

On May 19, 1998 the employing establishment offered appellant a light-duty position. A Form CA-3 (report of termination of disability and/or payment) indicated that appellant reported for work on June 11, 1998. In a decision dated July 13, 1998, the Office terminated compensation under 5 U.S.C. § 8106(c)(2) for refusal of suitable work. The Office found that upon initially arriving for work appellant complained of muscle spasms and stopped working.

By decision dated March 24, 1999, an Office hearing representative set aside the July 13, 1998 decision, finding that appellant did not refuse an offer of suitable work because she did work light duty for six days commencing June 11, 1998. The hearing representative further determined that the medical evidence did not establish disability for the light-duty job after July 13, 1998.

Appellant requested reconsideration of her claim, which was denied by decisions dated September 24, 1999, December 21, 2001 and April 25, 2002. In a decision dated April 14, 2003, the Office refused to reopen the claim for review of the merits of the claim.

On November 15, 2004 appellant submitted an October 28, 2004 report from Dr. Fernando Mallou, an anesthesiologist, who stated that appellant had a lumbar radiculopathy with dysesthesias in the left leg. He stated that he believed this was part of the original injury on November 15, 1997. On February 3, 2005 appellant submitted a recurrence of disability claim (Form CA-2a) dated November 1, 2004. Appellant indicated that the original injury was on November 15, 1997; she did not identify an date of recurrence of disability. She resubmitted medical reports from 1999 and 2000 from Dr. Bryan Drazner, an internist. In a May 28, 1999 report, Dr. Drazner provided a history and results on examination, diagnosing lumbar disc disease with myelopathy. In an August 28, 1999 report, Dr. Drazner indicated that appellant should undergo an aggressive rehabilitation program.

In a report dated January 27, 2005, Dr. Mallou provided a history of a November 15, 1997 injury, noting that an August 4, 2000 electromyogram (EMG) showed L5-S1 radiculopathy and a May 14, 2000 magnetic resonance imaging scan showed L5-S1 disc herniation. Dr. Mallou opined “the current symptomology is consistent with her injuries of November 15, 1997. She has not had the appropriate treatment to resolve her problems.... She is in need of additional treatment to resolve her physical problems.”

By decision dated February 16, 2005, the Office denied the claim for a recurrence of disability on the grounds that the evidence did not establish that the claimed recurrence resulted from the accepted work injury.

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”¹

¹ 20 C.F.R. § 10.5(x).

When 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 establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either 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

The only decision on appeal in this case is the February 16, 2005 Office decision. Appellant filed a Form CA-2a on February 2, 2005 without indicating a specific date of a recurrence of disability.³ As noted above, a recurrence of disability is a change in an employment-related condition, without an intervening injury, that results in an inability to work. The evidence submitted in this case does not establish a recurrence of disability. In his January 27, 2005 report, Dr. Mallou provided a brief history of a November 15, 1997 injury and an opinion that appellant's current symptomology was consistent with the injury. He did not provide a complete background showing familiarity with appellant's employment duties and work history, nor did he provide a reasoned medical opinion with respect to causal relationship between appellant's condition and the employment injury. In addition, he did not discuss disability for work commencing on a specific date.

The remainder of the medical evidence submitted is also of limited probative value with respect to the issue presented. The reports from Dr. Drazner discuss appellant's treatment without providing a reasoned opinion as to a recurrence of disability causally related to the employment injury. It is appellant's burden of proof to establish her claim, and the Board finds the medical evidence is of diminished probative value and is not sufficient to meet her burden in this case.

CONCLUSION

The Board finds that appellant did not submit probative medical evidence with respect to a recurrence of disability and she did not meet her burden of proof in this case.

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

³ The March 24, 1999 decision from the Office hearing representative made findings with respect to appellant's work stoppage in June 1998; that decision and subsequent denial of modification decisions are not before the Board. The Board's jurisdiction is limited to final decisions issued within one year of the filing of the appeal. 20 C.F.R. § 501.3(d)(2).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 16, 2005 is affirmed.

Issued: July 7, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member