

The Office accepted his claim for an aggravated recurrent left inguinal hernia and authorized surgical repair which occurred on April 9, 2001. In a report dated April 29, 2001, Dr. Thomas J. Swope, appellant's treating physician and a Board-certified surgeon, released appellant to light duty on April 30, 2001 and to full duty on May 22, 2001.¹

Appellant returned to *full-time* work from April 30 to May 5, 2001. The employing establishment then placed him in a leave without pay status from that date until May 16, 2003.² On May 25, 2001 Dr. Swope released appellant to regular duty effective on May 29, 2001. On July 17, 2001 he stated, in a form report, that appellant was totally disabled from April 9 to May 31, 2001 and that he could return to light duty on June 1, 2001. *The doctor checked a box "yes" indicating that appellant's condition was employment related.* Dr. Swope then referred appellant to Dr. James S. Lin, a Board-certified anesthesiologist and a pain management specialist. On October 19, 2001 Dr. Lin performed a nerve block and released appellant to return to work on October 25, 2001. On November 12, 2001 appellant signed a form indicating that he accepted a limited-duty job offer.

Dr. Lin performed a second nerve block procedure on December 18, 2002. In a report dated January 15, 2003, Dr. Lin stated that appellant was notified on December 18, 2002 that he would be released to return to light work on January 1, 2003. On January 23, 2003 Dr. Lin indicated that appellant's diagnosis was left inguinal neuralgia and continued his work restrictions. In a report also dated that day, Dr. Lin stated that appellant's left groin pain was secondary to hernia repair and that it had become worse.

On January 29, 2003 appellant filed a CA-7 claim for compensation for the period May 5, 2001 to January 23, 2003. The employing establishment noted that he stopped work on May 5, 2001 and was in a leave-without-pay status from May 5, 2001 to January 23, 2003. On March 21, 2003 appellant filed an additional claim for compensation from May 15, 2001 to March 7, 2003 and, on March 25, 2003 he filed a third claim for compensation from January 22 to March 21, 2003. On April 7, 2003 the Office requested appellant to submit a report from his doctor regarding the relationship between his ability to work and the accepted work-related condition. He then submitted additional claims for compensation from March 22 to May 2, 2003. The employing establishment noted that appellant was in a leave without pay status for each of the claimed pay periods.³ He also submitted a narrative on May 1, 2003 stating that he had had serious pelvic pain after hernia surgery due to scar tissue, noting that subsequent injections and nerve blocks did not help.

¹ Appellant's restrictions included a 20-pound limit of lifting, pushing or pulling and a restriction against bending and prolonged standing.

² The employing establishment, in its response to a December 18, 2002 claim for compensation, indicated that appellant did not work from May 5, 2001 to January 23, 2003. In subsequent claims, the employing establishment indicated that appellant did not work from January 22 to May 16, 2003.

³ In appellant's claim dated May 7, 2003, the employing establishment indicated that appellant was in a leave without pay status from April 19 to May 2, 2002. The date should read from April 19 to May 2, 2003.

By decision dated May 16, 2003, the Office denied appellant's claim for recurrence of disability beginning May 2001 on the grounds that the evidence failed to establish that his claimed recurrence was causally related to his employment-related injury.

Appellant subsequently submitted a claim for compensation for May 3 to 16, 2003, which the Office received on June 3, 2003. The employing establishment noted that appellant was in a leave without pay status from May 3 to 16, 2003. On July 11, 2003 he submitted an Office form requesting reconsideration. By decision dated September 29, 2003, the Office denied review of appellant's request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 show that he 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.⁴

ANALYSIS -- ISSUE 1

The Board finds that appellant has not provided any rationalized medical evidence to establish that he was totally disabled for the claimed period from May 5, 2001 to May 2, 2003 as a result of a recurrence of his accepted left inguinal hernia. The record reflects that on April 29, 2001 Dr. Swope released appellant to return to light duty on April 30, 2001 and to full duty on May 22, 2001. Although the record includes a May 23, 2001 Office report noting that appellant returned to work on April 30, 2001, there is no evidence from the employing establishment that he returned to work on or after May 5, 2001. On the reverse side of appellant's claims for compensation, the employing establishment noted that appellant was on a leave without pay status from May 5, 2001 to May 16, 2003. The employing establishment checked appropriate boxes indicating that there were no intermittent periods when appellant was in a pay status and that he did not return to work during the periods claimed.⁵

With respect to Dr. Swope's July 1, 2001 report indicating that appellant was totally disabled from April 9 to May 31, 2001, he provided no rationalized medical opinion to support appellant's disability from May 5 to 31, 2001. Further, he did not explain why his opinion changed from his April 29, 2001 report when he released appellant to light duty on April 30, 2001 and to full duty on May 22, 2001. Likewise, Dr. Swope's opinion supporting causal relationship in his July 17, 2001 form report is insufficient to establish causal relationship as the

⁴ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁵ In the April 17, 2003 claim, the employing establishment incorrectly checked yes indicating that appellant was in a pay status.

doctor did not provide any rationale to explain how work activity caused or contributed to the claimed period of disability.⁶

Although appellant underwent a nerve block on October 19, 2001 and was totally disabled from work until October 25, 2001 and again on December 18, 2002 with disability until January 1, 2003, the Office did not accept that either nerve block was related to the accepted injury. Appellant submitted no evidence to establish that his disability from October 19 to October 25, 2001 was work related. Further, Dr. Lin's January 23, 2003 report attributing appellant's pain to his hernia repair which required the December 18, 2002 nerve block and total disability status until January 1, 2003 was not supported by a rationalized medical opinion explaining the causal relationship between the accepted repair and the continuing increase in pain. Further, he noted that appellant underwent hernia repair in September 2001, when the date of the repair was April 9, 2001. The Board has long held that medical reports not containing a rationalized medical opinion on causal relationship are entitled to little probative value⁷ and medical opinions which are based on an incomplete history or which are speculative or equivocal in character have little probative value.⁸

Consequently, there is insufficient medical evidence to establish that appellant was disabled due to his employment injury during the claimed period.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation.⁹ Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).¹⁰ The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.¹¹ Section 10.608(b) provides that, when a request for reconsideration

⁶ See *Alberta S. Williamson*, 47 ECAB 569 (1996) (the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of little probative value).

⁷ *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁸ *Frank Luis Rembisz*, 52 ECAB 147 (2000).

⁹ 5 U.S.C. § 8128(a) ("[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

¹⁰ 20 C.F.R. § 10.608(a) (1999).

¹¹ 20 C.F.R. § 10.606(b)(1)-(2) (1999).

is timely, but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.¹²

ANALYSIS -- ISSUE 2

In support of his request for reconsideration, appellant merely submitted a claim for compensation from May 3 to 16, 2003. This report has no probative value and thus, is insufficient to warrant further review of the claim since it does not show that the Office erroneously applied or interpreted a specific point of law; has not advanced a relevant legal argument not previously considered by the Office; and did not include relevant and pertinent evidence not previously considered by the Office.

CONCLUSION

Appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability on or about May 5, 2001 based on his work-related left inguinal hernia condition. Further, as he is not entitled to a review of the merits of his claim, the Board finds that the Office properly denied appellant's July 11, 2003 request for reconsideration.

¹² 20 C.F.R. § 10.608(b) (1999).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 29 and May 16, 2003 are affirmed as modified.¹³

Issued: July 27, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹³ The Office's May 16, 2003 decision noted that appellant's claim for compensation was from May 15, 2001. However, appellant claimed compensation from May 5, 2001.