



## **FACTUAL HISTORY**

The Office accepted that on June 15, 1988 appellant, then a 33-year-old casual employee, sustained a left inguinal hernia while lifting a heavy mailbag at work. It authorized a surgical repair of the tear. Appellant returned to full duty on October 17, 1988. He did not work for the employing establishment after 1988 but worked in nonfederal employment.<sup>2</sup>

The claim was dormant until February 2006 when appellant telephoned the Office and asked that it be reopened. The Office informed him that the case had been closed and recommended that he file a recurrence claim.

On August 21, 2008 appellant filed a notice of recurrence.<sup>3</sup> He stated that he stopped working on July 18, 2004 as a result of the recurrence. Appellant noted that he could not lift over 10 pounds and had pain and a weakened groin wall on his left side. He explained that his recurrence happened when he injured his right shoulder, fractured his pelvis, herniated discs, strained his back and developed a bone chip in his neck. In a recurrence form filed on January 14, 2009, appellant alleged that his recurrence began on August 8, 2008 and indicated that his injury was due to putting pressure on his right hip. He also attributed it to an automobile accident where he fractured his hip, injuring his pelvis and groin area.

In a September 23, 2008 report, Dr. Charles A. DeMarco, an attending Board-certified orthopedic surgeon, stated that appellant was being evaluated for a work-related case from June 15, 1988. He noted that appellant was working for the employer lifting heavy packages and had an injury to his left groin and a left inguinal hernia. Dr. DeMarco advised that “[b]ecause of the pain, [appellant] was putting increased pressure on the right hip and now, he has right inguinal hernia.” He noted appellant’s right hip was exacerbated since the accident. Dr. DeMarco listed a 2006 motor vehicle accident with a pelvic fracture. He stated that appellant had a childhood history of bilateral inguinal hernias. In an October 14, 2008 progress note, Dr. DeMarco documented a June 15, 1988 injury due to moving heavy packages and diagnosed a left inguinal hernia and repair. The note was annotated that appellant had multiple injuries to the neck and shoulder and lower back, along with a fractured pelvis. On October 28, 2008 Dr. DeMarco diagnosed a possible torn labrum of the right hip and recommended therapy. He continued to treat appellant.

In an October 7, 2008 report, Dr. Dwiref Mehta, a Board-certified surgeon, diagnosed a right inguinal hernia. He noted a history of appellant working for the employer and lifting boxes in July 1987, when he sustained a right inguinal hernia that was repaired. Dr. Mehta opined that the right inguinal hernia was related to the July 1987 work injury.

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<sup>2</sup> The record reflects that appellant has numerous injuries after he left federal employment from incidents that included falls, an automobile accident and a 2006 encounter with a psychiatric patient. These resulted in injuries that included a fractured pelvis, injuries to his neck, shoulder and back and post-traumatic stress disorder.

<sup>3</sup> The record contains a continuing disability claim form from a private employer in which appellant alleged that he was disabled commencing July 5, 2008.

In a December 9, 2008 progress note, Dr. DeMarco reiterated that appellant was being evaluated for a work-related injury on June 15, 2008.<sup>4</sup> Appellant worked for the employer and had a left inguinal hernia. Dr. DeMarco stated that “[b]ecause of the pain, [appellant] was putting increased pressure on the right hip and now, he has right inguinal hernia.” He also related that appellant’s right hip was exacerbated since the accident in 2006, where he had pelvic fracture. Appellant complained of pain and dysfunction in the right hip. Dr. DeMarco noted appellant’s childhood history of bilateral inguinal hernias and stated that he now had complaints of more pain and dysfunction in the right groin, which worsened with prolonged activity. He advised that appellant’s pain was persistent and debilitating. Dr. DeMarco diagnosed a possible torn labrum in the right hip that might require surgery.

In a February 6, 2009 letter, the Office noted that it accepted the claim for a left inguinal hernia and appellant returned to full duty on October 17, 1988. It noted appellant’s 2006 motor vehicle accident and requested that he submit additional evidence in support of his claim.

In a February 23, 2009 response, appellant stated that he was advised that his claim would be reopened once his medical evidence was provided. He confirmed that he was in a car accident on March 17, 2006 that injured his right hip, causing a pelvic fracture. In a March 4, 2009 statement, appellant stated that he was incapacitated and confined to his home since August 2008, due to hip pain and bilateral groin and leg pain.

In a letter dated March 16, 2009, Barbara E. Brewster, a human resources manager, controverted the claim. She advised that appellant was diagnosed with a left inguinal hernia and cleared for full duty on October 17, 2008. Ms. Brewster advised that his claim was closed on October 25, 2008. She noted appellant’s motor vehicle accident in 2006 and Dr. DeMarco records indicating that appellant had a history of bilateral inguinal hernias as a child.

By decision dated April 7, 2009, the Office denied appellant’s claim for a recurrence of disability on August 8, 2008. It found that the evidence failed to demonstrate that recurrence of August 8, 2008, was causally related to the accepted June 15, 1988 injury.

Appellant requested a hearing that was held on August 10, 2009. The Office received additional evidence, including that previously submitted. In reports dated April 1 and 28, 2009, Dr. DeMarco repeated his findings and noted that further right hip evaluation was warranted. He referred to appellant’s accepted injury of June 15, 1988. Due to pain, appellant put increased pressure on the right hip and now had a right inguinal hernia. Dr. DeMarco stated that the motor vehicle accident of 2006, which included a pelvic fracture, exacerbated the initial injury. He advised that appellant was totally disabled due to the multiple injuries to the cervical spine, lumbar spine, left knee, left hip and right shoulder. Dr. DeMarco added that appellant had an acute exacerbation of the right inguinal hernia and might require further intervention. In a May 26, 2009 report, he noted that appellant fell off a stool while filing reports and sustained injuries to the cervical spine, lumbar spine and right shoulder.

By decision dated November 25, 2009, the Office hearing representative affirmed the Office’s August 8, 2008 decision.

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<sup>4</sup> This appears to be a typographical error, as it should read June 15, 1988.

On December 4, 2009 appellant requested reconsideration. He advised the Office that additional evidence would be forthcoming. On December 10, 2009 appellant contacted the Office to inquire if the request was received and to determine whether the Office received additional evidence. The Office advised him that no additional evidence was received.

In a January 15, 2010 decision, the Office denied appellant's request for reconsideration finding that the request was insufficient to warrant a merit review.

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

Section 10.5(x) of the Office's regulations provide that 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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>5</sup>

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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 who supports that conclusion with sound medical reasoning.<sup>6</sup> Where no such rationale is present, the medical evidence is of limited probative value.<sup>7</sup> To establish that a claimant's alleged recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between his present condition and the accepted injury must support the physician's conclusion of a causal relationship.<sup>8</sup>

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

The Office accepted that appellant sustained a left inguinal hernia in the performance of duty on June 15, 1988. Appellant returned to full duty on October 17, 1988. He did not work for the employing establishment after 1988 but continued to work in the private sector. On August 21, 2008 appellant claimed a recurrence of disability beginning August 8, 2008. He has not submitted sufficient reasoned medical evidence to establish a spontaneous change in his accepted left inguinal hernia condition, without an intervening injury, that caused the claimed disability.

Appellant submitted several reports from Dr. DeMarco dated September 23, 2008 to April 2009. Dr. DeMarco noted the history of appellant's June 15, 1988 work injury. He opined that, due to pain, appellant put increased pressure on the right hip, which caused a right inguinal hernia. Dr. DeMarco also asserted that appellant's 2006 motor vehicle accident, which included a pelvic fracture, exacerbated the initial injury. He advised that appellant was totally disabled

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<sup>5</sup> 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

<sup>6</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

<sup>7</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004); *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>8</sup> *Mary A. Ceglia*, *id.*; see *Ricky S. Storms*, 52 ECAB 349 (2001).

due to the multiple injuries to the cervical spine, lumbar spine, left knee, left hip and right shoulder. The Board notes that the accepted condition was for a left inguinal hernia. Dr. DeMarco failed to support his opinion with medical reasoning and objective findings to explain how the right inguinal hernia resulted from the June 15, 1988 employment injury.<sup>9</sup> This is especially important in light of the pelvic fracture from the 2006 motor vehicle accident, other nonwork injuries and appellant's childhood history of hernias. There also is no medical evidence of bridging symptoms between appellant's present condition and the accepted injury. Dr. DeMarco did not reference any other medical evidence documenting any continuing symptomology after the original 1988 work injury. This is significant in view of the length of time between appellant's return to regular duty in 1988 and the filing of his recurrence of disability claim on August 21, 2008.

Other reports from Dr. DeMarco also do not provide a reasoned discussion explaining how the right inguinal hernia or any nonaccepted conditions could be attributed to his June 15, 1988 employment injury and why any such conditions would not be due to intervening causes such as the 2006 motor vehicle accident, the 2006 encounter with a psychiatric patient or the May 26, 2009 fall from a stool. Consequently, the reports of Dr. DeMarco are insufficient to establish appellant's claim.

In an October 7, 2008 report, Dr. Mehta diagnosed a right inguinal hernia. He provided an incorrect history in which he noted that appellant was working for the employer in July 1987, when he sustained a right inguinal hernia. The Board notes that the accepted work injury occurred on June 15, 1988 and it was for a left inguinal hernia. Dr. Mehta does not have a clear history of injury. He does not appear to be aware of the subsequent injuries, including the motor vehicles accident in 2006. It is well established that medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of little probative value.<sup>10</sup>

The remaining evidence submitted by appellant's physicians did not address whether appellant's claimed recurrence of disability beginning August 8, 2008 was causally related to his accepted employment injury. Consequently, appellant has not met his burden of proof to establish his claim.

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

Under section 8128(a) of the Act,<sup>11</sup> the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits if the written

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<sup>9</sup> See *G.A.*, Docket No. 09-2153 (issued June 10, 2010) (for conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation).

<sup>10</sup> *Douglas M. McQuaid*, 52 ECAB 382 (2001).

<sup>11</sup> 5 U.S.C. § 8128(a).

application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(1) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(2) Advances a relevant legal argument not previously considered by [the Office]; or

“(3) Constitutes relevant and pertinent new evidence not previously considered by the [the Office].”<sup>12</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>13</sup>

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

Appellant disagreed with the denial of his claim for a recurrence of disability on August 8, 2008 and requested reconsideration on December 4, 2009. The underlying issue on reconsideration was whether he sustained a recurrence of disability on August 8, 2008. Appellant did not provide any relevant or pertinent new evidence to the issue of whether he sustained a recurrence of disability on August 8, 2008.

In the December 4, 2009 request for reconsideration, appellant noted that he would submit additional medical evidence from his physician. But despite contacting the Office on December 10, 2009 to inquire if evidence was of record, no additional medical evidence was received. Appellant did not make any argument in support of his request. He did not show that the Office erroneously applied or interpreted a specific point of law. Appellant did not identify a specific point of law or show that it was erroneously applied or interpreted. He did not advance a new and relevant legal argument.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, the Office properly denied merit review.

On appeal, appellant indicated that he disagreed with the Office’s decision. He submitted additional evidence. For the reasons noted in this decision, the Office’s decisions were proper. The Board also has no jurisdiction to review new evidence for the first time on appeal.<sup>14</sup>

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<sup>12</sup> 20 C.F.R. § 10.606(b).

<sup>13</sup> *Id.* at § 10.608(b).

<sup>14</sup> *Id.* at § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish a recurrence of disability beginning August 8, 2008. The Board also finds that the Office properly refused to reopen his case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 15, 2010 and November 25, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 22, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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