

which predated his employment injury. He filed a recurrence of disability claim on March 29, 2005 alleging that on March 1, 2005 he sustained a recurrence of total disability due to his August 19, 2004 employment injury. The Office denied appellant's claim for recurrence of disability by decision dated August 1, 2005. The Branch of Hearings and Review affirmed this decision on March 7, 2006. In a decision dated September 7, 2006,¹ the Board found that appellant did not submit sufficient medical and factual evidence to establish a recurrence of total disability on or after March 1, 2005. The facts and the history of the case as set out in the Board's prior decision are incorporated herein by reference.

In a report dated March 14, 2005, Dr. Daniel Rancier, a Board-certified family practitioner, provided a history of an August 14, 2003 employment injury which resulted in a diagnosis of sciatica. He further noted that appellant believed that he sustained an exacerbation of pain because he had to work too hard as he had recently shoveled some snow. Appellant stopped work on his recommendation with no significant improvement in his back pain. Dr. Rancier referred appellant for a magnetic resonance imaging (MRI) scan on May 6, 2005 which revealed chronic degenerative disc disease at L4-5 with only minimal impression on the thecal sac in the midline and mild impression on the thecal sac posterolaterally. The MRI scan revealed no evidence of nerve root compression. In a note dated May 9, 2005, Dr. Rancier diagnosed chronic low back pain and noted that appellant was not experiencing any change in his condition. On June 21, 2005 he stated that appellant's diagnoses included sciatica and low back pain which existed concurrently. Dr. Rancier stated, "This is all related to his previous injury and there is nothing significantly new going on with this condition."

In a report dated August 19, 2005, Dr. Rancier diagnosed chronic low back pain with radiation down the right leg. He noted that appellant denied any significant change in his chronic low back pain. On September 22, 2005 Dr. Rancier diagnosed chronic low back pain with radiation down the legs and stated that appellant had improved since stopping work. He described work which required lifting, twisting, bending or an excessive amount of time standing or sitting could exacerbate appellant's back pain. Dr. Rancier concluded that appellant was disabled from his regular duties. He completed an additional report on October 4, 2005 which stated that he first found appellant totally disabled beginning May 9, 2005.

On October 28, 2005 the Office received an undated report from Dr. Rancier noting that he had examined appellant monthly since August 14, 2003. Dr. Rancier stated, "[Appellant's] pain and disability is a permanent condition due to spinal compression related to the presence of degenerative disc disease." He diagnosed degenerative disc disease and chronic low back pain.

Appellant retired from the employing establishment effective June 2, 2006. His attorney requested reconsideration on October 1, 2006 and requested review of the medical evidence of record.² Appellant underwent a radiofrequency ablation of the right L3, L4 and L5 facet joints with fluoroscopy on March 21, 2006. On March 28, 2006 Dr. Rancier stated that appellant was

¹ Docket No. 06-1001 (issued September 7, 2006).

² Counsel referred to a January 9, 2006 report from Kristen Barry, a psychologist. This report was in the record at the time of the hearing representative's March 7, 2006 decision and was therefore before the Board in its September 7, 2006 decision.

experiencing severe back pain. On May 3, 2006 Dr. Richard Zogby, a Board-certified orthopedic surgeon, noted appellant's history of injury lifting a patient in August 2004. Appellant reported pain and stiffness in the low back with radiation to the right leg and foot. Dr. Zogby diagnosed lumbar spinal stenosis and recommended an MRI scan. He found appellant totally disabled. On May 26, 2006 Dr. Zogby recommended a lumbar laminectomy L3-S1. He continued to support appellant's total disability and need for surgery on June 13 and September 13, 2006.

Dr. Mahender Goriganti, Board-certified in physical medicine and rehabilitation, examined appellant on August 24, 2006. Appellant reported an "insidious onset of pain" in the lumbosacral region with no specific recollection of any particular activity which may have led to those symptoms. Dr. Goriganti diagnosed degenerative disc disease, and lumbar radiculopathy L4-5 and L5-S1. On September 19, 2006 he expanded his diagnoses to include lumbosacral sprain/strain, chronic low back pain, spinal stenosis as well as lumbosacral degenerative disc disease. Dr. Goriganti found appellant totally disabled.

In a report dated October 9, 2006, Dr. Zogby recommended a surgical decompression of the nerve roots from L3-4 and L5-S1.

By decision dated October 19, 2006, the Office denied further reconsideration of the merits.

Dr. Goriganti completed a report on October 10, 2006 and diagnosed failed back syndrome, chronic low back pain and lumbar radiculopathy. He opined that appellant was totally disabled. On October 25, 2006 Dr. Zogby noted appellant's history of injury in October 2004. He repeated his prior diagnoses and recommended surgery. Dr. Goriganti examined appellant on November 7, 2006 and stated that appellant's symptoms had improved. He found appellant totally disabled. On November 30, 2006 Dr. Zogby noted appellant's history of injury in 2004 and found he was totally disabled.

The Office accepted the additional conditions of chronic lumbar syndrome with radiculitis and underlying degenerative disc disease at L4-5 as due to the August 19, 2004 employment injury by letter dated March 14, 2007.

Dr. Zogby completed a report on April 9, 2007 and indicated that appellant underwent surgery on December 7, 2006. He described the surgery as lumbar laminectomy and bilateral decompression with partial discectomy.

Appellant, through his attorney, requested reconsideration before the Office on May 21, 2007. He submitted the March 14, 2007 expansion of appellant's claim. By decision dated August 15, 2007, the Office found that there was no new evidence in the record addressing a change in the nature and extent of appellant's injury-related condition or light-duty job requirements and denied modification of its prior decision.

LEGAL PRECEDENT

A recurrence of disability is 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 which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.³ When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-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 cannot perform such limited-duty work. 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 limited-duty job requirements.⁴

This medical opinion must be based upon a complete factual and medical background with an accurate history of appellant's employment injury. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

ANALYSIS

The Office accepted that appellant sustained lumbar sprain and strain, chronic lumbar syndrome with radiculitis and underlying degenerative disc disease at L4-5 as a result of the August 19, 2004 employment injury. Appellant has not submitted any additional factual evidence addressing whether there was a change in the nature and extent of his light-duty job requirements beginning March 1, 2005. The Board will review appellant's claim to determine whether he has established a change in the nature and extent of his injury-related conditions beginning March 1, 2005.

Dr. Rancier, a Board-certified internist and appellant's attending physician, attributed appellant's exacerbation of pain on March 14, 2005 to shoveling snow. This does not represent a spontaneous change in the nature and extent of the injury-related condition, but instead attributes any change in March 2005 to an intervening cause, shoveling snow. This report is not sufficient to establish that appellant sustained a recurrence of total disability in March 2005. On May 9, June 1 and August 19, 2005 Dr. Rancier denied any change in appellant's back pain or conditions. He did not support that appellant's back conditions had changed. Dr. Rancier's reports do not establish a change in the nature and extent of the injury-related conditions necessary to establish a recurrence of disability. He completed a report on October 4, 2005 and stated that he first found appellant totally disabled beginning May 9, 2005. Dr. Rancier did not state that appellant's back conditions had changed in May 2005 and did not offer any medical reason for appellant's total disability at that time. This report is insufficient to meet appellant's

³ 20 C.F.R. § 10.5(x).

⁴ *Joseph D. Duncan*, 54 ECAB 471, 472 (2003); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁵ *James Mack*, 43 ECAB 321, 328-29 (1991).

burden of proof in establishing a recurrence of total disability. In a report received by the Office in October 2005, Dr. Rancier attributed appellant's pain and disability to the accepted condition of degenerative disc disease. He did not explain how appellant's degenerative disc disease had changed on or after March 1, 2005 rendering appellant totally disabled. Without a medical explanation of how appellant's accepted employment-related condition had changed causing total disability, this report is not sufficient to meet appellant's burden of proof. On March 28, 2006 Dr. Rancier stated that appellant was experiencing severe back pain. He did not offer any explanation for appellant's increased back pain and did not attribute this to a change in the nature and extent of appellant's accepted employment-related injuries. Dr. Rancier has not submitted any medical findings suggesting that appellant's accepted employment-related conditions have changed such that he became totally disabled on or after March 1, 2005. His reports are not sufficient to meet appellant's burden of proof.

Appellant also submitted several reports from Dr. Zogby, a Board-certified orthopedic surgeon, addressing his ongoing back treatment. On May 3, 2006 Dr. Zogby noted appellant's employment injury in August 2004 and diagnosed lumbar spinal stenosis. He found that appellant was totally disabled. Dr. Zogby recommended surgical decompression of the nerve roots from L3-4 and L5-S1. He did not address the period of disability claimed as of March 1, 2005 or identify any change in appellant's accepted conditions which resulted in his total disability for work. These reports are not sufficient to meet appellant's burden of proof in establishing that he sustained a recurrence of total disability on March 1, 2005 due to his accepted lumbar strain and sprain or chronic lumbar syndrome with radiculitis and underlying degenerative disc disease at L4-5.

Appellant also submitted several reports from Dr. Goriganti, a physician Board-certified in physical medicine and rehabilitation. Dr. Goriganti first examined appellant on August 24, 2006 and noted that appellant did not provide a history of a specific injury as causing or contributing to his ongoing back condition. He diagnosed degenerative disc disease and lumbar radiculopathy at L4-5 and L5-S1. Dr. Goriganti found that appellant was totally disabled. While he attributed appellant's current disability to his accepted employment-related conditions of degenerative disc disease, he did not address the progression of this condition and explain when or how appellant's condition worsened such that appellant became totally disabled for work as of March 1, 2005. Dr. Goriganti also appeared not to be aware of appellant's accepted employment incident in August 2004 and did not attribute appellant's current disability to this injury. As these reports are not based on a proper factual background, they are of diminished probative value and cannot establish a period of total disability due to appellant's accepted employment injuries.

Appellant has not submitted rationalized medical opinion evidence based on a proper factual background establishing that he sustained a recurrence of total disability on or after March 1, 2005 causally related to his accepted employment injuries. Without medical evidence explaining how his accepted conditions worsened and when these conditions rendered him totally disabled, appellant has not meet his burden of proof and the Office properly denied his claim.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing a recurrence of total disability on or after March 1, 2005.

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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