

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

E.N., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS HEALTH ADMINISTRATION,)
Loma Linda, CA, Employer)

Docket No. 16-0637
Issued: June 13, 2016

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 18, 2016 appellant, through counsel, filed a timely appeal from a January 11, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the case.

ISSUE

The issue is whether appellant is entitled to wage-loss compensation for the period commencing January 21, 2015 causally related to his February 13, 2013 employment injury.

FACTUAL HISTORY

OWCP accepted that on February 13, 2013 appellant, then a 54-year-old housekeeping aide, sustained a lumbosacral sprain and temporary exacerbation of degenerative low back

¹ 5 U.S.C. § 8101 *et seq.*

disease, when he slipped on wax in the performance of duty. Appellant did not stop work, but worked limited-duty assignments.

Throughout 2014 appellant continued to treat with Dr. Jonathan K. Lee, a Board-certified physiatrist, who diagnosed aggravation of prior lumbar strain, and lumbar strain superimposed on preexisting lumbar disc degeneration. Dr. Lee continued to provide work restrictions, including no lifting over 10 pounds, no repetitive bending or stooping.

On January 21, 2015 appellant stopped work. On January 29, 2015 he filed a claim for compensation (Form CA-7) for the period January 21, 2015 onward.

In a January 21, 2015 disability status form, Dr. Lee advised that appellant was temporarily totally disabled.

In a February 10, 2015 letter, OWCP advised appellant of the deficiencies in his claim for compensation. It noted that the medical evidence did not substantiate that the claimed disability was causally related to his February 13, 2013 work injury. OWCP requested that he submit a narrative medical report from his treating physician supported by objective findings explaining how his disability was causally related to his February 13, 2013 work injury. It indicated that disability compensation was only payable if it was established that the disability was causally related to his February 13, 2013 work injury without intervening cause. Appellant was afforded 30 days to submit the requested information.

OWCP thereafter received a January 21, 2015 report from Dr. Lee. Dr. Lee reported that on December 13, 2014 appellant was exiting his shower and his back slipped out. He advised that appellant had lumbar disc disease with moderate-to-severe spinal stenosis of the lower lumbar spine and diagnosed discogenic low back pain. While appellant reported an increase in symptoms since December 13, 2014, Dr. Lee found no neurologic changes. In his March 18, 2015 report, Dr. Lee noted that appellant was last seen on January 21, 2015 with the diagnosis of aggravation of prior lumbar strain, lumbar strain superimposed on preexisting lumbar disc degeneration and history of diabetic peripheral neuropathy. He diagnosed discogenic low back pain and, in a March 18, 2015 disability form, indicated that appellant was temporarily totally disabled.

By decision dated April 9, 2015, OWCP denied the claim for compensation because the medical evidence of record did not establish that appellant's disability starting January 21, 2015 and continuing was causally related to his February 13, 2013 accepted work injury.

On April 14, 2015 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held on October 22, 2015. Appellant acknowledged that his back went out when he stepped out of the shower in December 2014. He indicated that he had never returned to work in a full-duty capacity since his February 13, 2013 work injury, but worked in a light-duty capacity. Appellant's counsel asserted that appellant had sustained a recurrence of disability as his condition spontaneously worsened when he got out of the shower.

Appellant submitted an April 29, 2014 magnetic resonance imaging (MRI) scan and a March 28, 2015 disability note from Dr. Lee.

In May 13, 2015 and September 2, 2015 reports, Dr. Lee diagnosed low back pain and opined that appellant was totally disabled. He noted prior diagnoses of lumbar strain, lumbar strain superimposed on preexisting lumbar disc degeneration and history of diabetic peripheral neuropathy. There were also disability notes from May 13 and September 2, 2015.

In an October 28, 2015 report, Dr. Lee indicated that appellant continued to have pain in his back due to an aggravation of prior lumbar strain. The aggravation occurred on December 14, 2014 when appellant was getting out of the shower and he felt pain in his back which was a little worse than the pain he was experiencing since his injury. Dr. Lee diagnosed low back pain and opined that appellant was totally disabled until seen by a surgeon. He also provided an October 28, 2015 slip noting total disability.

In December 23, 2015 medical reports, Dr. Lee noted aggravation of prior lumbar strain, lumbar strain superimposed on preexisting lumbar disc degeneration, and history of diabetic peripheral neuropathy and there were no new injuries since last visit of October 28, 2015. Appellant complained of increased radiating pain into his right leg and was diagnosed with low back pain.

By decision dated January 11, 2016, the OWCP hearing representative affirmed the April 9, 2015 decision denying appellant's claim for compensation.

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force) or when the physical requirements of such an assignment are altered such that they exceed the employee's physical limitations.² Appellant has the burden of proof to establish that there was no medically appropriate light duty available for the claimed period.³

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish a recurrence of total disability and to show that he cannot perform the limited-duty position. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty requirements.⁴ To establish a change in the nature and extent of the injury-related

² 20 C.F.R. § 10.5(x). See *John I. Echols*, 53 ECAB 481 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *J.F.*, 58 ECAB 124 (2006).

⁴ *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994).

condition, there must be probative medical evidence of record. The evidence must include a rationalized medical opinion, based on a complete and accurate factual and medical history and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.⁵

This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

In order 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.⁷

For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.⁸

ANALYSIS

The Board finds that appellant has not established disability for the period beginning January 21, 2015 causally related to the February 13, 2013 employment injury.

OWCP accepted appellant's February 13, 2013 work injury for lumbosacral sprain and temporary exacerbation of degenerative low back disease. Appellant continued to work in a light-duty capacity until January 21, 2015, when he stopped work following an increase in pain. He filed a claim for disability compensation alleging which OWCP denied.

The Board finds that the medical evidence of record does not establish disability from work due to appellant's accepted work injury of February 13, 2013. Dr. Lee's reports detail appellant's preexisting back conditions and opine that he is totally disabled. In his October 23, 2014 report, Dr. Lee opined that appellant's back pain was due to an aggravation of a prior lumbar strain which occurred when he was exiting the shower on December 14, 2014. However, no medical rationale was provided in support of this conclusion.⁹ Dr. Lee did not explain the significance of the fact that the pain returned while appellant was exiting a shower. He did not explain whether the pain spontaneously occurred. A recurrence of disability is defined as the

⁵ *Vanessa Young*, 55 ECAB 575 (2004).

⁶ *Ronald A. Eldridge*, 53 ECAB 218 (2001); see *Nicolea Bruso*, 33 ECAB 1138 (1982). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3 (January 2013).

⁷ *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁸ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁹ See *Sedi L. Graham*, 57 ECAB 494 (2006) (medical form reports and narrative statements merely asserting causal relationship generally do not discharge a claimant's burden of proof).

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.¹⁰ Additionally, Dr. Lee provided no opinion that the increase in appellant's back pain was causally related to the accepted February 13, 2013 work injury, the slip in the shower, or due to appellant's preexisting degenerative condition which had progressed beyond what might be expected from the natural progression of that condition.¹¹ A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition. As Dr. Lee did not explain what effect the shower incident had on appellant's accepted condition, his opinion is not sufficient to establish that appellant's disability was causally related to the employment injury of February 13, 2013.

Appellant has not submitted any medical reports from a physician who, on the basis of a complete and accurate factual and medical history, established that appellant was totally disabled from work beginning January 21, 2015 and continuing due to residuals of his accepted injury. He failed to establish by the weight of the reliable, probative, and substantial evidence, a change in the nature and extent of the injury-related condition resulting in his inability to perform his employment duties.¹²

On appeal, counsel contends that the evidence shows a classic recurrence. However, as discussed above, the medical evidence of record does not support appellant's disability claim.

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 failed to establish a disability causally related to his February 13, 2013 employment injury and, thus, is not entitled to wage-loss compensation for the period commencing January 21, 2015.

¹⁰ Y.A., Docket No. 16-0258 (issued April 13, 2016).

¹¹ R.E., Docket No. 14-868 (issued September 24, 2014).

¹² *Beverly A. Spencer*, 55 ECAB 501 (2004).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated January 11, 2016 is affirmed.

Issued: June 13, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board