



appellant's lumbar spine was performed on February 16, 2001 by Dr. Victor A. Rozeboom, a Board-certified radiologist, who found no fracture or spondylolisthesis. He noted a spina bifida occulta at the lowest lumbar segments which were of no clinical significance and degenerative changes at S1. Appellant returned to regular work duty on February 20, 2001. By letter dated June 11, 2001, the Office accepted his claim for a contusion of the back.

On October 21, 2002 appellant filed a claim alleging that he sustained a recurrence of disability. He did not stop work but indicated that he was seeking medical treatment. Appellant submitted medical records from Dr. Charles Horton, his attending Board-certified family practitioner, who treated appellant that day for low back pain. He recommended specific work restrictions while appellant underwent physical therapy beginning on October 21, 2002.

Dr. Horton referred appellant to Dr. Joseph M. Ricciardi, a Board-certified orthopedic surgeon, who submitted a December 6, 2002 medical report. Dr. Ricciardi provided a history of appellant's February 16, 2001 employment injury and findings on physical and x-ray examination. He diagnosed an acute flare-up of chronic back strain. Dr. Ricciardi stated that the spina bifida occulta was of no clinical significance but the fact that appellant had six ribless segments was important as it represented hypermobility at two areas of the spine and he had chronic pain at both of these areas. He recommended a vigorous strengthening program unlike appellant's previous physical therapy and extension exercises to be performed up to 30 repetitions a day and prescribed medication for his condition.

In a December 19, 2002 attending physician's report, Dr. Ricciardi provided a history of the February 16, 2001 employment injury and referred to his December 6, 2002 report for his clinical findings and diagnosis. He indicated that appellant was advised on December 6, 2002 that he could return to his regular full-time work.

In a December 27, 2002 report, Dr. Horton provided a history of appellant's February 16, 2001 employment injury, symptoms and medical treatment. He reviewed findings of his examination of appellant on October 21, 2002, appellant's unsuccessful physical therapy treatment, and the December 6, 2002 findings of Dr. Ricciardi. Regarding a causal relationship between appellant's need for continuing medical treatment and the accepted work-related condition, Dr. Horton opined that appellant needed to strengthen his back before he could return to a regular work condition where he was lifting up to 70 pounds, judging from the objective evidence of abnormalities within the spine and hypermobility that he may have according to Dr. Ricciardi. Dr. Horton further opined that appellant was limited to lifting no more than 20 pounds, which would lessen an exacerbation of his chronic pain until things improved.

By letter dated February 12, 2003, the Office accepted appellant's October 21, 2002 recurrence claim and paid his medical bills.

The Office received treatment notes from Dennis Fellers, appellant's physical therapist, indicating that he was treated on March 5, 2004 for a chronic thoracic strain based on authorization from Dr. James B. Blankenship, a Board-certified neurosurgeon whom appellant was referred to by Dr. Horton.

On March 25, 2004 appellant filed a recurrence of disability claim, due to ongoing pain and muscle spasms in his back. He did not stop work but noted that he obtained medical treatment. The employing establishment controverted appellant's claim on the grounds that he performed his regular job duties with no restrictions and did not provide the date of his alleged recurrence of disability.

In an April 5, 2004 letter, the Office informed appellant that according to its records, he returned to regular-duty work on February 16, 2001. The Office noted the time gap between the last medical record dated December 27, 2002 and the most recent medical record dated March 5, 2004. The Office stated that the evidence of record was insufficient to establish his claim. The Office provided a description of a recurrence of disability and advised appellant about the type of factual and medical evidence he needed to submit within 30 days to establish his claim.

Appellant submitted the results of a January 8, 2004 magnetic resonance imaging (MRI) scan performed by Dr. Jordan C. Page, a Board-certified radiologist, which demonstrated moderately advanced discogenic degeneration affecting the L4-5 and L5-S1 levels where neural compressive affect may be present. He also submitted a February 5, 2004 note from Dr. Horton, who advised that his parathyroid hormone and calcium levels were normal and there was no need to check them again.

In an unsigned March 3, 2004 report, Dr. Blankenship noted the findings of an MRI scan which revealed moderate degenerative changes at L4-5 and L5-S1 with minimum retrolisthesis in a neutral position and L4-5 that did reduce, spina bifida occulta of the spinous process of L5 with rotatory scoliosis with zygapophyseal joint arthropathy and 5 moveable lumbar segments with an extremely short 12<sup>th</sup> rib. In a March 3, 2004 narrative report, Dr. Blankenship provided a history that appellant fell down a flight of stairs in February 2002, while carrying mail and reviewed his medical treatment. He reported essentially normal findings on physical examination. Dr. Blankenship opined that the majority of appellant's pain was myofascial in nature, at least in the thoracic spine. He noted that the MRI scan findings revealed disc space changes at L4-5 and L5- S1, lateral disc protrusion at L4-5 on the right side and some mild lateral recess stenosis. Dr. Blankenship also noted that the major problem seen on the plain films was rotatory scoliosis in the lumbar spine, which referred to the myofascial type of pain that appellant was experiencing. He advised appellant that his condition was directly related to his February 2002 employment-related injury. Dr. Blankenship opined that over 50 percent of appellant's lumbar problems were directly related to his employment injury and authorized physical therapy for his thoracic complaints.

Dr. Blankenship's March 17, 2004 duty status report, provided a history that appellant fell from a porch on February 16, 2001, a diagnosis of myalgia back pain and appellant's physical work restrictions.

Dr. Horton's March 29, 2004 report, indicated that he had been treating appellant since the February 16, 2001 employment injury and that he had ruled out a parathyroid tumor. He stated that appellant had high calcium at one point but this condition had resolved. He did not believe appellant's spasms were medically related, rather they were related to his fall.

Dr. Horton noted that an MRI scan of appellant's back had been ordered and the referral of appellant to Dr. Blankenship for further evaluation and treatment.

Appellant submitted Mr. Fellers's treatment notes covering the period March 8 through 24, 2004 and duplicate copies of his March 5, 2004 treatment notes.

In an April 19, 2004 letter, appellant stated that his back symptoms never resolved and that he had nonreimbursed medical expenses dating from 2003 for office visits and prescribed medications. He further stated that both Dr. Horton and Dr. Blankenship believed his current back condition resulted from his February 16, 2001 employment injury and noted that the Office had accepted the October 21, 2002 recurrence of disability.

By decision dated May 6, 2004, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability causally related to his February 16, 2001 employment injury.<sup>1</sup> Accordingly, the Office denied appellant's claim and terminated prior authorization of his medical treatment.

### **LEGAL PRECEDENT**

A "recurrence of disability" 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.<sup>2</sup>

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which he claims compensation is causally related to the accepted employment injury.<sup>3</sup> Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.<sup>4</sup> 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.<sup>5</sup> Moreover, the physician's conclusion must be supported by sound medical reasoning.<sup>6</sup>

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<sup>1</sup> Following the issuance of the Office's May 6, 2004 decision, appellant submitted additional medical evidence. Appellant has also submitted new evidence on appeal. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration under 5 U.S.C. § 8128 and 20 C.F.R. § 10.606.

<sup>2</sup> 20 C.F.R. § 10.5(x).

<sup>3</sup> *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

<sup>4</sup> *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

<sup>5</sup> *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)(b).

<sup>6</sup> *Alfredo Rodriquez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>7</sup> In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.<sup>8</sup> While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>9</sup>

### ANALYSIS

The Office accepted that appellant sustained a contusion of the back on February 16, 2001 and that he sustained a recurrence of disability on October 21, 2002, for which he received reimbursement of medical expenses. Appellant was not treated again for his back problems until January 8, 2004 when an MRI scan was obtained by Dr. Horton. He filed a recurrence of disability claim on March 5, 2004 but he did not stop work. Instead, appellant sought medical treatment for his ongoing back problems. The Board finds that appellant has failed to submit rationalized medical evidence establishing that his back condition is causally related to his accepted employment-related injury of February 16, 2001.

The January 8, 2004 MRI scan revealed moderately advanced discogenic degeneration affecting the L4-5 and L5-S1 levels. The diagnostic study did not address whether appellant's back condition was causally related to the February 16, 2001 employment injury. Therefore, this report is insufficient to establish appellant's claim.

Dr. Horton's February 5, 2004 letter, which advised appellant that his parathyroid hormone and calcium levels were normal, failed to address the relevant issue of whether appellant's back condition, for which he sought treatment, was causally related to his accepted employment injury. Dr. Horton's letter is insufficient to satisfy appellant's burden of proof.

The March 3, 2004 unsigned report submitted on Dr. Blankenship's letterhead, addressing the findings of the MRI scan performed on that date, does not constitute probative medical evidence. The Board has consistently held that unsigned medical reports are of no probative value because the preparer cannot be identified as that of a physician.<sup>10</sup>

Based on a March 3, 2004 examination, Dr. Blankenship stated on March 17, 2004 that appellant had myalgia back pain and that he could work with certain physical limitations. However, he did not discuss whether appellant's back condition or symptoms in 2004 were

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<sup>7</sup> See *Ricky S. Storms*, *supra* note 5; see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

<sup>8</sup> For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Shirloyn J. Holmes*, 30 ECAB 938 (1988); *Richard McBride*, 37 ECAB 748 at 753 (1986).

<sup>9</sup> See *Ricky S. Storms*, *supra* note 5; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>10</sup> See *Merton J. Sills*, 39 ECAB 572 (1988).

caused by the accepted employment injury. Dr. Blankenship's report is insufficient to establish appellant's claim.

In a March 29, 2004 report, Dr. Horton opined that appellant's back spasms were related to his accepted employment injury. However, Dr. Horton did not provide an explanation of the facts in evidence to support his stated conclusion. The Board has held that a medical opinion lacking rationale is of diminished probative value.

The treatment notes from Mr. Fellers, appellant's physical therapist, which indicated that appellant was treated for a chronic thoracic spine from March 5 through 24, 2004, do not constitute probative medical evidence as a physical therapist is not a "physician" as defined under the Federal Employees' Compensation Act.<sup>11</sup>

There is no "bridging evidence" from a physician which addresses how appellant's degenerative changes of the back, spina bifida occulta, rotatory scoliosis, joint arthropathy, myalgia and back spasms in 2004 are related to the accepted contusion of the back, in 1991. No physician explained how, over three years following the accepted contusion of the back, appellant's symptoms in 2004 caused disability resulting in the need for medical treatment. The Office never accepted that appellant's degenerative changes of the back, spina bifida occulta, rotatory scoliosis, joint arthropathy, myalgia or back spasms arose as a result of his February 16, 2001 employment injury.<sup>12</sup> The medical evidence submitted by appellant in support of his March 25, 2004 recurrence of disability claim is insufficient to establish that his need for ongoing medical treatment is related to the accepted injury.<sup>13</sup>

### CONCLUSION

The Board finds that appellant has failed to establish that he sustained a recurrence of disability causally related to his February 16, 2001 employment injury.

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<sup>11</sup> 5 U.S.C. §§ 8101-8193; 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 (2000) (a physical therapist is not a physician under the Act).

<sup>12</sup> For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>13</sup> See *Carmen Gould*, *supra* note 4 at 508 (finding that a physician's opinion that failed to explain the relationship between appellant's current back condition and the accepted lumbar sprain was insufficient to establish causation and thus failed to meet appellant's burden of proof). See also, *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 6, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member