

October 20, 2004 an employee of Methodist Occupational Health Centers¹ diagnosed lumbosacral strain and released appellant to work without restrictions effective immediately.

On August 1, 2007 appellant filed a claim alleging that she experienced a recurrence of disability on June 6, 2007. She stopped work in connection with her claimed recurrence of disability on July 11, 2007. Appellant stated that she sustained her recurrence of disability while performing her daily work and that she noticed pain in the same area as she had noticed previously, but that she initially tried to continue working. She stated that she also had a “work related” left shoulder strain on July 31, 2006. Appellant submitted numerous treatment notes relating to her shoulder strain and to her original 2004 lumbosacral strain.

In a September 20, 2007 statement, Patricia J. Dewaelsche, an employee of the employing establishment, explained that she witnessed appellant complaining of back pain at the end of July 2007. She stated that appellant claimed to have injured her back at home.

On September 18, 2007 Dr. Carl Sartorius, a Board-certified neurosurgeon, released appellant to return to work effective September 24, 2007 with restrictions against bending, stooping, twisting or lifting more than 20 pounds for two months.

In a July 30, 2007 statement, appellant explained that she had back pain while working on June 6, 2007. However, she stated that when she informed her supervisor that she needed medical attention because something was wrong with her back, her supervisor did not ask her if the pain was work related. Appellant stated that she continued to work until July, when her doctor diagnosed back pain and required that she take three days off work. When she returned, she requested light duty and stated that her injury occurred at home because she was not sure whether the injury occurred at home or at work. Appellant asserted that the employing establishment informed her that her injury did not occur at work unless she was “100 percent sure” that it did.

Appellant’s supervisor, James C. Murray, provided a July 27, 2007 witness statement. He stated that appellant requested leave to see her doctor on June 6, 2007, stating that she was “not feeling well,” but that she did not mention back pain. Mr. Murray explained that appellant returned to light duty on July 12, 2007. He stated that when he asked appellant if her injury occurred at work, she informed him that she was injured at home. Mr. Murray explained that appellant did not tell him her injury occurred at work until after her doctor had recommended that she undergo surgery with four weeks’ recovery time.

Appellant provided a June 6, 2007 note from Dr. Molly Garau, a Board-certified family practitioner, advising that she was seen in the physician’s office on June 6, 2007, “due to illness.”

Appellant provided a report from Dr. Sartorius indicating that she underwent a left L5-S1 microlumbar discectomy, a microdiscectomy and intraoperative x-ray on August 20, 2007.

¹ The Board is unable to determine whether the noted report was prepared by a physician, as the signature on the form is illegible.

Dr. Sartorius diagnosed a disc herniation at L5-S1. On November 19, 2007 he released appellant to work without restrictions, effective immediately.

On January 9, 2008 the Office accepted appellant's claim for sprain of the lumbosacral joint (ligament), which resolved on October 20, 2004. By decision dated the same day, it denied appellant's claim for recurrence of disability on the grounds that appellant had not established a causal relationship between her present disability and her originally accepted injury. The Office noted that appellant's June 6, 2007 injury appeared to be a new injury rather than a recurrence of disability causally related to her original 2004 back strain.

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.”²

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.³ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on an appellant's unsupported belief of causal relation.⁵

ANALYSIS

The Office found that appellant sustained a lumbosacral sprain in the performance of duty, which resolved effective October 20, 2004. On August 1, 2007 appellant claimed a recurrence of disability on June 6, 2007. She stopped work on July 11, 2007 and returned to light duty on July 12, 2007. Appellant underwent a L5-S1 lumbar discectomy on August 20, 2007 and was released to return to full duty on November 19, 2007. The Board finds that appellant did not meet her burden of proof in establishing a causal relationship between her present condition and disability for work and the original 2004 back sprain because the medical

² 20 C.F.R. § 10.5(x) (2002).

³ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

⁴ *See Nicolea Brusco*, 33 ECAB 1138 (1982).

⁵ *Ausberto Guzman*, 25 ECAB 362 (1974).

evidence does not support that her present symptoms, and her disability from August 20 to November 19, 2007, are related to her 2004 lumbosacral strain.

In support of her claim, appellant submitted a June 6, 2007 note from Dr. Garau, stating that appellant was seen in the office on that day “due to illness.” However, Dr. Garau did not state that appellant complained of back pain, nor did she diagnose a specific condition or relate it to appellant’s 2004 lumbosacral strain. Dr. Sartorius also provided an August 20, 2007 surgical report noting that appellant underwent a L5-S1 discectomy and a November 19, 2007 note releasing her to return to work without restrictions. Although he diagnosed a disc herniation at L5-S1, Dr. Sartorius did not address causal relationship or support that appellant’s current disability is related to her 2004 lumbosacral strain. The Board has held that medical evidence which does not address causal relationship is not probative on that issue.⁶ Appellant submitted other medical and treatment notes from 2004, but as these notes referenced her original injury and an unrelated left shoulder strain, they are not germane to the issue of whether appellant experienced a recurrence of disability of her accepted back sprain. Accordingly, the Board finds that the evidence of record is insufficient to establish that appellant experienced a recurrence of disability in the performance of duty on June 6, 2007, causally related to her 2004 lumbosacral strain. The Board also notes that appellant’s own statement, as well as the statements of Mr. Murray and Ms. Dewaelsche, raises questions concerning whether appellant’s claimed work injury is a new injury and whether it occurred at home or at work. Therefore, the Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability in the performance of duty on June 6, 2007.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on June 6, 2007 causally related to her October 2004 work injury.

⁶ See *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006).

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2008
Washington, DC

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