

restrictions, including no lifting, pulling or pushing over five pounds; limited kneeling and squatting; and limited stooping and bending. Appellant submitted additional medical reports from Empire Occupational Medical Clinic, including: a report dated November 20, 2002 bearing an illegible signature, reflecting that appellant suffered from constant back pain, had flexion at 60 degrees and leaned to the left when sitting; a report dated December 5, 2002 bearing an illegible signature reflecting that appellant continued to have significant pain; and a report dated December 19, 2002 bearing an illegible signature reflecting 90 degrees flexion in her back and 50 degrees side bending with pain.

Appellant submitted a report of a magnetic resonance imaging (MRI) scan dated December 19, 2002 signed by Dr. G.S. Kang, a radiologist, who diagnosed moderate degenerative changes at the L5-S1 level and small- to medium-sized broad-based leftward posterior herniation of L5-S1 intervertebral disc with moderate extrinsic pressure on the thecal sac.

On January 21, 2003 appellant consulted with Dr. John C. Steinmann, a Board-certified orthopedic surgeon, for an evaluation of her December 19, 2002 MRI scan. In a report dated January 21, 2003, Dr. Steinmann disagreed with Dr. Kang's reading of the MRI scan, stating that her scan was essentially normal; that there was no evidence of significant disc herniation, and that the narrowing at L5-S1 was congenital and not developmental. He further indicated that appellant should expect her pain to last for many months and instructed her to avoid activities that would aggravate her pain. Dr. Steinmann released appellant to work with no lifting, pushing or pulling over 20 pounds.

In a report dated May 15, 2003, Dr. Jonathan K. Lee, a Board-certified physiatrist, provided a diagnosis of discogenic lower back and opined that appellant's condition was "industrial in nature." Dr. Lee stated that her thecal disc herniation at L5-S1 was most probably congenital.

In a report dated November 11, 2003, Dr. Thai T. Do, a Board-certified internist and appellant's primary treating physician, diagnosed disc herniation of L5-S1 with moderate degenerative changes at the same level and opined that "more likely than not," appellant's work-related injury produced her current level of disability. In a progress report dated December 15, 2003, Dr. Do provided a diagnosis of lumbar disc herniation with aggravation and degenerative change of the lumbar spine and indicated that appellant continued to suffer from and had missed work for several days due to pain; that she had problems sleeping; and that there was no swelling, some tenderness to palpation of the lower lumbar area and good range of motion. In progress notes dated January 5, 2004, Dr. Do related appellant's complaints of constant slight pain that increased with repetitive heavy lifting or prolonged walking.

In a report dated January 21, 2004, Dr. Steven Walsh, Board-certified in the area of family medicine, related that he examined appellant on October 3, 2003, at which time he diagnosed chronic back pain. He indicated that her back pain had been ongoing for one year and that she was totally disabled from October 3 to 4, 2003.

By letter dated February 13, 2004, the Office notified appellant that she was required to complete a Form CA-2a, notice of recurrence, in order to receive medical benefits related to her

November 1, 2002 employment-related injury. The Office further advised appellant that it was her responsibility to provide evidence establishing the relationship between her accepted injury and her current condition.

In response to the Office's request on March 4, 2004, appellant submitted a Form CA-2a, notice of recurrence. In her request, appellant reiterated that her current condition was not a recurrence but rather a continuation of her November 1, 2002 injury. She stated that her condition had not changed and that her lower back pain varied each day. Appellant also submitted numerous progress reports from her physicians at Kaiser Permanente reflecting her ongoing complaints of low back pain due to her diagnosed condition, as well as responses to questions posed by the office regarding her condition. In response to the question as to her reasons for belief that her current condition was a recurrence of her original injury, appellant stated, "I believe my current condition is not a recurrence [but rather is] a continuous injury from my original injury of November 1, 2002." Appellant also indicated that her case had never been closed.

By letter dated May 7, 2004, the Office denied appellant's claim for a recurrence on the grounds that the evidence submitted was insufficient to establish a causal relationship between her current medical condition and the accepted work injury.

Appellant and her representative requested reconsideration by memoranda dated July 20 and October 15, 2004 respectively. In conjunction with her request, appellant provided a multitude of medical documents, including numerous physician's progress notes from Dr. Do dated December 15, 2003, March 23, April 15, May 6 and June 1, 2004 reflecting her complaints of intermittent pain in her low back and a diagnosis of: degenerative disc disease with mild disc herniation at L5-S1; an April 2, 2004 note signed by Dr. Johannes Bernbeck, a Board-certified orthopedic surgeon, which provided a diagnosis of chronic muscle strain in appellant's low back with a nonspecific pattern of low back pain; a report dated March 2, 2004 signed by Dr. Sangarapil Manoharan, Board-certified in the area of emergency medicine, documenting continued pain; a January 3, 2003 report from Dr. Steinmann reflecting a diagnosis of discogenic low back pain without significant radiculopathy; a January 3, 2003 certification of health care provider signed by Dr. Lee describing appellant's condition as disc herniation and degeneration related to her work injury; a June 24, 2003 patient reexamination form signed by Dr. Lee reflecting appellant's condition as chronic, recurrent and resulting from the November 1, 2002 injury; a consent for treatment form and questionnaire dated October 4, 2003; a report dated June 24, 2004 from Dr. Do providing a diagnosis of chronic myofascial strain of the lower back and probable discogenic back pain caused, "more likely than not" by the repetitive bending and heavy lifting at work. Appellant also submitted a statement dated October 18, 2004 alleging that her medical condition was a continuation of her original work-related injury; that she had been on limited duty since her injury; and that her injury had not resolved.

By decision dated November 8, 2004, the Office denied modification of its May 7, 2004 decision on the grounds that appellant had failed to establish that she had sustained a recurrence of disability.

LEGAL PRECEDENT

Title 20 of section 10.5(x) of the Code of Federal Regulations provides in part: “*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 (Emphasis in the original.)

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.²

Evidence of causal relationship must be submitted for adjudication of claims for recurrent medical care if the employee has been released from medical care for the accepted employment-related injury.³

ANALYSIS

In the instant case, the Board finds that the Office improperly analyzed appellant’s request for medical benefits arising from her accepted condition as a claim for a recurrence of disability. 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 Appellant does not allege, nor does the evidence support, that she suffered a recurrence of disability.

Appellant has alleged and her physicians have concurred that the medical condition for which she sought treatment was a continuation of her original work-related injury, which has not resolved. Appellant sustained her initial injury on November 1, 2002. Her claim was accepted for lumbar strain on March 27, 2003. The record reflects that although she returned to modified duty immediately following her work-related injury, appellant received medical treatment for her injury continuously from the date of her injury through the date of the Office’s final decision. Reports from Dr. Lee document visits on January 3, May 15 and June 24, 2003 related to her work injury. Numerous reports and notes from Dr. Do, appellant’s primary treating physician, including those dated November 11 and December 15, 2003 and January 4, March 23, April 15, May 6 and June 1, 2004, establish that appellant suffered from continuous pain resulting from

¹ See *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004).

² See *LaDonna M. Andrews*, 55 ECAB ____ (Docket No. 03-1573, issued January 30, 2004) see also *Joseph Roman*, 55 ECAB ____ (Docket No. 03-1883, issued January 8, 2004); *Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, 41 ECAB 361 (1990).

³ *Federal (FECA) Procedure Manual*, Part 2 -- Claims, *Recurrence of Medical Conditions*, Chapter 2.1500.5 (January 1995).

⁴ See *Phillip L. Barnes*, *supra* note 1.

the November 1, 2002 injury. The evidence of record establishes that appellant was not released from medical treatment for her accepted employment-related injury. None of appellant's doctors described, nor has appellant alleged, any spontaneous change in her medical condition which would indicate a recurrence of disability.

The right to medical benefits for appellant's accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁵ However, in this case, the Office *sua sponte* shifted the burden to appellant. Although this case remained open, on February 13, 2004 the Office refused to authorize medical benefits and advised appellant that, in order to receive entitlement to the benefits, she was required to complete a Form CA-2a, notice of recurrence of disability, and that it was her responsibility to provide evidence establishing the relationship between her accepted injury and her current condition. The Office did not properly notify appellant of its intent to terminate medical benefits, nor does the record contain an opinion from a physician affirmatively stating that appellant had no further residuals of her accepted lumbar strain.

As appellant believes and the evidence supports that her symptoms were not due to a spontaneous change in the nature and extent of her injury-related condition and as the history as given to her physicians supports this belief, the Board finds that appellant's claim should be developed as a termination of medical benefits rather than a recurrence of disability. The Office's May 7 and November 8, 2004 decisions denying appellant's claim on the grounds that she had not established recurrence of disability are not appropriate under the law, facts and circumstances of the case and must be set aside. On remand, the Office should develop appellant's claim as a termination of medical benefits and issue an appropriate decision.

CONCLUSION

The Board finds that the Office should have treated appellant's claim as a termination of medical benefits rather than as a recurrence of disability.

⁵ See *LaDonna M. Andrews, Joseph Roman and Furman G. Peake, supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 8 and May 7, 2004 be set aside and remanded for action consistent with this decision of the Board.

Issued: June 13, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member