

The issues are: (1) whether appellant has established that he sustained a recurrence of a medical condition on July 24, 2004 causally related to his April 18, 2002 employment injury; and (2) whether he is entitled to a schedule award for a permanent impairment due to his accepted work injury.

## **FACTUAL HISTORY**

On April 18, 2002 appellant, then a 47-year-old heavy mobile equipment mechanic, filed a claim for an injury to his lower back and hip occurring on that date in the performance of duty. The Office administratively closed the case, assigned file number xxxxxx825, as it was uncontroverted, he had minimal medical expenses and claimed no time lost from work.

On July 9, 2008 appellant requested that the Office develop his April 18, 2002 traumatic injury claim. On August 1, 2008 the Office informed him that it had handled his case as an uncontroverted short form closure as he sustained a minimal injury and he returned to full duty within two weeks. It advised appellant to file a notice of recurrence (Form CA-2a) if he believed that he required further medical treatment due to the injury.

On February 1, 2009 appellant filed a notice of recurrence of a medical condition on July 20, 2004 causally related to his April 18, 2002 work injury. He asserted that he had never recovered from his injury. Appellant first sought medical treatment after his alleged recurrence on November 22, 2004. He noted that he was terminated due to misconduct and left work status on July 20, 2004.

On February 2, 2009 appellant filed a claim for a schedule award.

On February 25, 2009 the Office accepted that appellant sustained a temporary aggravation of preexisting lumbar degenerative disc disease at L4-5 and L5-S1 and lumbago due to his April 18, 2002 employment injury. It found that both conditions resolved by May 6, 2002 when his physician released him to resume full-time employment.<sup>1</sup>

By letter dated February 25, 2009, the Office noted that appellant had previously filed a notice of recurrence of disability on July 20, 2004 due to an injury under file number xxxxxx141.<sup>2</sup> It informed him that to establish a recurrence of a medical condition he must show that his condition was present and due to his April 18, 2002 work injury.

In a report dated July 27, 2004, Dr. John D. Marshall, who specializes in family practice, diagnosed neuropathy, arthralgia and a history of degenerative disc disease. He related that appellant could “return to full work duties” with limited use of the neck and lifting not more than 35 pounds. On August 24, 2004 Dr. Plas T. James, a Board-certified orthopedic surgeon, diagnosed L4-5 Grade 1 spondylolisthesis with instability and L5-S1 degenerative disc disease. He recommended diagnostic studies. On November 22, 2004 Dr. James diagnosed L4-5 Grade 1

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<sup>1</sup> In a form report dated April 18, 2002, a physician found that appellant was disabled from April 18 to 22, 2002, could work light duty from April 22 to May 6, 2002 and could return to his regular duties on May 6, 2002. In a report dated April 29, 2002, Dr. J. Kenneth Burkus, a Board-certified orthopedic surgeon, diagnosed spondylosis at L4-5 and L5-S1 with lumbar instability, stenosis at L4-5 and L5-S1 with radiculitis and cervicalgia. He recommended that appellant return to work without restrictions and found that he was not entitled to a permanent impairment rating.

<sup>2</sup> The Office noted that it had determined that appellant did not establish a recurrence of disability on July 20, 2004 under file number xxxxxx141 and that its finding was affirmed by the Board. It indicated that it appeared that he was trying “to circumvent the normal appeal process.”

spondylolisthesis, instability, L5-S1 degenerative disc disease, spinal stenosis and facet arthropathy. He attributed appellant's condition to injuries in August 2001 and 2004. Dr. James recommended a spinal fusion. On January 10, 2005 Dr. Patrick A. Griffith, a Board-certified neurologist, discussed appellant's complaints of increased back pain on August 7, 2004. He diagnosed chronic post-traumatic back pain and right lumbosacral radiculopathy.

The record contains no further medical evidence until 2008. Appellant submitted medical reports and disability certificates from 2008 and 2009 describing his treatment for back and neck problems. None of the medical reports referred to a work injury on April 18, 2002.

In a multiple impairment questionnaire dated March 3, 2009, a physician diagnosed L5 disc disease and cervical disc disease. He found that appellant could not "remain gainfully employed with the present condition."

By decision dated May 1, 2009, the Office found that appellant had not established a recurrence of a medical condition due to his accepted work injury. In another decision dated May 1, 2009, the Office found that he had not established entitlement to a schedule award.

On appeal appellant described his other work injuries and alleged that the Office did not consider all of the evidence.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 10.5(y) of the Office's regulations provides in pertinent part:

"Recurrence of medical condition means a documented need for further medical treatment after release from treatment of the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a 'need for further medical treatment after release from treatment' nor is an examination without treatment."<sup>3</sup>

The Office's procedure manual provides:

*"After 90 days of Release from Medical Care* (Again, this should be based on the physician's statement or instruction to return PRN, or computed by the [claims examiner] from the date of last examination.) The claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury."<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that appellant sustained lumbago and a temporary aggravation of preexisting lumbar degenerative disc disease at L4-5 and L5-S1 due to his April 18, 2002

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<sup>3</sup> 20 C.F.R. § 10.5(y).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (May 2003).

employment injury. Appellant resumed his usual work on May 6, 2002 and the medical records do not indicate that he received any further treatment for the effects of the April 18, 2002 work injury. On February 1, 2009 he filed a recurrence of disability claim on July 20, 2004 causally related to his April 18, 2002 work injury. The Office notified him of the type of evidence needed to establish a recurrence of disability. Appellant submitted medical evidence; however, none of the evidence submitted addressed the relevant issue of whether he required further medical treatment for his accepted April 18, 2002 work injury. He did not submit evidence substantiating that he required medical treatment beginning July 24, 2004 due to his accepted work injury. Appellant has the burden of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound rationale.<sup>5</sup> Consequently, the Office properly determined that he did not establish a recurrence of a medical condition.

### **LEGAL PRECEDENT -- ISSUE 2**

The Federal Employees' Compensation Act<sup>6</sup> provides compensation for both disability and physical impairment. "Disability" means the incapacity of an employee, because of an employment injury, to earn the wages the employee was receiving at the time of injury.<sup>7</sup> In such cases, the Act compensates an employee for loss of wage-earning capacity. In cases of physical impairment the Act, under section 8107(a), compensates an employee, pursuant to a compensation schedule, for the permanent loss of use of certain specified members of the body, regardless of the employee's ability to earn wages.<sup>8</sup>

As a claimant seeking compensation under the Act has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, it is thus the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of his or her employment injury entitling him or her to a schedule award.<sup>9</sup> The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury.<sup>10</sup> The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.<sup>11</sup>

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<sup>5</sup> See *Mary A. Ceglia*, 55 ECAB 656 (2004).

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *Lyle E. Dayberry*, 49 ECAB 369 (1998).

<sup>8</sup> *Renee M. Straubinger*, 51 ECAB 667 (2000).

<sup>9</sup> See *Veronica Williams*, 56 ECAB 367 (2005).

<sup>10</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>11</sup> *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

### **ANALYSIS -- ISSUE 2**

Appellant has not submitted sufficient evidence to establish that, as a result of his April 18, 2002 employment injury, he sustained a permanent impairment of the lower extremities. He submitted medical evidence but it was not relevant in determining whether he established a permanent impairment. It is appellant's burden to establish that he sustained a permanent impairment of a scheduled member as a result of an employment injury.<sup>12</sup> He did not submit such evidence and thus failed to meet his burden of proof.

On appeal appellant contends that the claims examiner did not consider all the evidence. He noted that he had numerous other accepted claims. The relevant issue in the present appeal, however, is whether appellant established either a recurrence of a medical condition or a permanent impairment due to his April 18, 2002 work injury.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained a recurrence of a medical condition on July 24, 2004 causally related to his April 18, 2002 employment injury. The Board further finds that he is not entitled to a schedule award for a permanent impairment due to his accepted work injury.

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<sup>12</sup> *Tammy L. Meehan*, 53 ECAB 229 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 1, 2009 are affirmed.

Issued: December 9, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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