

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

BRIDGET J. KING, Appellant)	
)	
and)	Docket No. 02-1939
)	Issued: April 22, 2004
DEPARTMENT OF THE NAVY, WASHINGTON NAVY YARD, Washington, DC, Employer)	
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Appearances: Oral Argument March 11, 2004
Clarissa Thomas, Esq., for the appellant
Paul D. Knothe, Esq., for the Director

DECISION AND ORDER

Before:
 DAVID S. GERSON, Alternate Member
 WILLIE T.C. THOMAS, Alternate Member
 MICHAEL E. GROOM, Alternate Member

JURISDICTION

On July 11, 2002 appellant timely appealed the Office of Workers' Compensation Programs' decision dated January 4, 2002 denying modification of an August 22, 2001 decision which denied her recurrence of disability claim. Pursuant to 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 established that she sustained a recurrence of disability on November 17, 2000 causally related to her June 3, 1998 accepted back injury.

FACTUAL HISTORY

On June 24, 1998 appellant, then a 32-year-old child development program assistant, filed a claim for traumatic injury, Form CA-1, alleging that on June 3, 1998 she injured her back when she slipped and fell on a wet floor while in the performance of her duties. Appellant received medical care from Hadley Memorial Hospital on June 3, 1998 and did not return to work. The Office accepted appellant's claim for a subluxation of the cervical and lumbar spine

and a lumbosacral sprain and paid appropriate benefits. On November 13, 2000 appellant returned to light-duty work in a desk position which required sitting and answering telephones.

On December 15, 2000 appellant filed a claim for a recurrence of disability beginning November 17, 2000. She stated that she had restrictions of no bending, pulling, twisting, walking for more than one hour, or standing for long periods of time due to her back condition. Appellant asserted that the recurrence of total disability occurred because she was on her feet too long. In a separate statement dated November 17, 2000, appellant stated that her back and leg pain were triggered by walking around the employing establishment looking for the proper building to obtain a new identification card, and that her legs weakened as she walked back to her car before returning to work. Later that day, as she was getting up to use the telephone to inform her supervisor that she was experiencing pain, appellant reported that she fell down when her right leg gave way. Appellant submitted witness statements, a copy of her restrictions and medical evidence dated before the claimed recurrence, which documented her back condition and treatment.

In a November 17, 2000 report, Dr. Daniel R. Ignacio, Board-certified in physical medicine and rehabilitation and appellant's treating physician, advised that on that day appellant had a long walk and when she returned to the office, she experienced acute lower back pains and pains along the right leg which caused it to give way and resulted in a fall. Dr. Ignacio noted that a computerized axial tomography (CAT) scan revealed a ruptured L4-5 disc and he diagnosed lumbar spinal stenosis, contusion of both knees, lumbar disc syndrome and lumbar radiculopathy.

In a November 21, 2000 report, Dr. Hampton J. Jackson, Jr., an orthopedic surgeon, noted that appellant was seen at the request of Dr. Ignacio for persistent back pain, bilateral leg pain, dysesthesia in the right leg and giving way of the right leg since her work injury of June 3, 1998. He noted that appellant had attempted to work the previous week, but could not due to increased pain and that the right leg gave way with a subsequent fall. Dr. Jackson reviewed a September 1, 2000 CAT scan and found a significant disc rupture at L4-5 superimposed upon the facet hypertrophy at that level. As the disc rupture was toward the foramen at L4-5 on the right side, Dr. Jackson opined that the L5 root was affected more than the exiting L4 root, which he confirmed upon examination. He stated that appellant could not return to her previous employment and recommended surgery. In his December 19, 2000 report, Dr. Jackson stated that the confirmed disc rupture at L4-5 on the right side was the result of the work injury on June 3, 1998 and reiterated his recommendation for surgery as a definite treatment.

Progress reports from appellant's physicians were submitted, including a February 22, 2001 report, from Dr. Shobha Chidambaram, a neurologist, who provided an impression of multilevel lumbar disc syndrome. Disability certificates from Drs. Ignacio and Jackson also noted that appellant was totally disabled from November 17, 2000 and continuing.

In a December 1, 2000 report, Dr. Ignacio advised that a magnetic resonance imaging (MRI) scan revealed a herniated disc at the L4-5 level and diagnosed lumbar disc syndrome, lumbar radiculopathy, and cauda equina syndrome. He opined that appellant was totally disabled for work and advised that she would begin the neural enhancement therapy program. In a

separate report also dated December 1, 2000, Dr. Ignacio advised that there were abnormal electromyographic (EMG) findings consistent with bilateral L5 and right S1 radiculopathies. In a February 28, 2001 report, Dr. Ignacio advised that he performed an EMG and nerve conduction velocity study (NCV), which revealed abnormal findings consistent with chronic bilateral L5 radiculopathies. An impression of lumbar spinal stenosis was also provided.

In a March 7, 2001 report, Dr. Ignacio noted that appellant was seen for medical conditions and injuries sustained on June 3, 1998 and aggravated on November 17, 2000. He stated that a February 28, 2001 electrodiagnostic EMG study revealed evidence of bilateral lumbar radiculopathy, which was in keeping with the MRI scan study that revealed a ruptured lumbar disc at the L5-S1 level. Dr. Ignacio noted his examination findings and opined that appellant was totally disabled for work.

In an April 3, 2001 report, Dr. Jackson advised that appellant was starting to have some left leg symptoms, which were compatible with her disc injury at L4-5 caused by the work injury of June 3, 1998. He reported that appellant's EMG/NCV did not show any significant acute worsening and advised that surgery was necessary on an urgent basis.

In a May 1, 2001 attending physician's report, Form CA-20, Dr. Ignacio opined that appellant's lumbar disc rupture with radiculopathy was caused or aggravated by her employment activity by responding with a check mark in the "yes" box. The history of injury was noted as being a fall at work with the first examination on July 10, 1998. In a May 2, 2001 report, Dr. Ignacio diagnosed lumbar radiculopathy and lumbar disc syndrome and continued to opine that appellant was totally disabled. In a May 4, 2001 report, Dr. Ignacio noted that the MRI scan showed a right paracentral disc herniation at L4-5, which caused some foraminal stenosis. In a May 16, 2001 report, Dr. Ignacio advised that the electrodiagnostic EMG study was positive for lumbar denervation.

In an August 1, 2001 letter, the Office advised that the evidence appellant submitted did not support a recurrence of disability, but that she may have suffered a new injury due to new occupational exposure. Appellant was further advised of the evidence necessary to establish that the claimed recurrence was causally related to the approved injury of June 3, 1998 and was afforded 30 days within which to provide this information.

Appellant submitted an August 10, 2001 narrative statement in which she advised that she returned to work on November 13, 2000. She stated that she was unable to take her medication as it made her drowsy, her legs were not strong, and she still had back pain. Appellant claimed that she had pain going down her legs with all the strain she put on them at work. She indicated that she fell at work on November 17, 2000 when her legs came out from under her and she was advised by her physician that the fall was caused by a nerve in her back.

In a decision dated August 22, 2001, the Office denied appellant's claim for a November 17, 2000 recurrence of disability on the grounds that the evidence failed to establish that her disability was causally related to the accepted injury.

In a letter dated October 18, 2001, appellant requested reconsideration and submitted additional evidence. In an August 8, 2001 report, Dr. Ignacio diagnosed progressive lumbar disc

syndrome due to ruptured lumbar disc, progressive lumbar neuritis, and probable lumbar spinal stenosis. He opined that appellant was totally disabled and had not been able to work since November 18, 2000 due to the progressive lumbar disc protrusion and the complex dysfunctions sustained on June 3, 1998 and the recurrence of symptoms. He advised that the EMG and MRI scan studies confirmed the progressive nature of the lumbar disc syndrome and noted that appellant was to undergo a lumbar discogram.

In a September 13, 2001 progress report, Dr. Chidambaram provided an impression of multilevel lumbar radiculopathy.

Progress reports from Dr. Jackson found that appellant was totally disabled and had an ongoing disc injury in the lumbar spine as a result of the June 3, 1998 injury. In a September 14, 2001 report, Dr. Jackson advised that he had been seeing appellant since October 2000 and stated that additional studies such as a discogram were required. He stated that appellant's initial injury on June 3, 1998 persisted into today's date. He noted that on occasion appellant had responded to absolute rest and medication but that upon her return to work in November 2000, her back and spine conditions were directly aggravated to the point where she could no longer tolerate the pain associated with the activities at work which led to her total disability since November 2000.

In a September 5, 2001 progress report, Dr. Ignacio reported his examination findings and diagnosed progressive lumbar disc syndrome, lumbar radiculopathy and cauda equina syndrome. He advised that appellant continued to suffer with lumbar disc injury causally related to the accident at work on June 3, 1998, which was clinically progressive. He further opined that appellant was totally disabled and could not return to her regular occupational duties.

In an October 23, 2001 report, Dr. Jackson stated that appellant's activity upon her return to work in November 2000 directly aggravated her continuing back and spine condition which was superimposed upon a long-standing work injury of June 3, 1998.¹

In a November 7, 2001 report, Dr. Ignacio advised that appellant was under medical care for medical conditions and injuries on June 3, 1998 and that she continued to suffer with a complex spinal injury, namely ruptured lumbar disc with progressive lumbar neuropathies causing cauda equina syndrome, which have been confirmed by EMG and MRI scan studies as well as positive lumbar discopathy. He advised that appellant was not able to perform the essential functions of her job due to the abnormal medical condition from November 17² to December 15, 2001.

In a January 4, 2002 decision, the Office denied modification of the August 22, 2001 decision.

¹ Dr. Jackson also referred to typographical mistakes in his September 14, 2001 report which related to a scheduling of a discogram.

² Although Dr. Ignacio referenced a date of November 7, this appears to be a typographical error as November 17, 2000 is the date of the claimed recurrence.

On appeal, appellant, through her attorney, argued that she had previously experienced the symptoms which led to her fall on November 17, 2000 and that her work had aggravated her back injury of June 3, 1998.

LEGAL PRECEDENT

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or she 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, such that she can no longer perform her light-duty job.³

ANALYSIS

The Board finds that the evidence of record fails to establish that there was a change in the nature of appellant's light-duty job requirements, such that she was no longer able to perform the duties of the position.

With respect to appellant's light-duty job requirements, the record reflects that appellant had returned to a desk position which involved sitting and answering telephones. Appellant has alleged that the excessive walking she performed while trying to find the proper building to obtain her new identification card aggravated her preexisting back condition which had caused her legs to weaken and shake and resulted in the subsequent fall at work on November 17, 2000. Both appellant and her attorney have stated that she had previously experienced the back and leg symptoms before her actual recurrence. Appellant did not link the occurrence of pain and the shaking of her legs with the performance of any particular job duty other than the walking involved to find the building to get her new identification card.

The Board finds that the evidence does not support that appellant's light duties changed, and further notes that appellant does not, in fact, appear to be asserting that they did. Rather, appellant attributed her increased back pain and the shaking of her legs and subsequent fall at work on November 17, 2000 to excessive walking while trying to find the proper building to obtain a new identification card aggravated her preexisting medical condition. These contentions, however, while relevant to a claim for new injury due to these employment factors,

³ *Albert C. Brown*, 52 ECAB 152 (2000); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

are not dispositive in a claim for recurrence of disability.⁴ Only changes that cause the light-duty assignment to exceed the employee's work tolerance limitations result in a compensable recurrence of disability.⁵

The Board further finds that the medical evidence of record is insufficient to establish that appellant sustained a recurrence of disability. While the medical reports of record indicate that appellant has additional back conditions, which have not been accepted by the Office as employment related, none of these reports establish that appellant sustained a recurrence of disability on November 17, 2000. Dr. Chidambaram provides no opinion on the cause of appellant's back conditions. The reports from Drs. Ignacio and Jackson are insufficiently rationalized to establish a change in the nature and extent of appellant's injury-related condition.⁶ Although Dr. Ignacio, in his August 8, September 5 and November 7, 2001 reports, and Dr. Jackson, in his September 14, 2001 report, advise that appellant has been totally disabled since November 18, 2000 due to the progressive effects of the June 3, 1998 work injury to which they attribute additional back and neurological conditions, they offer no medical rationale as to why appellant's initial work injury of June 3, 1998 had persisted and resulted in additional back conditions and fail to present any medical rationale explaining the nature of the asserted relationship between the injuries, which contain additional back conditions which have not been accepted by the Office. Although Dr. Ignacio indicated with a check mark in a May 1, 2001 form report that appellant's lumbar disc rupture with radiculopathy was causally related to her employment injury, the physician but offered no medical explanation of his opinion and, thus, this report cannot establish the requisite causal relationship.⁷ Moreover, Drs. Ignacio and Jackson attribute appellant's work stoppage of November 17, 2000 primarily to an aggravation of her preexisting injury of June 3, 1998. The Board has held that aggravation or exacerbation of a preexisting injury may constitute a new injury, not a recurrence of disability.⁸

⁴ A recurrence of disability is defined as the inability to work after an employee has returned to work, caused by a spontaneous change in the medical condition, which resulted from a previous injury or illness without intervening injury or new exposure to the work environment that caused the illness. *See* 20 C.F.R. § 10.5(x). Office procedures further state that a recurrence of disability does not include a condition that results from a new injury, even if it involves the same part of the body previously injured. Office procedures also state that "If a new work-related injury or exposure occurs, Form CA-1 (notice of traumatic injury) or Form CA-2 (notice of occupational disease or illness) should be completed accordingly." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b (January 1995).

⁵ *Kim Kiltz*, 51 ECAB 349 (2000).

⁶ Rationalized medical evidence is medical evidence, which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. *See Gloria J. McPherson*, 51 ECAB 441 (2000).

⁷ *See Calvin E. King*, 51 ECAB 394, 400 (2000) (numerous form reports from a physician who checked a "yes" box indicating a causal relationship between appellant's spinal stenosis and his employment had little probative value absent supporting rationale and were insufficient to establish causation).

⁸ *See* 20 C.F.R. § 10.104; *Willie J. Clements, Jr.*, 43 ECAB 244, 247 n.8 (1991).

Appellant has not presented rationalized medical evidence showing that her work requirements changed or that her originally accepted back condition changed, such that she could no longer perform her light-duty position. Appellant has, therefore, failed to establish that she sustained a recurrence of disability on November 17, 2000 resulting from the June 3, 1998 employment injury.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a recurrence of disability on November 17, 2000 causally related to her accepted June 3, 1998 back injury.

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2002 and August 22, 2001 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: April 22, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member