, 50 ECAB 103 (1998); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

⁷ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁸ *Ricky S. Storms*, 52 ECAB 349 (2001).

conditions. The circumstances did not involve a spontaneous change in the accepted lumbar conditions.⁹ For this reason, the Office's denial of the claimed recurrence of disability was proper under the law and the facts of the case.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability commencing January 7, 2006 causally related to the accepted lumbar conditions.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 1, 2007 is affirmed.

Issued: August 4, 2008
Washington

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁹ *Bryant F. Blackmon*, 56 ECAB 752 (2005).