

On March 26, 1998 appellant's attending orthopedic surgeon, Dr. William Dorn, III, related her history of injury and noted limited motion of the lumbosacral spine and generalized tenderness with no neurological deficits. X-rays revealed slight degenerative changes of the facet joints involving L5-S1 with disc spaces well maintained. Dr. Dorn diagnosed a strain of the lumbosacral spine and prescribed modalities designed to reduce the edema and inflammation of the back and to increase flexibility and strength. He imposed restrictions on bending, stooping, heavy lifting and prolonged standing and walking.¹ On April 1, 1998 Dr. Dorn reported that appellant had improved with anti-inflammatory medication. He diagnosed degenerative arthritis of the lumbosacral spine.

Appellant saw Dr. Rida N. Azer, an orthopedic consultant and Dr. Dorn's associate, on April 22, 1998. She still had pain in the lumbar spine. Dr. Azer described his findings on physical examination. On May 13, 1998 he reported that appellant was much better with improved range of motion. She still had some tenderness over L5-S1 but only slight muscle spasm. Neurologically, Dr. Azer noted that appellant remained status quo. On June 10, 1998 Dr. Azer reported further improvement and took appellant off physical therapy to continue simply on a home program of exercises. Appellant's symptomatology continued.

On September 18, 1998 the Office accepted appellant's claim for lumbar strain and subsequently paid compensation for periods of disability for work.

Appellant continued to have tenderness, pain and muscle spasms. An electromyogram and nerve conduction study obtained on October 22, 1998 showed a right L5 radiculopathy and a left S1 radiculopathy. A magnetic resonance imaging (MRI) scan the following month showed a mild broad-based disc bulge at L5-S1 with a superimposed small disc protrusion focally to the right resulting in mild impress upon the right anterolateral recess and originating right S1 nerve root. A mild superimposed facet arthrosis resulting in an element of mild proximal foraminal narrowing bilaterally was also noted, as were degenerative disc, annular and facet joint changes at L3-4 and L4-5 unassociated with impingements.

On August 9, 1999 appellant presented to Dr. Azer with distress because of pain. She could hardly move. Dr. Azer reported: "I think [appellant's] condition is deteriorating." He diagnosed lumbar disc syndrome. Appellant returned to work on October 14, 1999 with restrictions.² On November 24, 1999 Dr. Azer stated that he had reviewed appellant's medical records, as well as a development letter from the Office. He noted that appellant had an injury on March 24, 1998 while pulling files and leaning over a box. "She had low back pain," he stated, "the result of which [appellant] sustained a lumbar disc syndrome with a herniated lumbar disc." Dr. Azer stated that appellant's condition "does have episodes in which the symptoms improve, but they recur again."

¹ Notwithstanding these restrictions, it appears appellant was able to return full time to her date-of-injury position. The physical demands of her position were as follows: "The work requires some walking and carrying light items such as paper, supplies, files and books; otherwise the work is sedentary. No special physical qualifications are required to perform the work."

² Appellant was to avoid bending, stooping, kneeling, squatting, unprotected heights, pushing, pulling and lifting heavy objects, prolonged standing and prolonged walking.

The Office accepted that appellant sustained a recurrence of disability on August 8, 1999 causally related to her employment injury on March 24, 1998. The Office specified that it was accepting her claim of recurrence for “sprain lumbar region.”

Appellant came under the care of Dr. Hampton J. Jackson, Jr., an orthopedic surgeon and associate of Dr. Horn and Dr. Azer. On June 3, 2002 Dr. Jackson noted that an MRI scan “showed evidence of a disc injury dating back to 1988 and 1989.” On July 29, 2002, after reporting that he had reviewed all records very thoroughly, Dr. Jackson stated:

“It is my opinion that the condition that we are currently treating [appellant] [for], which we have recommended a percutaneous surgery for, is the condition caused by the injury of March 24[,] [19]98. Later in 1991 [sic] and 2001, there was another injury; however, this has not caused any additional damage to the disc. It did cause damage to certain ligaments in the back. This is my opinion with a high degree of medical certainty.”

On February 7, 2003 appellant filed a claim alleging that she sustained a recurrence of disability on February 10, 2003 causally related to her March 24, 1998 employment injury.³ She explained that her back got worse on January 28, 2003 and that she was given an appointment with Dr. Azer on February 5, 2003. She stated: “Since I sustained my back ailment, on the job, March 24, 1998 and until the recurrence on August 8, 1999 and again on January 29, 2003, I continue to have pain in my back and down the right leg (sciatic nerve).” Appellant added:

“This recurrence of my back problem occurred while I was recuperating at home from an accident from falling down the stairs on my job on October 29, 2002. I broke both my feet (the left fibular bone and the right metatarsal bone) and was hospitalized at George Washington Hospital for two days; they put [a] hard cast on both my feet up to my knees. After six weeks both hard cast[s] came off and a soft cast was put on the left foot for another four weeks. When that cast came off I started taking [p]hysical [t]herapy. I was using a wheelchair for much of three months using the walker when I could. I lay on my back much of the time. I finally graduated to using the crutches and finally a cane. Sue the back [p]hysical [t]herapist said that it was a possibility that I was compensating by bending and walking lopsided much of the time thereby, causing my back to become extremely painful. Due to the feet injury of October 29, 2002, I was scheduled to go back to work on February 10, 2003.”⁴

On March 4, 2003 the Office requested that appellant submit additional information to support her claim, including her physician’s opinion regarding the relationship between her ability to work and the accepted work-related condition.

³ She dated the recurrence January 29, 2003 but did not stop work until February 10, 2003.

⁴ The opinion of a physical therapist has no probative value on medical questions because a physical therapist is not a “physician” as defined by 5 U.S.C. § 8101(2) and, therefore, is not competent to render a medical opinion. *Barbara J. Williams*, 40 ECAB 649, 657 (1988).

The Office received a February 20, 2003 report from Dr. Warren D. Yu, a specialist in spinal disorders. Dr. Yu noted that he had been taking care of appellant for a right metatarsal fracture and a left ankle fracture suffered from a fall: “Because of the difficulties posed with walking, she has had recurrence of her back pain and right sciatica pain from a previous work injury in 1998. This has clearly exacerbated her symptomatology.”

In a decision dated June 24, 2003, the Office denied appellant’s claim of recurrence. The Office found that the medical evidence did not address the issue of whether there was a causal relationship between the claimed recurrence of disability and the accepted work injury of lumbar strain.⁵

LEGAL PRECEDENT

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.⁶

ANALYSIS

Appellant has not furnished sufficient medical evidence to establish her claim. The record contains many medical reports of the treatment appellant received following her injury on March 24, 1998, including reports on her lumbar disc syndrome and opinions from Dr. Azer and Dr. Jackson relating this syndrome to the accepted employment injury.⁷ Dr. Yu’s report on February 20, 2003, however, is the only evidence submitted in this case that expresses a physician’s opinion on the cause of the disability for which appellant presently seeks compensation. Dr. Yu attributed the worsening of appellant’s back condition to an intervening injury and its treatment and not to a spontaneous change in or natural progression of the accepted employment injury. A “recurrence of disability,” as defined by regulation, 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.⁸ As Dr. Yu made clear, it was the intervening injury on October 29, 2002 and the difficulties the fractures posed with walking, that exacerbated appellant’s back symptomatology. While this opinion tends to support that appellant’s

⁵ The Office denied compensation for lost time but explained that medical care continued to be authorized in appellant’s case. The Office’s subsequent boilerplate “[m]edical treatment at [the Office’s] expense is not authorized and prior authorization, if any, is hereby terminated” appears to be in error. The Board notes that the Office made no formal attempt to terminate compensation benefits for the accepted condition of lumbar strain.

⁶ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104 (1999).

⁷ The Office has issued no decision on whether appellant’s lumbar disc syndrome with radiculopathy is causally related to her work activities on March 24, 1998. In accepting a recurrence on August 8, 1999, the Office specified that it accepted her claim of recurrence for “sprain lumbar region.”

⁸ 20 C.F.R. § 10.5(x) (1999).

disability in February 2003 was consequential to her injury on October 29, 2002, it does not support the claim currently before this Board that she was unable to work beginning February 10, 2003 because of a spontaneous change in her March 24, 1998 employment injury.⁹ Appellant has submitted no other medical opinion evidence to support her claim of recurrence.

Appellant's lay opinion on the cause of her disability and statements from physicians merely relating her opinion, cannot discharge her burden of proof in this matter. Causal relationship is medical in nature and can be established only by medical evidence.¹⁰

CONCLUSION

The Board finds that the medical opinion evidence submitted in support of appellant's claim fails to establish that she sustained a recurrence of disability on or about February 10, 2003 causally related to her employment injury of March 24, 1998. As she has not met her burden of proof, the Office properly denied her February 7, 2003 claim of recurrence.

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2003
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁹ The Office's June 24, 2003 decision suggests that appellant should pursue the issue of disability beginning February 10, 2003 under her other claim, case number 252022297, as there was evidence she may have suffered a consequential injury to her back from the accepted injuries in that case.

¹⁰ *Ausberto Guzman*, 25 ECAB 362 (1974).