

FACTUAL HISTORY

This case has previously been before the Board on appeal.² In a February 23, 2009 decision, the Board found that appellant had not met her burden of proof to establish that she sustained permanent impairment of a scheduled body member due to her accepted lumbar strain. The facts and history contained in the prior appeal are incorporated by reference.

On April 30, 2008 the employing establishment noted that the medical evidence supported that appellant was able to perform her full range of duties as a nursing assistant, with the exception of walking more than 12 hours. It noted that her duty hours would be changed to 12-hour shifts.

On July 10, 2008 appellant asked that the Office conduct a medical review with regard to whether her claim should be expanded to include injuries to her hips, knees, right thigh and both feet. She also noted that she would file a new claim for her hips, right thigh and vertigo. Appellant alleged that she had been having problems since August 2004, when her back started hurting again. She submitted reports from Dr. Naseem A. Shekhani, Board-certified in family medicine and a treating physician. On March 12, 2008 Dr. Shekhani diagnosed right ankle osteoarthritis, right foot pain, antalgic gait and low back pain. On April 10, 2008 he noted that appellant had low back, ankle and knee pain that increased with activity. Dr. Shekhani diagnosed lumbago, right leg pain and antalgic gait. He continued to provide similar diagnoses. On June 9, 2008 Dr. Shekhani indicated that appellant could work a 16-hour week while, on July 7, 2008, he noted that she advised that her pain worsened over the weekend with “ambulation and doing her work.” Appellant requested treatment for her lumbar strain. Dr. Shekhani provided an excuse from work for July 7 and 8, 2008. Additionally, he completed a duty status report on July 18, 2008 advising that appellant could work 16 hours per day for two to three days a week. On July 28, 2008 Dr. Shekhani added a 50-pound lifting restriction.³

In a letter dated July 18, 2008, Dr. Matthew McCall, an employing establishment physician, noted that appellant was presently working as nursing assistant. He requested that Dr. Shekhani clarify her duties. Dr. McCall noted that the present restrictions included that appellant could intermittently walk and work for 16 hours a day. He explained that her present position required that she work three 16-hour tours back to back for one week and then the following week, she would work two 16-hour tours.

In a letter dated June 21, 2009, appellant stated that she had an “illness in July 2002 until this present time.” She noted having chronic back pain that was a deep, aching, dull and burning pain from the middle of her back traveling down the right leg, to both of her hips, knees and feet. Appellant stated that she worked 16 hours one week and two days the next week. She alleged

² Docket No. 08-1934 (issued February 23, 2009). Appellant, then a 38-year-old psychiatric nurse’s aide, filed a traumatic injury claim alleging that on November 25, 2000 she sustained lower back pain while repositioning a patient in bed. The Office accepted the claim for lumbar strain resolved by decision dated October 20, 2004. It also accepted a recurrence on November 6, 2006.

³ On October 3, 2008 appellant claimed intermittent leave without pay from April 1 to September 29, 2008. The Office paid her for intermittent hours for time lost due to medical appointments from July 7 to August 25, 2008.

that the employing establishment was now working her eight hours a day, five days a week, which caused stress and pain in her legs and feet.

Appellant provided a June 19, 2009 report from Dr. Shekhani, diagnosing a lumbar sprain and noting restrictions that included no pushing, pulling or lifting over 20 pounds. In a July 6, 2009 report, Dr. Shekhani diagnosed lumbago and advised that work restrictions were given to her.

On June 23, 2009 appellant filed a notice of recurrence claiming a recurrence of disability on July 2, 2002. She alleged that her recurrence involved an injury to her knees, the elbow and right foot. Appellant alleged to have stopped work on July 7, 2008 and returned to work on June 8, 2009. The statement accompanying the recurrence claim noted that she experienced more pain when she was returned to eight hours per day, five days per week.⁴ The employing establishment indicated that she returned to work with a limitation of no pushing or pulling anything greater than 10 pounds.⁵ It noted accommodating appellant each time she provided a statement of work restrictions.

Appellant had accepted a June 9, 2009 limited-duty job offer taking vital signs, entering data and other clerical duties, such as answering telephones. This was to be an eight-hour per day, five days per week position.

On June 29 and July 21, 2009 the Office informed appellant of the type of evidence needed to support her claim. It explained that a physician's opinion was crucial to her claim and allotted her 30 days within which to submit the requested information.

In a July 20, 2009 report, Dr. Shekhani advised that he treated appellant since August 2007. He noted that her back injury occurred in November 2000 and that she had a right foot injury in August 2007. Dr. Shekhani stated that appellant had decreased range of motion of her lower back and trigger points where she received injections, an antalgic gait with bilateral hips, knees and ankle pain more on the right than left. He advised that she "clearly has a cause which is her work injuries." Dr. Shekhani indicated that appellant could not perform her duties as she would have problems in lifting, pulling, pushing, kneeling, bending, stooping and ambulating on a constant basis as required by her work duties. He noted that her condition was progressively worsening and was preventing her from performing her duties to the fullest. Dr. Shekhani diagnosed spondylosis without myelopathy, lumbar injury/strain and degenerative spine disease. He opined that appellant's pain was getting worse. Dr. Shekhani placed her on restrictions with regard to lifting, pushing and pulling.

⁴ The Office, by letter dated June 10, 2008, had previously denied appellant's claim that hip, knees and ankle conditions be accepted as consequential injuries to her accepted lumbar strain. This issue is not currently before the Board.

⁵ The record reflects that appellant has filed several claims for intermittent disability. Additionally, on July 21, 2009, she fell at work on a floor mat and reported low back pain. These other claims are not presently before the Board.

In an August 14, 2009 duty status report, Dr. Shekhani advised that appellant's restrictions which included lifting, bending, stooping, pulling or pushing of no more than 5 to 10 pounds, were permanent.

In a letter dated September 15, 2009, the Office notified appellant's representative that appellant's claim was accepted for a lumbar strain. It noted reviewing her claim and determining that no consequential conditions had been accepted. The Office advised appellant that she should consider filing new claims if her conditions were believed to be work related.⁶

By decision dated September 16, 2009, the Office denied appellant's claim for a recurrence of disability. It found that the medical evidence failed to support an increase in disability as a result of the accepted medical condition.

Appellant's representative requested a telephonic hearing that was held on January 6, 2010. During the hearing, appellant's representative confirmed that appellant was receiving retirement benefits. Appellant testified that she last worked on August 20, 2009. She stated that she claimed a recurrence to cover periods in which her employer had placed her in absent without leave status.

In a September 28, 2009 report, Dr. Shekhani noted that he saw appellant for neck, shoulder, back and right ankle pain. Appellant related that her pain was excruciating and getting progressively worse. Dr. Shekhani observed difficulty in ambulation secondary to ankle pain. He examined appellant and diagnosed lumbar pain, cervalgia and spasm with right rotator cuff syndrome and right shoulder pain.

In a March 26, 2010 decision, the Office hearing representative affirmed the Office's September 16, 2009 decision.

LEGAL PRECEDENT

Section 10.5(x) of the Office's regulations defines "recurrence of disability" as 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.⁷

Appellant has the burden of establishing that she sustained a recurrence of a medical condition⁸ that is causally related to his accepted employment injury. To meet her burden, she must furnish 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

⁶ *Supra* note 4.

⁷ 20 C.F.R. § 10.5(x) (2002). *See Carlos A. Marrero*, 50 ECAB 117 (1998).

⁸ "Recurrence of medical condition" means a documented need for further medical treatment after release from treatment for 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. 20 C.F.R. § 10.5(y) (2002).

injury and supports that conclusion with sound medical rationale.⁹ Where no such rationale is present, the medical evidence is of diminished probative value.¹⁰

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that he can perform the light-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 show that he 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.¹¹

ANALYSIS

The Office accepted that on November 25, 2000 appellant sustained employment-related lumbar strain. Appellant subsequently alleged that she sustained a recurrence of disability which caused disability for work commencing on July 2, 2002, but allegedly did not cause her disability for work until July 7, 2008.

The Board finds that appellant did not submit sufficient medical evidence to establish that she had disability beginning July 2, 2002, which was causally related to her November 25, 2000 employment injury. The Board also notes that there is no evidence showing a change in the nature and extent of the light-duty job requirements. The record supports that the employer made available appropriate light-duty work that was consistent with appellant's restrictions.

In support of her claim for a recurrence of disability, appellant provided reports from Dr. Shekhani. On July 7, 2008 Dr. Shekhani noted that she advised him that her pain worsened over the weekend with "ambulation and doing her work." He indicated that appellant requested treatment for her lumbar strain. Dr. Shekhani diagnosed lumbar strain, right leg pain and antalgic gaits and excused her from work for July 7 and 8, 2008. He did not specifically address whether appellant had a spontaneous change in her low back strain sustained on November 25, 2000 and he did not otherwise explain why she had disability due to the accepted low back strain. Other July 2008 reports from Dr. Shekhani also did not offer any opinion to explain why she could not perform her light duties beginning July 7, 2008, due to her November 25, 2000 employment injury. Instead, these reports noted appellant's symptoms, diagnoses and work restrictions. Thus, these reports most contemporaneous with the beginning of the claimed recurrence of disability do not specifically address how her disability beginning July 7, 2008 is due to a spontaneous change in her November 25, 2000 low back strain.¹²

⁹ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

¹⁰ *Albert C. Brown*, 52 ECAB 152 (2000).

¹¹ *Conard Hightower*, 54 ECAB 796 (2003).

¹² See *K.W.*, 59 ECAB 271(2007) (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).

Dr. Shekhani's later reports are also insufficient to establish the claim. In a July 20, 2009 report he noted appellant's history, including her back injury in November 2000 and advised that she "clearly has a cause which is her work injuries." However, Dr. Shekhani did not provide rationale explaining why appellant's disability beginning July 7, 2008 was due to a spontaneous change in her accepted low back strain. He also noted several diagnoses, such as a foot injury, spondylosis and degenerative spine disease, which are not accepted conditions in the claim before the Board. Dr. Shekhani did not explain how these additional diagnoses resulted from the accepted lumbar strain that occurred in November 2000.¹³ The Board also notes that Dr. Shekhani did not appear to be aware that appellant had not worked for the employer since August 20, 2009.¹⁴ Likewise, in Dr. Shekhani's September 28, 2009 report, he referenced several conditions not accepted by the Office and he did not address how her disability beginning July 7, 2008 was due to the accepted low back strain. Other 2009 reports from him did not relate appellant's disability beginning July 7, 2008 to her accepted low back strain.

Dr. Shekhani also provided reports that predated the claimed recurrence which noted findings, diagnoses and work restrictions. These reports did not offer any support that appellant had any disability beginning July 7, 2008 that was causally related to her accepted low back strain. There is no other medical evidence provided by her that addresses how her claimed recurrent disability is due to her accepted lumbar strain.

The Board finds that the medical evidence of record does not establish that appellant experienced a spontaneous change in her accepted low back strain that caused total disability beginning July 7, 2008. The medical reports submitted by appellant do not contain a rationalized opinion to explain why she could no longer perform the duties of her light-duty position and why any such disability or continuing condition would be due to the accepted low back strain without an intervening injury or new exposure. As appellant has not submitted any medical evidence establishing that she sustained a recurrence of disability due to her accepted employment injury, she has not met her burden of proof.

CONCLUSION

The Board finds that appellant did not establish that she sustained a recurrence of disability commencing on July 7, 2008 causally related to an accepted November 25, 2000 employment injury.

¹³ 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, not the Office's burden to disprove such relationship. *G.A.*, Docket No. 09-2153 (issued June 10, 2010).

¹⁴ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2010 decision of the Office of Workers' Compensation Programs' hearing representative is affirmed.

Issued: April 25, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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