



beginning February 14, 1998 and returned to work as a modified letter carrier for four hours a day on April 27, 1998. On June 18, 2001 appellant began working eight hours a day with restrictions.

In a June 14, 2001 report, Dr. Andrew V. Slucky, an attending Board-certified orthopedic surgeon, diagnosed a lumbar strain/sprain and degenerative disc disease and indicated that appellant could work eight hours a day with restrictions, including no lifting over 20 pounds, one hour of rest after each three hours of work and no excessive bending.

In a report dated December 13, 2001, Dr. Slucky changed appellant's lifting restriction from 20 pounds to 10 pounds and added a restriction of no overhead lifting. In reports dated April 1, 2002 to June 9, 2003, he indicated that appellant's back condition was unchanged and there was no significant change to her work restrictions.

In an undated attending physician's report, Dr. Slucky diagnosed lumbar degenerative disc disease and indicated that appellant was totally disabled from July 15 to 26, 2004.

By letter dated August 10, 2004, the Office advised appellant that she needed to submit medical evidence establishing that there had been a change in her accepted back conditions or a change in her light-duty position such that she was totally disabled.

In disability certificates dated July 15 and 26, 2004, Dr. Slucky diagnosed a lumbar strain and degenerative lumbar disc disease and indicated that appellant was totally disabled.

On August 23, 2004 appellant submitted a claim for a recurrence of total disability between July 15 and 26, 2004.

By decision dated November 10, 2004, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained a recurrence of total disability between July 15 and 26, 2004 causally related to her November 4, 1997 employment injury.

Appellant requested reconsideration and submitted additional medical evidence. In a January 27, 2005 report, Dr. Slucky stated that on July 15, 2004 appellant presented with severe low back pain. He provided findings on physical examination which included reduced lumbar range of motion and diagnosed a lumbar sprain exacerbating a preexisting lumbar degenerative condition. Appellant felt that she was not capable of performing her modified position and was placed on temporary total disability until July 27, 2004. Dr. Slucky stated:

“[Appellant's] most recent recurrence of low back pain represents an exacerbation of her preexisting industrial condition, namely degenerative disc disease as a consequence of a herniated intervertebral disc (initial industrial-injury condition). To this effect, [appellant] has responded to an appropriate course of conservative treatment.”

By decision dated May 18, 2005, the Office denied appellant's recurrence claim on the grounds that the medical evidence did not establish that she sustained a recurrence of total disability between July 15 and 26, 2004 causally related to her November 4, 1997 employment injury.

## LEGAL PRECEDENT

The Federal Employees' Compensation Act provides that an employee may receive compensation for total disability due to an employment-related injury.<sup>1</sup>

Where an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she 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 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.<sup>2</sup>

The Board notes that the term "disability," as used in the Act means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>3</sup> Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>4</sup> When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.<sup>5</sup> "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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>6</sup>

## ANALYSIS

The record reflects that appellant sustained a lumbar strain and herniated disc on November 4, 1997 and returned to work in a light-duty capacity. She subsequently filed a claim for a recurrence of total disability between July 15 and 26, 2004. As noted, to be entitled to compensation for total disability beginning on July 15, 2004, appellant must provide medical evidence establishing that she was totally disabled due to a worsening of her accepted work-related conditions or a change in her job duties such that she was unable to perform her light-duty work.

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<sup>1</sup> 5 U.S.C. § 8105.

<sup>2</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>3</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).

<sup>4</sup> *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

<sup>5</sup> *Clement Jay After Buffalo*, 45 ECAB 707 (1994).

<sup>6</sup> 20 C.F.R. § 10.5(x).

In an attending physician's report and disability certificates, Dr. Slucky diagnosed lumbar degenerative disc disease and indicated that appellant was totally disabled from July 15 to 26, 2004. However, he did not provide a rationalized medical opinion explaining how appellant's recurrence of total disability was due to either a change in the nature and extent of her employment-related back conditions, a lumbar strain and herniated disc, or a change in the nature and extent of her light-duty job requirements such that she was totally disabled. Additionally, the Office has not accepted the condition of degenerative disc disease as causally related to the November 4, 1997 employment injury.

In a January 27, 2005 report, Dr. Slucky stated that on July 15, 2004 appellant presented with severe low back pain which represented an exacerbation of her preexisting degenerative disc disease due to a herniated intervertebral disc and he provided physical findings which included decreased lumbar range of motion. However, Dr. Slucky failed to provide a rationalized medical opinion explaining how appellant's disability was due to a change in the nature of her injury-related back conditions sustained on November 4, 1997 or a change in the nature and extent of her light-duty job requirements such that she was totally disabled. Such medical rationale is critical in light of the fact that her claimed recurrence of total disability occurred nearly seven years after the original employment injury and the fact that she had performed her light-duty position full time since June 2001.

Appellant failed to establish that she was totally disabled due to a worsening of her accepted work-related back conditions or a change in her job duties such that she was unable to perform her light-duty work. Therefore, she failed to meet her burden of proof and the Office properly denied her claim for a recurrence of total disability.

### **CONCLUSION**

The Board finds that appellant failed to establish that she sustained a recurrence of total disability between July 15 and 26, 2004 causally related to her November 4, 1997 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 18, 2005 and November 10, 2004 are affirmed.

Issued: December 7, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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