

normal limits. Appellant was returned to limited duty on November 25, 2002 and to regular duty as of December 3, 2002. Her claim was accepted by the Office for a lumbar strain.

On December 30, 2002 appellant filed a claim for a recurrence of disability commencing December 27, 2002. She indicated that she was going to bed when her back gave out. She stopped work as of December 28, 2002.

In a January 14, 2003 note, Dr. Goodman requested authorization for a lumbosacral magnetic resonance imaging (MRI) scan.

By letter dated January 30, 2003, the Office advised appellant that additional evidence was required in order to support her claim. She submitted a CA-20 attending physician's report from Dr. Goodman, who advised on January 27, 2003 that appellant experienced a relapse of symptoms on December 28, 2002 and was off work. In a January 27, 2003 disability slip, he noted that appellant was totally disabled for work and would be seen for a follow-up examination on March 3, 2003. On February 3, 2003 Dr. Goodman listed the dates of appellant's treatment, noted her history of lifting a bucket at work, stated there was no history of a recurrence and that the diagnosis was a lumbosacral strain pending MRI scan studies.

On March 6, 2003 appellant requested that she be allowed a change of treating physicians. She subsequently submitted the March 14, 2003 report of Dr. Michael Shapiro, a Board-certified internist. He obtained a history of injury on November 5, 2002 while lifting buckets of mail at work and noted that appellant improved following physical therapy. Appellant developed severe pain on December 27, 2002 and, upon his examination, she complained of constant back pain. He reported findings on physical examination and stated that review of an MRI scan showed mild degenerative changes at L4-5 and L5-S1 with some minimal spinal stenosis.¹ Dr. Shapiro diagnosed lower back strain and recommended anti-inflammatory medication and continuing physical therapy.

In a report dated April 22, 2003, Dr. Laurence E. Mermelstein, a Board-certified orthopedic surgeon, reviewed a history of injury and appellant's treatment which included medication and physical therapy. He listed findings on physical examination, noting minimal tenderness to palpation of the lumbar spine and equal reflexes, normal motor examination of the lower extremities with no evidence of atrophy or focal motor weakness. Dr. Mermelstein stated that appellant was capable of returning to light-duty work and listed his diagnosis as a resolved lumbar strain. The record reflects that she returned to work on April 28, 2003.

By decision dated May 5, 2003, the Office denied the recurrence of disability claim. It found that the medical evidence did not provide a rationalized medical opinion explaining how appellant's back condition had worsened such that she was disabled for work on or after December 27, 2002.

On July 23, 2003 appellant requested reconsideration and submitted additional medical evidence. In a May 23, 2003 report, Dr. Thomas J. Dowling, a Board-certified orthopedic

¹ The record reflects that Dr. Goodman obtained an MRI scan of the lumbar spine on March 9, 2003 which listed L4-5 and L5-S1 small disc protrusions with mild degenerative changes and mild global stenosis at L3-4 and L4-5.

surgeon and associate of Dr. Mermelstein, noted that appellant had returned to light-duty work and that her low back symptoms were decreasing. He listed findings on physical examination and stated that she had a resolving lumbar strain for which she should continue on light duty. On June 30, 2003 Dr. Dowling stated that appellant's symptoms of lumbosacral strain had completely resolved and that she could tolerate a return to full-duty work as of July 1, 2003. On July 8, 2003 Dr. Mermelstein submitted an amended note to his April 22, 2003 report, indicating that there had been a transcription error. He listed appellant's back condition as a resolving lumbar strain, noting that it had not resolved as was listed in his prior report, and that she was continuing with conservative treatment.

In a May 27, 2003 report, Dr. Goodman noted that appellant had been under his care since November 11, 2002 and that her diagnosis had been a lumbosacral strain pending MRI scan studies. He stated that, because MRI scan studies were not obtained, appellant was "unable to return to work although, based upon the clinical findings alone, she has not been precluded to return to work." The report noted that appellant was not to return to work "because of the potential for a significant aggravation of her preexisting condition."

In a September 26, 2003 decision, the Office denied modification of the May 5, 2003 decision.

On November 30, 2003 appellant requested reconsideration and submitted a November 7, 2003 report from Dr. Mermelstein. He reviewed his prior reports and noted that appellant's back condition was resolving and had not completely resolved. Dr. Mermelstein noted that appellant still required conservative treatment in the form of medication, home exercise and physical therapy. Dr. Mermelstein stated that appellant was totally disabled from work as was noted in his March 14, 2003 letter and that she received treatment and was returned to full-duty work on June 30, 2003.

In a June 10, 2004 decision, the Office denied modification of the September 26, 2003 decision.

LEGAL PRECEDENT

An employee who claims a recurrence of disability due to an accepted employment-related condition has the burden of establishing by the weight of the substantial and reliable evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

A recurrence of disability is defined under the Office regulations as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition

² See *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Helen K. Holt*, 50 ECAB 279 (1999).

which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³

ANALYSIS

Appellant sustained injury on November 5, 2002, accepted by the Office for a lumbar strain. She was treated by Dr. Goodman, who noted negative x-rays on examination and made the diagnosis of a soft tissue injury. The diagnostic studies of November 11, 2002 noted mild scoliosis of the upper lumbar spine convex to the right and straightening of the lumbar lordosis with facet joint arthritis bilaterally. On November 19, 2002 Dr. Goodman stated that physical examination revealed normal straight leg raising with a normal gait and limitation of lumbar motion. She was returned to limited-duty work on November 25, 2002 and to regular duty as of December 3, 2002.

On December 30, 2002 appellant filed a claim for a recurrence of disability. She indicated that she experienced back pain while preparing to go to bed on December 27, 2002 and stopped work for the period December 28, 2002 to April 28, 2003, when she returned to light duty.

In support of her claim, appellant submitted several reports from Dr. Goodman. In a CA-20 form report, he noted that she experienced a relapse of symptoms on December 28, 2002 and was off work. In a January 27, 2003 disability slip, he indicated that appellant was totally disabled and would be seen in followup on March 3, 2003. On February 3, 2003 Dr. Goodman listed the dates of his treatment of appellant, stated that there was no recurrence and diagnosed lumbosacral strain pending an MRI scan. These reports of Dr. Goodman are not sufficient to establish that appellant sustained a recurrence of disability on December 27, 2002 due to the November 5, 2002 injury, accepted for lumbosacral strain. These reports do not provide any medical narrative from Dr. Goodman explaining the relationship of appellant's symptoms and disability commencing December 27, 2002 to the November 5, 2002 injury. To be of probative value, a physician's opinion on disability should include findings on physical examination and a rationalized opinion, based on a reasonable degree of medical certainty, explaining the nature of the relationship between the diagnosed condition and the injury accepted by the Office.⁴

In the May 27, 2003 report, Dr. Goodman stated that he held appellant off work pending an MRI scan study which was not obtained. He noted that appellant was "unable to return to work although, based upon the clinical findings alone, she has not been precluded to return to work." This opinion is equivocal and not well rationalized, as the medical evidence reflects that an MRI scan was obtained for Dr. Goodman on March 9, 2003. The MRI scan listed small disc protrusions at L4-5 and L5-S1 with degenerative changes and stenosis at L3-4 and L4-5. Dr. Goodman did not provide a report in which he never addressed the findings on the MRI scan nor did he address appellant's disability commencing December 27, 2002 in terms of distinguishing his treatment of her accepted lumbosacral strain from the preexisting spinal stenosis and degenerative changes found on diagnostic testing. He did not relate the disc

³ See 20 C.F.R. § 10.5(x).

⁴ See *Barry C. Petterson*, 52 ECAB 120 (2000); *Bonnie Goodman*, 50 ECAB 139 (1998).

protrusions noted to the accepted November 5, 2002 lifting injury. Although he stated that appellant was not returned to work because of the potential for a significant aggravation of her preexisting condition, the Board notes that the possibility of a future injury is not a sufficient basis on which to establish appellant's claim of a recurrence of total disability for the period commencing December 27, 2002.⁵ Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁶ The medical evidence from Dr. Goodman is deficient as he did not provide a well-reasoned explanation as to how appellant's accepted lumbosacral strain condition worsened on or after December 27, 2002, resulting in a recurrence of total disability for the period claimed.

Dr. Shapiro treated appellant but did not provide a medical opinion on the relevant issue of whether her disability commencing December 27, 2002 was related to the accepted employment injury. He reviewed diagnostic testing and noted the degenerative changes and spinal stenosis found on the MRI scan. Dr. Shapiro did not address how appellant's accepted condition caused or contributed to her recurrence of total disability nor did he address whether the degenerative changes or spinal stenosis conditions caused her disability.

Dr. Mermelstein and his associate, Dr. Dowling, first treated appellant on or about March 14, 2003, after she stopped work. Although appellant related a history of the November 5, 2002 lifting injury to the physicians, neither physician provided any opinion addressing her disability for work or its relationship to the accepted lumbosacral strain injury. Dr. Mermelstein listed his diagnosis as a resolved lumbar strain on April 28, 2003, a diagnosis which he amended in a July 8, 2003 report when he stated that appellant's condition had not resolved and that she was continuing treatment. This was not explained in terms of Dr. Dowling's June 30, 2003 report, which similarly found a resolved lumbosacral strain and advised that she was capable of returning to full duty nor did Dr. Mermelstein address the MRI scan test or any relationship appellant's spinal stenosis or degenerative changes had with regard to her disability for work. The relevant issue in this case is whether appellant's accepted injury caused or contributed to her disability commencing December 27, 2002. The reports of the various physicians of record do not provide a well-rationalized medical opinion, based on a complete review of the history of injury and diagnostic testing, which explains how her accepted lumbosacral strain condition became worse on December 27, 2002 and caused total disability for work. In assessing medical evidence, the number of physicians supporting one position or another is not controlling. The weight of such evidence is determined by its reliability, probative value and convincing quality the care manifested in the physician's analysis and the medical rationale expressed in support of a stated opinion.⁷ The Board finds that appellant has not submitted sufficient medical evidence to establish that her disability commencing December 27, 2002 was causally related to the November 5, 2002 employment injury.

⁵ See *Virginia Dorsett*, 50 ECAB 478, 482 (1999).

⁶ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ See *Anna M. Delaney*, 53 ECAB 384 (2002).

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2004 and September 26, 2003 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: May 11, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member