

lifted an electrical box. The Office accepted that he sustained a lumbar strain. Appellant stopped work on January 4, 1991 and returned on January 10, 1991 to a light-duty position and worked intermittently thereafter.

On November 1, 1991 the employing establishment proposed to remove appellant due to excessive unauthorized absences for the period March 22 to May 13, 1991 and for leaving the job site without permission on June 27, 1991. On February 27, 1992 the proposed removal was finalized as appellant continued to have unauthorized absences without administratively acceptable documentation. In correspondence dated July 17, 1992, the employing establishment advised that prior to his removal appellant was working in a light-duty position and that the light-duty position accommodated the physical limitations imposed by his physician. The employing establishment further advised that his assignment would have remained available until a permanent light-duty position was identified.

Appellant submitted various treatment notes from Kaiser Permanente from January 28, 1991 to July 1992, which noted that he was being treated for back pain and diagnosed lumbosacral strain. The records indicated that appellant could work limited duty subject to various restrictions. Also submitted was a report from Dr. Richard A. Shrader, a Board-certified orthopedist, dated June 12, 1992, who noted treating appellant for persistent low back pain and diagnosed chronic lumbosacral ligamentous sprain. He indicated that appellant was disabled and recommended physical therapy. Appellant came under the treatment of Dr. T. Vandergast, a Board-certified urologist, who noted treating him on October 22, 1992 for chronic low back pain from a December 1990 work injury. He diagnosed chronic low back pain with no evidence of neurological deficit.¹

On January 23 and February 19, 2002 appellant filed a notice of recurrence of disability. He indicated a recurrence of neck and back pain and numbness in his legs commencing on December 2, 1992 and continuing thereafter.

By decision dated March 15, 2002, the Office denied appellant's claim for recurrence of disability on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after December 2, 1992, which was causally related to the accepted employment injury sustained on December 12, 1990.

On June 11, 2002 appellant requested reconsideration and submitted various medical reports. A report from Dr. Vandergast dated September 7, 1992 noted a history of his work injury and subsequent treatment for chronic low back pain and numbness in the legs. He diagnosed chronic low back pain with no evidence of neurological deficit. A Watts Health Foundation progress note dated December 18, 2001, advised that appellant was treated for back pain and was diagnosed with a history of trauma and numbness in the legs. In a progress note dated April 23, 2002, a physician whose signature is illegible, diagnosed low back syndrome and an abscess. Also submitted was a report from Dr. Ronald Schilling, Board-certified in physical medicine and rehabilitation, dated June 10, 2002, who noted a history of injury on December 12,

¹ On December 3, 1991 appellant filed a claim for a schedule award for his back. In a decision dated July 28, 1993, the Office denied appellant's claim on the grounds that the Federal Employees' Compensation Act does not grant schedule awards for the back.

1990 and diagnosed lumbar sprain/strain and lumbar radiculopathy. He opined that appellant's current symptoms were a direct continuation of the original injury suffered in 1990 and that he was totally temporarily disabled.

In a decision dated June 20, 2002, the Office denied modification of the prior decision on the grounds that the medical evidence of record did not establish that the recurrence of disability was causally related to the accepted December 12, 1990 work-related injury.

On June 13, 2002 appellant requested reconsideration and submitted various medical records. In a report dated May 29, 2002, Dr. Howard R. Bass, a Board-certified internist, noted a history of appellant's work-related injury of December 1990 and diagnosed lumbar spine disc disease, lumbosacral spine strain and sprain, myalgia, myospasms and radiculitis. Nerve conduction testing and an electromyography (EMG) were performed on May 31, 2002 and revealed left L5-S1 radiculopathy. Also submitted were progress notes dated June 21 to October 3, 2002 which noted appellant's treatment for lumbar sprain/strain, lumbar radiculitis and lumbar discopathy.

In a decision dated November 4, 2002, the Office denied modification of the prior decision on the grounds that the medical evidence of record did not establish that the recurrence of disability was causally related to the accepted December 12, 1990 work-related injury.

On December 22, 2002 appellant requested reconsideration and submitted additional medical evidence. A prescription note dated July 18, 2002 prescribed a transcutaneous electrical nerve stimulator unit. A MyoVision WinScan98 Examination was performed on September 26, 2002 which revealed muscle tension. Also submitted were progress notes from November 1 to December 10, 2002, which noted positive physical findings of spasm, tenderness and limited range of motion of the lumbar spine and diagnosed lumbar sprain/strain and lumbar radiculopathy.

In a decision dated April 22, 2003, the Office denied modification of the prior decision on the grounds that the medical evidence of record did not establish that the recurrence of disability was causally related to the accepted December 12, 1990 work-related injury.

In an undated letter appellant requested reconsideration and submitted a permanent and stationary report from Dr. Schilling dated April 17, 2003. He noted a history of injury December 12, 1990 and indicated that appellant continued to experience pain in his low back and was permanent and stationary at this time. Dr. Schilling noted limited range of motion of the lumbar back and advised that a magnetic resonance imaging (MRI) scan dated June 4, 2002 revealed no abnormalities. He diagnosed lumbar sprain/strain and lumbar radiculopathy. Dr. Schilling opined that appellant's "medical findings are consistent with the patient's description of his accident." He noted that appellant's injury was a continuous trauma, commencing December 12, 1990 to September 2, 2002. Dr. Schilling further advised that appellant was precluded from substantial work and indicated that these work restrictions were prophylactic in nature to prevent additional injury.

In a decision dated August 9, 2003, the Office denied modification of the prior decision on the grounds that the medical evidence of record did not establish that the recurrence of disability was causally related to the accepted December 12, 1990 work-related injury.

Appellant requested reconsideration and submitted additional medical evidence. In an undated addendum report, Dr. Schilling noted a detailed history of his work-related injury of December 12, 1990 and indicated that appellant was discharged as permanent and stationary on April 4, 2003. He opined that appellant's back injury was directly and causally related to his employment as an electrician. Also submitted were various medical reports from Kaiser Permanente from May 16, 1990 to June 27, 1991. All of the reports were duplicative except for the May 16, 1990 note which indicated that appellant was treated for a lumbar strain and noted with a checkmark that the cause of the condition was both industrial and undetermined.

In a decision dated May 26, 2004, the Office denied modification of the prior decision on the grounds that the medical evidence of record did not establish that the recurrence of disability was causally related to the accepted December 12, 1990 work-related injury.

LEGAL PRECEDENT

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 requirements.²

ANALYSIS

Appellant has not submitted sufficient evidence to support a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.

Regarding whether there was a change in the injury-related condition, reports from Kaiser Permanente from May 16, 1990 to July 1992 do not establish the claimed recurrent condition since they predate the time of the claimed recurrence of December 2, 1992 and do not address the relevant time period. Similarly, reports from Dr. Shrader dated June 12, 1992; and Dr. Vandergast dated September 7 to October 22, 1992 all predate the time of the claimed recurrence of disability of December 2, 1992 and do not establish a recurrent back condition.

Dr. Bass's report dated May 29, 2002 noted a history of appellant's work-related injury of December 1990 and diagnosed lumbar spine disc disease, lumbosacral spine strain and sprain, myalgia, myospasms and radiculitis. However, Dr. Bass did not indicate a specific date of a recurrence of disability, nor did he note a particular change in the nature of appellant's physical

² *Terry R. Hedman*, 38 ECAB 222 (1986).

condition, arising from the employment injury that prevented him from performing his light-duty position.³ Therefore, this report is insufficient to meet appellant's burden of proof.

Dr. Schilling's June 10, 2002 report noted a history of injury on December 12, 1990 and diagnosed lumbar sprain/strain and lumbar radiculopathy. He opined that appellant's current symptoms were a direct continuation of the original injury suffered in 1990 and that he was totally temporarily disabled. The physician's report of April 17, 2003 noted that appellant's findings were consistent with his "description of his accident" and advised that his injury was a continuous trauma, commencing December 12, 1990 to September 2, 2002. In his addendum report, Dr. Schilling opined that appellant's "back injury is, therefore, directly and causally related to his employment as an electrician." However, these reports are vague regarding the time of the onset of the claimed recurrence of disability and are unrationalized in that they do not explain how the December 1990 employment injury would have caused a particular period of disability beginning on December 12, 1992.⁴

Other medical reports submitted by appellant failed to specifically address whether he sustained a recurrence of disability on December 2, 1992 causally related to the December 12, 1990 work injury, nor did they note a particular change in the nature of appellant's physical condition, arising from the employment injury that prevented him from performing his light-duty position. Therefore, the Board finds that appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related condition.

Appellant also has not established a change in the nature and extent of the light-duty requirements. He was working in a light-duty position when he was removed from the employing establishment due to excessive unauthorized absences. There is no evidence indicating that the removal from light duty was related to his employment injury. When a claimant stops working at the employing establishment for reasons unrelated to his employment-related physical condition, he has no disability within the meaning of the Act.⁵ The Board finds that there is no credible evidence which substantiates that appellant experienced a change in the nature and extent of the light-duty requirements or was required to perform duties that exceeded his medical restrictions. The light-duty position performed by appellant was in conformance with the medical restrictions set forth by his treating physicians and the record is void of evidence which would indicate that there was a change in the nature and extent of the light-duty requirements or that was required to perform duties which exceeded his medical restrictions. Furthermore, the employing establishment noted that the light-duty position would have remained available until a permanent light-duty position was identified.

³ *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).

⁴ See *Jimmie H. Duckett*, *supra* note 3.

⁵ See *John W. Normand*, 39 ECAB 1378 (1988) (where the claimant was removed from his light-duty position for disciplinary reasons, the Board found no disability within the meaning of the Act). Office regulations indicate that there is no recurrence of disability when withdrawal of light duty occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force. 20 C.F.R. § 10.5(x). Regarding the Act, see 5 U.S.C. §§ 8101-8193.

Appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit him from performing the light-duty position he assumed after he returned to work.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit him from performing the light-duty position he assumed after he returned to work.

ORDER

IT IS HEREBY ORDERED THAT May 26, 2004 and August 9, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 21, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member