

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

D.G., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
HUDSON VALLEY HEALTH CARE SERVICE,)
Castle Point, NY, Employer)

Docket No. 13-612
Issued: May 21, 2013

Appearances:
Paul Kalker, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 24, 2013 appellant, through her attorney, filed a timely appeal from a December 19, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) finding that she did not establish a recurrence of disability. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 June 6, 2012 causally related to her October 14, 2011 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 26, 2012 appellant, then a 35-year-old registered nurse, filed a traumatic injury claim alleging that on October 14, 2011 she sustained lumbar pain while moving a patient. OWCP accepted the claim for lumbar sprain. Appellant returned to her regular employment on October 15, 2011.

On August 13, 2012 appellant filed a recurrence of disability claim as of June 6, 2012 causally related to her October 14, 2011 employment injury. The employing establishment noted that, when she stopped work, she had restrictions due to an alleged injury to her back on February 26, 2012, assigned file number xxxxxx801.

On June 6, 2012 Dr. John F. McNulty, a Board-certified neurosurgeon, stated, “[Appellant] is scheduled to have surgery on June 13, 2012. She is having a microdiscectomy to treat the herniated lumbar disc that she has. Due to the severity of her pain, [appellant] is unable to work effective immediately.”

On July 16, 2012 appellant was admitted to the hospital with “intractable back pain...” In a July 19, 2012 discharge report, Dr. McNulty related that a magnetic resonance imaging (MRI) scan study showed a “very large herniated disc at L5-S1 right.” He performed a microdiscectomy at L5-S1 on the right on July 18, 2012.

In a report dated August 20, 2012, Dr. McNulty noted that he initially evaluated appellant on June 4, 2012 for back pain that began in October 2011. After assisting a heavy patient on October 14, 2011, she experienced a pull in her back followed by significant pain when she awoke the following day. An MRI scan study showed a right-sided “moderate to large disc protrusion.” Dr. McNulty performed a microdiscectomy on July 18, 2012. He stated, “It is clear to me within a reasonable degree of medical certainty that [appellant’s] disc herniation, causing her back and leg pain, was the direct result of her injury in October 2011.”

By letter dated September 21, 2012, OWCP noted that appellant returned to her regular employment on October 15, 2011 and filed a claim for a new injury on February 26, 2012. It informed her that the alleged June 6, 2012 recurrence of disability was related to the February 26, 2012 injury under file number xxxxxx801, which was denied. OWCP advised appellant that it could not consider whether she sustained an alleged recurrence of disability on a denied claim.

By letter dated November 14, 2012, OWCP requested that appellant submit additional factual and medical information in support of her alleged recurrence of disability. It noted that it had accepted her claim for a lumbar sprain but her physician attributed her disability to a disc herniation. OWCP asked that appellant submit a medical report addressing the causal relationship between her initial injury and the disc herniation.

In a November 27, 2012 response, appellant related that on June 6, 2012 she “experienced a spontaneous return of the symptoms of the original work injury that occurred on October 14, 2011.”²

By decision dated December 19, 2012, OWCP found that appellant did not establish that she sustained a recurrence of disability on June 6, 2012 causally related to her October 14, 2011 employment injury. It determined that she had not submitted a narrative report explaining the relationship between the disc herniation and her October 14, 2011 work injury.

On appeal appellant’s attorney argued that OWCP erred in its September 21, 2012 letter finding that she had alleged a recurrence of disability due to an injury on February 26, 2012. Counsel asserted that on June 6, 2012 appellant sustained a recurrence of disability due to her October 14, 2011 injury. He contended that appellant sustained more than a lumbar sprain due to her October 14, 2011 employment injury, noting that an MRI scan study obtained after June 6, 2012 showed a large disc herniation. Counsel indicated that the February 26, 2012 injury was an aggravation of her October 14, 2011 employment-related condition.

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.⁴ This burden includes the necessity of 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 employment factors and supports that conclusion with sound medical reasoning.⁵

ANALYSIS

OWCP accepted that appellant sustained lumbar sprain due to an October 14, 2011 employment injury. Appellant returned to her usual employment on October 15, 2011. She stopped work on June 6, 2012 and filed a recurrence of disability claim due to the October 14, 2011 employment injury. At the time appellant stopped work, she had restrictions due to an alleged February 26, 2012 work injury, assigned file number xxxxxx801.

² On September 21, 2012 Dr. McNulty found that appellant could return to work without restrictions on November 8, 2012. In a work restriction evaluation dated November 2, 2012, he listed restrictions including minimal lifting up to 10 pounds and minimal bending and stooping.

³ 20 C.F.R. § 10.5(x).

⁴ *Carmen Gould*, 50 ECAB 504 (1999).

⁵ *Mary A. Ceglia*, 55 ECAB 626 (2004).

On June 6, 2012 Dr. McNulty noted that appellant was scheduled for surgery to repair a herniated disc. He found that she was disabled from employment due to pain. Dr. McNulty did not address the cause of the herniated disc. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.⁶

In a report dated August 20, 2012, Dr. McNulty related that appellant sustained back pain on October 14, 2011 after assisting with a heavy patient. He performed surgery on July 18, 2012 to repair a moderate to large disc herniation on the right. Dr. McNulty attributed appellant's disc herniation and resulting back and leg pain directly to her October 14, 2011 employment injury. He did not, however, provide any rationale for his opinion that appellant sustained a herniated disc on October 14, 2011. A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.⁷ Without medical reasoning showing that the conclusion reached is sound, logical and rational, Dr. McNulty's opinion is of diminished probative value.⁸

On appeal appellant's attorney argued that OWCP erroneously found in its September 21, 2012 letter that she had alleged a recurrence of disability due to an injury on February 26, 2012 under file number xxxxxx801 rather than due to the October 14, 2011 employment injury. OWCP's September 21, 2012 letter was informational in nature rather than a final decision. As OWCP subsequently adjudicated the issue of whether appellant sustained a recurrence of disability due to her October 14, 2011 employment injury, any misstatement by OWCP in its September 21, 2012 communication is harmless as it does not affect the outcome of the case.

Counsel further asserts that an MRI scan study showed that appellant sustained a disc herniation. As discussed, however, the medical evidence is insufficient to establish that the disc herniation resulted from the October 14, 2011 employment injury.

Appellant's attorney also maintains that her February 26, 2012 injury is an aggravation of the October 14, 2011 accepted condition. He has not, however, appealed a final adverse decision relevant to the February 26, 2012 injury at this time and thus the issue is not before the Board.⁹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

⁶ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

⁷ *John W. Montoya*, 54 ECAB 306 (2003).

⁸ *See E.A.*, 58 ECAB 677 (2007).

⁹ *See* 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability on June 6, 2012 causally related to her October 14, 2011 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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