United States Department of Labor
Employees' Compensation Appeals Board

JAMES L. DEMARSE, Appellant	)	
and	)	**Docket No. 05-327**
	)	**Issued: June 7, 2005**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Nashville, TN, Employer	)	

Appearances:
James L. Demarse, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 22, 2004 appellant filed a timely appeal from a July 30, 2004 decision of the Office of Workers' Compensation Programs denying his claim for a recurrence of disability commencing February 24, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has established that he sustained a recurrence of disability commencing February 24, 2003 causally related to an accepted November 2, 2000 low back strain.

FACTUAL HISTORY

The Office accepted that on November 2, 2000 appellant, then a 55-year-old housekeeping aid supervisor, sustained a low back strain while trying to move a chair stuck in

floor wax. Dr. Eric Lee Grogan, an attending general surgeon, diagnosed a back strain and held appellant off work. Appellant returned to full duty on November 21, 2000.

On September 26, 2002 appellant filed a notice alleging that he sustained a recurrence of disability on August 15, 2002 while at home laundering clothes. He stated that he did not seek medical treatment as the condition resolved within two days. Appellant submitted an August 15, 2002 slip prescribing light duty through August 17, 2002.[1]

In an October 22, 2002 letter, the Office advised appellant of the type of additional evidence needed to establish his claim. The Office noted that, if "something off the job caused a condition to recur," he should not file a compensation claim. The Office also noted that, if appellant attributed his claimed condition to a "new incident at work," he should file a traumatic injury claim (Form CA-1). Appellant did not submit additional evidence before December 5, 2002.

By decision dated December 5, 2002, the Office denied appellant's claim for a recurrence of disability commencing August 15, 2002 on the grounds that he submitted insufficient medical evidence to establish a causal relationship between the claimed recurrence of disability and the accepted November 2, 2000 low back strain.

On March 6, 2003 appellant filed a claim alleging that he sustained a recurrence of disability on February 24, 2003. Before reporting for duty, he vacuumed and did laundry at home. At work, appellant "signed [his] employees in and pick[ed] up some things off the floor. [His] back just started hurting" and so he sought medical treatment. Appellant asserted that he sustained low back injuries on November 2, 2000, August 15, 2002 and February 24, 2003, with occasional episodes of his back "going out" for two to three days. Appellant stated that he was restricted to "light activity only" following the November 2, 2000 injury. On the reverse of the form, appellant's supervisor indicated that appellant's duties were not modified following the November 2, 2000 injury as his duties as a supervisor were "already light duty." Appellant was off work February 25 through March 3, 2003, when he returned to full-duty work.

In a February 24, 2003 report, Dr. John Riddick, an attending internist, noted that appellant worked as a "janitor supervisor" and that his "back went out tonight at work." On examination Dr. Riddick found bilaterally positive straight leg raising tests. He diagnosed a history of "bulging dis[c] and low back pain with exacerbation of lower back without known precipitator." Dr. Riddick held appellant off work that day, prescribed medication and recommended a physical therapy referral.

In an October 1, 2003 letter, the Office advised appellant of the type of additional evidence needed to establish his claim, including a report from his attending physician explaining how and why identified work factors would cause the claimed recurrence of disability. The Office noted that, on his claim form, appellant attributed the claimed recurrence

[1] As the signature on this slip is illegible, it cannot be ascertained whether it was signed or reviewed by a physician. The slip does not constitute medical evidence in this case. *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

of disability both to doing laundry at home and to lifting at work. The Office therefore advised appellant that, if he ascribed his condition to a new lifting incident at work, he should file a notice of traumatic injury (Form CA-1).

Appellant responded by an October 30, 2003 letter, stating that, since the accepted November 2, 2000 low back strain, he experienced "intermittent episodes of severe back pain and occasional immobility … when doing routine work" either on duty or "after working hours." He asserted that the accepted injury weakened his back such that it would "go out," requiring rest and medication. Appellant submitted an August 4, 2003 report from Dr. Barbara Snook, an attending Board-certified internist, who noted an "unclear" history of back pain with a recent "exacerbation on the job." She noted that appellant "was washing clothes today when his back started hurting." On examination Dr. Snook observed tenderness of the paraspinous musculature on palpation and diagnosed "[l]umbago." She recommended a truss, lumbar back support, medication and physical therapy. Appellant also submitted records pertaining to the accepted November 2, 2000 injury,[2] an August 15, 2002 emergency room nurse intake note and July 30, 1997 left knee x-ray reports.

By decision dated November 7, 2003, the Office denied appellant's claim for a recurrence of disability commencing February 24, 2003 on the grounds that he submitted insufficient medical evidence to establish a causal relationship between the claimed recurrence of disability and the accepted November 28, 2000 low back strain.

Appellant requested a review of the written record. He submitted February 24, 2003 slips from Dr. Riddick holding him off work February 25 through March 3, 2003 and releasing him to light duty. He also submitted copies of evidence previously of record.

By decision dated and finalized July 30, 2004, the Office hearing representative affirmed the November 7, 2003 decision of the Office, finding that appellant had failed to establish that he sustained a recurrence of disability commencing February 24, 2003. The hearing representative found that appellant submitted insufficient rationalized medical evidence indicating that the November 2, 2000 low back strain "left his back in a weakened condition" or otherwise caused or contributed to the claimed February 24, 2003 incident. Also, the hearing representative noted that a recurrence of disability was defined as a "spontaneous material change" in an accepted condition without an intervening injury or exposure to new factors.[3]

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[2] November 3, 2000 lumbar and pelvic x-rays showed a possible "levorotoscoliosis of the lumbar spine centered at L2-3," with osteophytes and minor to moderate facet hypertrophy from L3 to S1. Dr. William S. Witt, a Board-certified radiologist, noted a history of injury as "injured lower back yesterday, he was assisting an employee with moving an examination table … secured to the floor by wax" and pulled his lower back. In a November 14, 2000 report, Dr. Grogan provided a history of injury and diagnosed a low back strain. He held appellant off work for one week and prescribed medication.

[3] Following issuance of the Office's July 30, 2004 decision, appellant submitted additional evidence. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

LEGAL PRECEDENT

The Office's implementing regulations define a recurrence of disability as "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] When an appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. 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. Moreover, sound medical reasoning must support the physician's conclusion.[5] An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.[6]

ANALYSIS

In this case, the Office accepted that appellant sustained a lumbar sprain resulting from a November 2, 2000 pushing incident. He was released to full duty as of November 21, 2000. In his March 6, 2003 claim for recurrence of disability, appellant alleged that the November 2, 2000 incident caused a total disability for work commencing February 24, 2003, as well as periodic episodes of his back "going out." Appellant has the burden of providing sufficient evidence, including rationalized medical evidence, to establish the causal relationship asserted.[7]

In support of his claim, appellant submitted reports from Drs. Riddick and Snook. In his February 24, 2003 report, Dr. Riddick noted that appellant worked as a "janitor supervisor" and that his "back went out tonight at work." In his August 4, 2003 report, Dr. Snook noted an "unclear" history of back pain with a recent "exacerbation on the job" and an exacerbation that day while laundering. Neither physician explained how and why the November 2, 2000 injury would cause the claimed recurrence of disability commencing February 24, 2003. Thus, the Board finds that appellant did not submit sufficient rationalized medical evidence to meet his burden of proof.[8]

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[4] 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). *See also Philip L. Barnes*, 55 ECAB ___ (Docket No, 02-1441, issued March 31, 2004).

[5] *Ricky S. Storms*, 52 ECAB 349 (2001).

[6] *Alfredo Rodriguez*, 47 ECAB 437 (1996).

[7] *Ricky S. Storms*, *supra* note 5.

[8] *Beverly A. Spencer*, 55 ECAB ___ (Docket No. 03-2033, issued May 3, 2004).

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability on or after February 24, 2003 causally related to his November 2, 2000 employment injury as he submitted insufficient evidence to establish the claimed causal relationship.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 30, 2004 is affirmed.

Issued: June 7, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member