United States Department of Labor
Employees' Compensation Appeals Board

STEVEN H. BLACK, Appellant	)	
and	)	**Docket No. 05-1294**
	)	**Issued: December 15, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Cedar Rapids, IA, Employer	)	

Appearances:
Ron Watson, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On May 31, 2005 appellant filed a timely appeal of a March 4, 2005 merit decision of a hearing representative of the Office of Workers' Compensation Programs finding that he did not sustain a recurrence of total disability. 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 has established a recurrence of disability as of November 9, 2003, causally related to the January 6, 2000 injury.

FACTUAL HISTORY

On January 6, 2000 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim alleging injury as a result of a motor vehicle accident sustained while in the performance

of duty. Appellant did not stop work. The Office accepted the claim for a low back strain.[1] Appellant received compensation for all appropriate periods.

On November 13, 2003 appellant filed a recurrence of disability claim (Form CA-2a) alleging that he sustained a recurrence of disability on November 9, 2003. He indicated that he bent down to pick up something on a chair and his back popped. Appellant indicated that he had returned to unrestricted duties after his original injury. The evidence of record reflects that appellant was off work from November 9 to 18, 2003, when he was released to four hours light duty. Appellant was eventually released to full duties at the end of June 2004.

Evidence submitted with appellant's claim included treatment notes and reports from Dr. Stephen L. Runde, a family practitioner and appellant's treating physician, dated November 10, 2003 through January 9, 2004 which indicated appellant's progress. On November 10, 2003 Dr. Runde noted that appellant had injured his back on November 9, 2003 when he bent over to pick something up off a chair and heard a pop in his lower back. Dr. Runde noted that the pain was in the same area where appellant had pain before and that appellant had a work-related back injury for which he received treatment. Dr. Runde noted that appellant had injured his back less than a year prior and, after a course of physical therapy and epidural steroid injections, he was released back to full duties at work on April 8, 2003 and had done well until the November 9, 2003 incident. Dr. Runde diagnosed an acute lumbosacral strain, recurrent and took appellant off of work. In a November 13, 2003 report, Dr. Runde advised that appellant could return to restricted duty on November 18, 2003. In a January 9, 2004 report, Dr. Runde opined that appellant's pain developed as a result of an exacerbation of his previous work-related back injury of January 2000 as the symptoms and physical examinations were similar to those of the original injury.

The record reflects that the Office adjudicated the claim as a new traumatic injury and, in a February 19, 2004 letter, advised appellant of the evidence necessary to establish his claim.[2] In a March 1, 2004 letter, appellant stated that the current claim was for an intervening injury from his original injury of January 6, 2000 and he did not understand why a new claim was opened. Previously submitted treatment notes denoting appellant's progress and work restrictions from Dr. Runde were submitted. In a February 25, 2004 letter, Dr. Runde noted that, although appellant had injured himself while at home in November 2003, this injury was an aggravation of the underlying work injury.

By decision dated March 24, 2004, the Office denied appellant's claim for compensation as appellant had not established that his injury occurred in the performance of duty. The Office found that appellant sustained an injury at his parents' home while picking up a bag of clothing.

In a letter dated March 24, 2004, the Office advised that the evidence of record would be moved to his original claim file and his claim for an intervening injury would be developed.

[1] The claim was assigned file number 11-0176172.

[2] The claim was assigned file number 11-2020834.

In an April 14, 2004 letter, appellant requested an oral hearing, which was held on December 10, 2004. At the hearing, appellant testified about his original injury of January 6, 2000 and how it continued to affect him. He stated that he reinjured his back on November 9, 2003 while at his parents' house lifting a bag of laundry. Appellant stated that he continued to experience pain on a daily basis since the original injury and that the pain always came back in the same place. He resubmitted treatment reports from Dr. Runde documenting his back condition and work restrictions, and Dr. Runde's reports dated January 9, February 25 and December 2, 2004 opining that appellant's flare-up on November 9, 2003 was an exacerbation of the prior injury.

By decision dated March 4, 2005, the Office hearing representative denied appellant's recurrence claim effective November 9, 2003 on the grounds that his disability was caused by a nonwork-related intervening incident.

On appeal appellant argues that the Office hearing representative failed to consider the nature, quality and surrounding circumstances of an identified intervening incident in determining whether the chain of causation from the original accepted injury had been broken. Alternatively, appellant argues that the case should be remanded for further development of the record as he was never informed of evidence needed to develop his intervening injury.

LEGAL PRECEDENT

A person who claims a recurrence of disability due to an accepted employment-related injury 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 injury. This burden of proof requires that a claimant furnish 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 supports that conclusion with sound medical reasoning.[3]

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."[4]

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.[5]

[3] *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

[4] 20 C.F.R. § 10.5(x).

[5] Larson, *The Law of Workers' Compensation*, § 10.00 (2000); *see also John R. Knox*, 42 ECAB 193 (1990).

In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, Professor Larson states:

> "When the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury."[6]

Thus, it is accepted that, once the work-connected character of any condition is established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.[7]

If a member weakened by an employment injury, contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury, if the further medical complication flows from the compensable injury, *i.e.*, "so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable in the circumstances."[8]

ANALYSIS

In the present case, appellant sustained an injury on November 9, 2003 when he bent over and lifted a bag of laundry and sustained an acute lumbosacral strain, which Dr. Runde diagnosed as being recurrent in nature. On November 13, 2003 appellant filed a recurrence of disability claim alleging that his disability commencing November 9, 2003 was related to the January 6, 2000 work injury which had been accepted for a low back strain. Appellant noted that he bent down to pick up something on a chair when his back popped. In support of his claim, appellant submitted medical evidence from Dr. Runde, who noted that at the time of injury appellant had bent over to pick something up from a chair and heard a pop in his lower back. Dr. Runde diagnosed an acute lumbosacral strain, recurrent, noting that the pain was in the same location of the back where appellant had previously been treated for a work-related back injury, from which he was released back to full duties at work on April 8, 2003. Dr. Runde stated that appellant had done well until the November 9, 2003 incident. In reports dated January 9, February 25 and December 2, 2004, Dr. Runde opined that appellant's flare-up on November 9, 2003 was an exacerbation of the prior injury as the symptoms and physical examinations were similar to those of the original injury.

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[6] *Larson, supra* note 5 at 10.01; *see also Raymond A. Nester*, 50 ECAB 173 (1998).

[7] *Larson, supra* note 5 at 10.02; *see also Kathy A. Kelley*, 55 ECAB ___ (Docket No. 03-1660, issued January 5, 2004); *Charles W. Downey*, 54 ECAB ____ (Docket No. 02-218, issued February 24, 2003).

[8] *Larson, supra* note 5 at 10.01, 10.06; *Melissa M. Fredrickson*, 50 ECAB 170, 171 (1988).

The evidence establishes that appellant reinjured his back while bending over to pick up a bag of laundry on November 9, 2003. A recurrence of disability, as noted above, is a spontaneous change in a medical condition without an intervening injury. The triggering episode in this case was the bending over and lifting of a bag of laundry, while at his parents' home. The issue, therefore, is whether appellant's disability after November 9, 2003 is compensable as a direct and natural result of the January 6, 2000 low back strain.

The Board finds that the incident appellant described is neither a spontaneous return of symptoms nor a direct and natural progression of the injury. The operative factor is not the progression of the compensable injury but the result of an intervening injury caused by appellant's bending over and lifting of a bag of laundry. Appellant has not submitted any medical evidence which discusses the accepted employment injury, the November 9, 2003 bending and lifting incident, or with medical rationale, how the November 9, 2003 injury was a progression of the January 6, 2000 injury. Although Dr. Runde noted that appellant's symptoms and treatment following the November 9, 2003 injury were in the same location as that of the original injury, he failed to provide any opinion to support how the incident of bending over and lifting a bag of laundry would be a "natural progression" of appellant's original work-related low back strain. Dr. Runde's general conclusion that appellant's condition was caused by the January 6, 2000 injury is of diminished probative value.[9] The medical evidence of record is insufficient to establish a progression of appellant's accepted back condition after he was released from his original work injury and returned to full work duties on April 8, 2003. On the contrary, the evidence indicates that appellant's work-related condition had improved such that he was released to return to full work duties on April 8, 2003. Accordingly, the November 9, 2003 incident is an independent nonindustrial intervening event rather than the natural progression of the accepted employment injury.[10] Although appellant advised that he experienced continuous pain in the same area since his work-related injury, he has not submitted any rationalized medical evidence to establish that he sustained a recurrence of disability causally related to that injury. Accordingly, appellant has not established a recurrence of disability as of November 9, 2003.

Although appellant argued he was never informed of evidence needed to develop his intervening injury claim, the record reflects that the Office hearing representative had complete access to both the factual and medical evidence in this case and correctly understood that the claim was for an intervening injury. Accordingly, appellant's claim was properly considered and developed by the Office.

CONCLUSION

The Board finds that appellant did not establish a recurrence of disability as of November 9, 2003 as he sustained an intervening injury.

[9] *Sandra Dixon-Mills*, 44 ECAB 882 (1993).

[10] *Id.; Robert W. Meeson*, 44 ECAB 834 (1993); *John R. Knox, supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 4, 2005 is affirmed.

Issued: December 15, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board