# United States Department of Labor
# Employees' Compensation Appeals Board

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| **R.P., Appellant** | ) | |
| **and** | ) | **Docket No. 08-561** |
| | ) | **Issued: September 23, 2008** |
| **HUMAN RESOURCE OFFICE, NAVAL POST GRADUATE SCHOOL, Monterey, CA, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On December 10, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 11, 2006, which affirmed the denial of his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### ***ISSUE***

The issue is whether appellant sustained a recurrence of disability on February 17, 2001 causally related to his June 1, 1992 employment injury.

### ***FACTUAL HISTORY***

This case has twice been on appeal before the Board.[1] In decisions dated August 30, 2004 and November 23, 2005, the Board found that appellant failed to provide sufficient medical

[1] Docket No. 05-1584 ( issued November 23, 2005) and Docket No. 04-844 ( issued August 30, 2004).

evidence to establish a change in the nature and extent of his injury-related condition or a change in the nature and extent of his light-duty job requirements such that he was unable to perform his light-duty position. The Board found that he failed to meet his burden of proof to establish that the recurrence of disability on February 17, 2001 was causally related to his accepted employment injury on June 1, 1992. The facts and the history contained in the prior appeals are incorporated by reference.

By letter dated September 21, 2006, appellant requested reconsideration. He submitted new medical evidence and made several arguments. Appellant inquired as to why his chronic pain, chronic depression and leg impairments were not accepted by the Office. He contended that his condition had worsened such that he was unable to sit, bend, stand or walk and that it originated from his accepted injury as opposed to his preexisting conditions. Appellant also indicated that his light-duty position was for four hours per day, not six or eight hours. He requested that he be sent to a physician for a determination as to whether he reached maximum medical improvement. Appellant noted that his recurrence for an injury on June 5, 1997 was accepted under claim number's 13-1112172 and 13-1133067. He said that his employer withdrew the job offer of four hours a day on April 20, 1995 and did not adhere to his work restrictions. Appellant alleged that, when his work hours increased, his job description changed. He also alleged that there were differences in opinion between his physicians, questioned their specialties and suggested there was a conflict. Appellant asserted that his disability was not just a medical determination and that his age, education, work history, skills, abilities and pain should be considered. He also alleged that his back injury had seriously impacted his interactions with friends and family and that he had suffered hardships and had to take pain medications, which included narcotics and opiates which precluded him from driving. Appellant also noted that he lived in a rural area that was not accessible to mass transit.

A January 20, 2006 magnetic resonance imaging (MRI) scan of the lumbar spine, read by Dr. Randall G. Weissbuch, a Board-certified radiologist, revealed degenerative disc disease with minor nerve root impingements. A July 11, 2006 lumbar myelogram read by Dr. Andrew Schmidt, a Board-certified diagnostic radiologist, found no evidence of spinal stenosis or nerve root impingement.

In a report dated April 19, 2006, Dr. Christopher Carver, a Board-certified neurosurgeon, noted that appellant was seen for complaint of low back and bilateral lower extremity discomfort. He indicated that appellant had subjective pain in the low back, both legs, difficulty sitting any length of time, difficulty with walking, with weakness and numbness and tingling in both lower extremities. Dr. Carver noted that appellant's January 20, 2006 MRI scan revealed very mild discogenic disease at L4-5 and L5-S1. He diagnosed low back and extremity discomfort and chronic pain.

A June 29, 2006 nerve conduction study and electromyogram study read by Dr. Gerald F. Wahl, a Board-certified neurologist, was normal. On August 9, 2006 Dr. Carver noted that appellant's diagnostic test results were normal. He could not identify any neurosurgically amenable lesion and did not have a good explanation for appellant's ongoing chronic pain. Dr. Carver indicated that appellant remained symptomatic and advised that he should utilize chronic pain management. In a report dated September 20, 2006, he indicated that appellant

"returns for some reasons, which are not entirely clear." Dr. Carver advised he would see appellant on an as needed basis.

On October 2, 2006, Dr. Bradley W. Carpentier, a Board-certified anesthesiologist, noted appellant's history of injury and treatment. He conducted a physical examination and diagnosed lumbar spondylosis, axial low back pain and radiating lower extremity pain, with radiculopathy versus radiating facet pain. Dr. Carpentier recommended additional treatment which included diagnostic medial branch blocks from L3-4 to the sacrum at the levels of the visible facet hypertrophy, transforaminal epidural steroid injections and spinal cord stimulation. In a November 3, 2006 report, he repeated his previous diagnoses and recommended additional treatment.

By decision dated December 11, 2006, the Office affirmed the denial of appellant's recurrence claim.

## ***LEGAL PRECEDENT***

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 substantive 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.[2]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.[3] This consists of 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.[4] The physician's opinion 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.[5]

A recurrence of disability also includes 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 work duties or a reduction-in-force (RIF) or when the

[2] *Richard E. Konnen,* 47 ECAB 388 (1996); *Terry R. Hedman,* 38 ECAB 222, 227 (1986). *See* 20 C.F.R. § 10.5(x), (y) (defines the terms "recurrence of disability" and "recurrence of medical condition").

[3] *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

[4] *Duane B. Harris*, 49 ECAB 170, 173 (1997).

[5] *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[6]

## ***ANALYSIS***

The Office accepted that appellant sustained a lumbar strain, lumbar disc displacement and anxiety in the performance of duty on June 1, 1992. It later accepted aggravation of a herniated lumbosacral disc. Appellant then returned to work full time in a modified capacity on November 1, 1998. He worked full duty within his restrictions until February 17, 2001, when his position was eliminated due to a RIF. The Board previously determined that total disability due to a RIF by the employing establishment, which affects both full-duty and light-duty employees, does not constitute a compensable recurrence of disability.[7]

In the present appeal, appellant alleges a change in the nature and extent of his light-duty requirements. He contends that his previous light-duty position was actually supposed to be for four hours per day, not six or eight hours. Appellant also alleged that his employer did not adhere to his job restrictions and, when his work hours increased, his job description changed. The Board finds that this argument is unconvincing. The record reflects that appellant worked in a modified capacity full time from November 1, 1998 until his position was eliminated due to RIF on February 17, 2001. Appellant filed a claim for a recurrence of disability after his position was eliminated. The Board notes that his arguments regarding his job being changed were not made at that time. However, appellant has not presented any evidence to support his allegations. He made general allegations without any specific details as to time or place, other than to note a change in April 1995. Without any supporting evidence to substantiate his claim, appellant has not shown a change in the nature and extent of the light-duty job requirements.

Appellant also argues that his accepted conditions have worsened such that he is now unable to sit, bend stand or walk and that the worsening arose from his accepted conditions as opposed to his preexisting conditions. The Board notes that this is a medical issue. The evidence submitted by appellant does not establish that he sustained a recurrence of disability beginning February 17, 2001 causally related to the accepted employment injuries. Appellant has not submitted sufficient medical evidence showing that he sustained a recurrence of disability beginning February 17, 2001 due to his accepted employment injury.[8]

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[6] 20 C.F.R. § 10.5 (x).

[7] Docket No. 04-844, *supra* note 1. *See id. See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) and 2.1500.7(a)(4) (May 1997); *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814-12 (July 1997).

[8] Appellant also asserts that medical evidence should not be the only consideration in determining if his disability was caused by his work injury. However, the Board has held that whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence. *Tammy L. Medley*, 55 ECAB 182, 184 (2003). The Board has also held that an award of compensation may not be based on a claimant's belief of causal relationship. *Paul Foster*, 56 ECAB 208, 211 (2004).

Appellant submitted several reports from Dr. Carver. However, these reports did not offer any opinion regarding whether he had any disability beginning February 17, 2001 causally related to his accepted conditions.[9] Instead, Dr. Carver addressed appellant's current status and reported conditions that have not been accepted by the Office as employment related such as mild discogenic disease at L4-5 and L5-S1 noted in his April 19, 2006 report. In an August 9, 2006 report, Dr. Carver indicated that appellant's diagnostic test results were normal and opined that he did not have a good explanation for appellant's complaint of chronic pain.

Appellant also submitted October 2 and November 3, 2006 reports from Dr. Carpentier. However, Dr. Carpentier did not offer any opinion that appellant sustained a recurrence of disability on or after February 17, 2001 due to his accepted conditions and he also diagnosed conditions that were not accepted by the Office as being employment related.

Appellant also submitted several progress notes and numerous diagnostic reports. However, these reports are insufficient because none of these physicians provided an opinion addressing how appellant's accepted conditions had changed such that disability resulted beginning February 17, 2001. Therefore, their reports do not establish causal relationship.

Appellant has not submitted evidence establishing either a change in the nature and extent of his injury-related condition or a change in the nature and extent of his light-duty requirements. Consequently, he has not met his burden of proof in establishing a recurrence of disability beginning February 17, 2001.[10]

## ***CONCLUSION***

The Board finds that appellant did not meet his burden of proof to establish a recurrence of disability on February 17, 2001 causally related to the June 1, 1992 employment injury.

[9] *See A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[10] The Board notes appellant presented arguments regarding expansion of his claim. However, the Office has not rendered a decision regarding expanding his claim and thus that issue is not presently before the Board. *See* 20 C.F.R. § 501.2(c).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the December 11, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 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