

¹ 5 U.S.C. §§ 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on August 9, 2002 appellant, then a 32-year-old automotive mechanic, sustained a lumbar sprain when he pulled a jack from beneath a vehicle. Dr. Timothy Bothwell, an attending Board-certified family practitioner, diagnosed a back strain and held appellant off work. In a December 20, 2002 report, he noted permanent restrictions allowing only minimal stooping and bending. Appellant received compensation on the daily rolls for work absences. He returned to light duty in late 2002. On March 5, 2006 appellant's position was reclassified to mission support assistant reducing his salary. The reassignment was made specifically to accommodate his disability.²

On January 30, 2013 appellant filed a recurrence of disability claim (Form CA-2a) asserting that he experienced a flare-up of lumbar symptoms on January 21, 2013 after reaching into his sock drawer at home. He stated that when he reached "out to retrieve a pair of socks my back popped and the pain came to my mid to lower back." Appellant did not stop work. He remained in the light-duty position he had performed since March 2006. Appellant submitted February 1, 2013 form reports from Dr. Bothwell diagnosing a lumbar strain and finding him able to perform his light-duty position.

In a February 22, 2013 letter, OWCP advised appellant of the additional evidence needed to establish his claim for recurrence of disability, including a narrative report from his physician explaining how and why the accepted August 9, 2002 lumbar sprain would continue to require medical treatment as of January 21, 2013. It afforded him 30 days to submit such evidence.

In response, appellant submitted a March 1, 2013 statement explaining that he sought medical treatment when over-the-counter medication was ineffective. He provided February 14 and 28, 2013 form reports from Dr. Bothwell, diagnosing a back strain and finding him able to perform his full-time light-duty position.

By decision dated April 1, 2013, OWCP denied appellant's claim for recurrence of disability on the grounds that causal relationship was not established. It found that Dr. Bothwell's reports did not establish that the accepted lumbar sprain spontaneously worsened as of January 21, 2013 without an intervening cause. OWCP further found that appellant attributed the worsening of his symptoms to a January 21, 2013 nonoccupational incident, thus breaking the chain of causation from the accepted injury.

In a July 1, 2013 letter, appellant requested reconsideration. He submitted a June 24, 2013 statement explaining that, as his case had been closed due to inactivity, OWCP had advised him to file a claim for recurrence of disability. Appellant also provided a May 2, 2013 narrative report from Dr. Bothwell, noting that he did not examine appellant from December 20, 2002 to February 1, 2013. He noted that he experienced increased lumbar pain "after reaching into a drawer and felt a 'pop' in his lower back." Dr. Bothwell diagnosed an aggravation of the "previous lower back sprain." He opined that based on appellant's "age and weight of 340 [pounds] it would not be beyond medical probability that he has aggravated his preexisting degenerative spine condition."

² There is no evidence of record that OWCP performed a wage-earning capacity determination.

By decision dated September 9, 2013, OWCP denied modification, finding that the new evidence submitted was insufficient to establish causal relationship. It noted that Dr. Bothwell did not treat appellant from December 20, 2002 until February 1, 2013, when appellant presented with the history of injuring his back at home while pulling open a drawer. OWCP also found that he attributed appellant's symptoms to obesity and progression of preexisting degenerative disc disease, a condition not accepted by OWCP.

LEGAL PRECEDENT

OWCP's implementing regulations define a "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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³ This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury is withdrawn or when the physical requirements of such an assignment are altered such that they exceed the employee's physical limitations.⁴

When an appellant claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified 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. Moreover, sound medical reasoning must support the physician's conclusion.⁵ An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.⁶

ANALYSIS

OWCP accepted that appellant sustained a lumbar sprain on August 9, 2002. Appellant returned to full-time light duty in late 2002 and remained in this position through January 2013. In his January 30, 2013 claim for recurrence of disability, he attributed his increased lumbar pain to reaching into a sock drawer at home on January 21, 2013. Appellant thus has the burden of providing sufficient evidence, including rationalized medical evidence, to establish the causal relationship asserted.⁷

³ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

⁴ *J.F.*, 58 ECAB 124 (2006).

⁵ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁶ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁷ *Ricky S. Storms*, *supra* note 5.

The Board finds, however, that appellant identified an intervening cause, negating the claimed causal relationship between the August 9, 2002 lumbar sprain and his ongoing condition. Appellant attributed his condition to opening a sock drawer at home on January 21, 2013. This nonoccupational event broke the chain of causation between the August 9, 2002 injury and his lumbar condition.⁸ The claimed recurrence of disability therefore cannot be deemed to have arisen out of appellant's federal employment.

The Board notes that OWCP also denied appellant's claim because the medical evidence did not support that the August 9, 2002 lumbar sprain affected his back condition as of January 21, 2013. In February 2013 form reports, Dr. Bothwell, an attending Board-certified family practitioner, diagnosed a back strain but did not specify a cause. In a May 2, 2013 narrative report, he noted that appellant experienced increased lumbar pain after reaching into the sock drawer. Dr. Bothwell opined that, due to appellant's age and weight, he sustained an aggravation of preexisting degenerative spine disease. OWCP did not accept degenerative spinal disease as an occupational condition in this case. Therefore, Dr. Bothwell attributed appellant's lumbar condition as of January 21, 2013 to the intervening cause of reaching into the sock drawer and to idiopathic degenerative disc disease. His opinion negates a causal relationship between the August 9, 2002 lumbar sprain and appellant's condition as of January 21, 2013. Therefore, OWCP's September 9, 2013 decision denying the claimed recurrence of disability is proper under the law and facts of the case.

On appeal, appellant asserts that OWCP wrongly found that reaching into his sock drawer in January 2013 constituted an intervening cause because he experienced chronic lumbar pain since the August 2002 injury. He explains that he did not seek medical care from 2003 until January 2013 as he was trying to save the government money. As stated above, appellant and Dr. Bothwell attributed appellant's symptoms to reaching into his sock drawer. This intervening cause severed the chain of causation from the accepted injury.

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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability commencing January 21, 2013 as the evidence demonstrates an intervening incident, breaking the legal chain of causation from the August 9, 2002 injury.

⁸ See *Carlos A. Marrero*, 50 ECAB 117 (1998) (the Board found that the claimant's use of an exercise machine constituted an intervening cause of his disability and thus OWCP properly denied his claim for recurrence of disability); *Clement Jay After Buffalo*, 45 ECAB 707 (1994) (the Board found that the claimant's knee injury sustained while playing basketball broke the legal chain of causation from an accepted knee injury sustained in the performance of his duties as a firefighter).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 9, 2013 is affirmed.⁹

Issued: June 4, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁹ Richard J. Daschbach, Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after May 16, 2014.