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G.C., Appellant)	
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and)	Docket No. 08-2553
)	Issued: June 10, 2009
U.S. POSTAL SERVICE, QUEENS VILLAGE)	
STATION, Jamaica, NY, Employer)	
)	

Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

On September 22, 2008 appellant, though his attorney, filed a timely appeal from a June 30, 2008 merit decision of the Office of Workers' Compensation Programs which affirmed a denial of his recurrence claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction over the merits of appellant's recurrence claim.

The issue is whether appellant established that he sustained a recurrence of disability on January 22, 2007 causally related to his August 19, 2005 accepted employment injury.

On August 24, 2005 appellant, a 34-year-old letter carrier, filed a traumatic injury claim (Form CA-1) for back, left hand and left shoulder injuries. He attributed his injury to an August 19, 2005 motor vehicle accident which occurred when an SUV ran a stop sign and struck the driver's side of the postal vehicle appellant was driving. Appellant submitted medical

evidence in support of his claim, and by decision dated October 20, 2005, the Office accepted his claim for cervical sprain/strain and contusion of the left hand.

Appellant underwent medical treatment and received compensation. He returned to full duty on November 21, 2006.

On January 25, 2007 appellant filed a notice of recurrence of disability (Form CA-2a) alleging back pain, and numbness in his left leg from his hip to the bottom of his foot. He asserted that the date of recurrence was January 22, 2007.

By letter dated January 30, 2007, the Office advised appellant that he needed to submit evidence in support of his claimed recurrence.

In support of his recurrence claim, appellant submitted a New York state workers' compensation claim form in which he alleged that he had sustained a recurrence of a herniated lumbar disc. This form was signed by Dr. Reno Discala, Board-certified in family medicine, and indicated that appellant was totally disabled from work.

A treatment note dated January 23, 2007 diagnosed appellant with sciatica. This note was signed by a certified registered nurse practitioner. A February 26, 2007 medical treatment note signed by Dr. Discala, also diagnosed appellant with sciatica.

In a February 12, 2007 report, Dr. Sebastian Lattuga, a Board-certified orthopedic surgeon, reported that, upon inspection, while there was no sign of tenderness or spasms in the cervical spine, the thoracolumbar spine exhibited tenderness and spasm in response to percussion and palpation. A magnetic resonance imaging (MRI) scan of the spine dated September 15, 2005 revealed disc bulges at T3-4, T8-9 and T10-11 and disc herniations at T5-6, T6-7 and T7-8. Dr. Lattuga also noted that x-rays taken that day revealed a disc collapse at L5-S1. He proffered a diagnosis of lumbar discopathy and thoracic herniated nucleus pulposus (HNP).

In a February 26, 2007 note, Dr. Discala reported that, based on his examination of appellant, on January 23, 2007 it was his belief that, given appellant's history of back and lower extremity pain, appellant had sustained lumbar disc herniation "probably" at the L5-S1 region. He opined that appellant's current prognosis was guarded and that he was totally disabled from work. Dr. Discala also reported that appellant had no history of prior lumbar disc herniation and that the prior disc pathology was related to the dorsal spine.

In a note dated March 12, 2007, Dr. Lattuga restated his diagnosis, lumbar discopathy and thoracic herniated disc and reported that appellant had elected to proceed with conservative treatments.

By separate note dated March 12, 2007, Dr. Lattuga stated that appellant was under his care for the treatment of an acute lumbar disorder. He diagnosed acute lumbar sprain and severe lumbar radiculopathy. Dr. Lattuga stated that appellant was disabled from his regular occupation and was restricted from lifting, carrying, bending and sitting until further notice. In a March 28, 2007 treatment note, Dr. Discala diagnosed appellant with lumbar disc herniation and spinal derangement. He opined that appellant was totally disabled from work.

By decision dated April 18, 2007, the Office denied appellant's claim because the evidence of record failed to establish the relationship between his current symptoms and the August 19, 2005 accepted condition.

By report dated April 23, 2007, Dr. Lattuga diagnosed appellant with lumbar discopathy and thoracic HNP. He noted that appellant presented with thoracic lumbar pain and chronic lumbar back pain, radiating into the right lower extremity. Dr. Lattuga also reported that examination of appellant's back revealed tenderness to percussion and palpation in both the cervical and the thoracic regions and both areas demonstrated restricted range of motion.

Appellant submitted a series of treatment notes concerning appointments on January 1, March 7, April 18, May 22, June 21, July 28, August 28, September 26, October 26 and November 17, 2006. He also submitted treatment notes concerning appointments on January 23, February 26, March 28 and May 1, 2007.

Appellant also submitted a report dated May 21, 2007, signed by Dr. Lattuga, which restated his diagnosis of lumbar discopathy and thoracic HNP. Dr. Lattuga reported that examination of appellant's back revealed tenderness to percussion and palpation in both the cervical and the thoracic regions and both areas demonstrated restricted range of motion.

Appellant requested authorization for an MRI scan of his lumbar spine and chest. By letter dated May 29, 2007, the Office denied authorization for an MRI scan of his lumbar spine and chest. It noted that the only accepted conditions of record were cervical sprain/strain and contusion of the left hand and advised appellant that if his physician believed that these newly diagnosed conditions were causally related to the accepted injury of August 19, 2005 he should submit substantive medical evidence establishing such relationship.

Appellant submitted a medical report dated July 2, 2007, signed by Dr. Lattuga, who restated his diagnosis of lumbar discopathy and thoracic HNP.

Appellant also submitted a medical report dated August 6, 2007, signed by Dr. Lattuga, who restated his diagnosis of lumbar discopathy and thoracic HNP.

Appellant disagreed with the Office's April 18, 2007 decision and requested reconsideration.

Appellant submitted duplicate copies of Dr. Discala's February 26, 2007 letter and Dr. Lattuga's February 12, 2007 medical report.

By decision dated June 30, 2008, the Office denied modification of its April 18, 2007 decision.

LEGAL PRECEDENT

A 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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that

caused the illness.”¹ A person 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 she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish 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.² Where no such rationale is present, medical evidence is of diminished probative value.³

ANALYSIS

The Office accepted appellant’s claim for cervical sprain/strain and contusion of the left hand. Appellant received medical treatment and compensation and returned to full duty on November 21, 2006. He alleged recurrence of disability on January 22, 2007. The issue is whether the medical evidence of record establishes that appellant sustained a recurrence of disability causally related to his August 19, 2005 accepted condition. The Board finds that the evidence of record is insufficient to satisfy appellant’s burden of proof.

The earliest piece of medical evidence of record pertaining to appellant’s recurrence claim is a January 23, 2007 report signed by a certified registered nurse practitioner. This report is of no probative medical value because nurses, acupuncturists, physician’s assistants and physical therapists are not physicians under the Act and their reports do not constitute competent medical evidence.⁴ Because the opinions of laymen have no evidentiary medical value in regard to a medical issue such as the one involved in this case, this report is of no probative medical value and is insufficient to meet appellant’s burden.

The relevant medical evidence⁵ of record consists of reports and notes from Dr. Lattuga and Dr. Discala. But this evidence is insufficient to establish that appellant sustained a recurrence of disability on January 22, 2007 as neither physician proffered a rationalized medical opinion concerning the causal relationship between appellant’s current diagnosed conditions of the thoracic and lower lumbar spine and appellant’s August 19, 2005 accepted cervical and left hand conditions. The Board has consistently held that medical reports lacking a rationale on

¹ *R.S.*, 58 ECAB ____ (Docket No. 06-1346, issued February 16, 2007); 20 C.F.R. § 10.5(x).

² *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ See *Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁴ 5 U.S.C. § 8101(2); see also *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

⁵ The record contains medical treatment notes concerning appointments in 2006. As these medical notes predate the alleged date of recurrence, January 22, 2007, they are of no probative value.

causal relationship are of diminished probative value.⁶ A rationalized medical opinion is based on a complete factual and medical background and is supported by medical rationale.⁷

Moreover, a physician's opinion on the causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician.⁸ The opinion of a physician supporting causal relationship must be based on a complete and accurate medical and factual background, supported with affirmative evidence and explained by medical rationale.⁹

Dr. Lattuga diagnosed appellant with a variety of lumbar and lumbar disc conditions. But his reports and notes are of diminished probative value because they do not proffer any rationalized opinion explaining how appellant's August 19, 2005 injury caused these conditions for which he treated appellant in January 2007. While appellant initially sustained a cervical and left hand injury in August 2005, Dr. Lattuga has not furnished a medical rationale causally connecting appellant's thoracic and lower lumbar conditions, for which appellant claimed the recurrence of disability, and the accepted employment-related injury. Therefore, his reports and notes are not sufficiently rationalized, are of diminished probative value and, therefore, are insufficient to meet appellant's burden of proof.

Dr. Discala's reports are also of diminished probative value. He opined that appellant's history of back and lower extremity pain was due to lumbar disc herniation. Dr. Discala opined that the lumbar disc condition is probably at the L5-S1 region. But this is an equivocal statement because, as a matter of law, such terms as "suspected," "could," "may," "might be" or "probably" indicate that the report is equivocal, speculative or conjectural and, therefore, the report is of diminished probative value.¹⁰ Moreover, Dr. Discala did not proffer a rationalized medical opinion concerning the causal connection between appellant's current lumbar conditions and the accepted employment-related condition, sprain/strain and contusion of the left hand. Equivocal in nature and lacking a rationalized medical opinion, his reports are of diminished probative value and therefore are insufficient to meet appellant's burden.

This is a medical issue. The Office advised appellant that it was his responsibility to submit substantive competent medical evidence in support of his recurrence claim. As there is no rationalized medical evidence of record establishing that appellant's current thoracic and low lumbar conditions were causally related to the August 19, 2005 accepted injury, the Board finds that appellant has not established that he sustained a recurrence of disability on January 22, 2007 causally related to his August 19, 2005 employment injury.

⁶ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

⁷ *Froilan Negron Marrero*, 33 ECAB 796 (1982).

⁸ *Jean Culliton*, 47 ECAB 728, 735 (1996).

⁹ *Robert Broom*, 55 ECAB 339 (2004); *Patricia J. Glenn*, 53 ECAB (2001).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.3(g) (April 1993).

CONCLUSION

The Board finds appellant has not established that he sustained a recurrence of disability on January 22, 2007 causally related to his August 19, 2005 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board