

**United States Department of Labor
Employees' Compensation Appeals Board**

ROBERT J. SHIELDS, Appellant

and

**NATIONAL PARK SERVICE, GRAND TETON
NATIONAL PARK, Moose, WY, Employer**

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**Docket No. 04-2277
Issued: May 20, 2005**

Appearances:
Robert J. Shields, 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
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 20, 2004 appellant filed an appeal of a July 12, 2004 decision of the Office of Workers' Compensation Programs which denied his recurrence of disability claim. Pursuant to 20 C.F.R. §§ 510.2(c) and 501.3 (2)(d), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained a recurrence of disability commencing May 23, 2004, causally related to his accepted condition.

FACTUAL HISTORY

On December 11, 2002 appellant, then a 29-year-old law enforcement specialist, filed a traumatic injury claim for lower back and left leg conditions resulting from slipping on ice behind a car. The Office accepted appellant's claim for left thoracic/lumbosacral neuritis or radiculitis. A magnetic resonance imaging (MRI) scan conducted by a radiologist Thomas J. Wilson noted a "multilevel mild dis[c] dehydration most noted at L5-S1 which is also associated with a left paramidline asymmetric bulge and minimal deformity of the left S1 root." Appellant

returned to full duty on March 13, 2003 after being released by his treating physician, Dr. Geoffrey K. Skene, an osteopathic orthopedic physician.

On May 24, 2004 appellant filed a Form CA-2a alleging a recurrence of disability causally related to the December 11, 2002 employment injury which occurred when he twisted his back while dressing at home. He indicated that the pain he felt was in the exact location of the previous pain from the accepted injury. Appellant worked a full day on May 22, 2004 with difficulty due to increasing pain and discomfort. He was admitted to the hospital in the morning of May 23, 2003, where he was admitted for lower left back pain radiating into the buttock slightly and urinary retention. The emergency room physician, Damon Kuehl, a Board-certified physician in emergency medicine, noted a history of a herniated disc in 2002 and kidney stones, and diagnosed acute lumbar strain. An unsigned emergency treatment report, written by Jeffrey Greenbaum, a Board-certified physician in emergency medicine noted a “history of a dis[c] herniation, minor” and admitted appellant to the hospital primarily due to concerns about bladder dystonia secondary to spinal cord compression. An unsigned hospital treatment report from Heidi Jost, M.D., noted that appellant had a “history of a herniated dis[c] in 2002 causing left lower extremity radiculopathy.” She further noted that appellant had “several episodes since that time, usually occurring about once a month, with paresthesias down the inner aspect of the left thigh not requiring hospitalization. He has had improvement with physical therapy. ... Three days prior he was bending over to pick up a sock and the pain increased markedly, now radiating down the right leg intermittently and down the inner aspect of the left thigh.” The diagnosis was “low back pain with bilateral lower extremity radiculopathy and urinary retention.” He was released from the hospital on May 26, 2004. Dr. Skene’s treatment note of May 27, 2004 states that the MRI scan revealed a “minor tear, possibly small herniation L5-S1.”

Appellant provided a May 23, 2004 MRI scan conducted by Gary W. Heath, a Board-certified radiologist with subspecialties in vascular and interventional radiology, which compared appellant’s current condition with the December 2002 examination. He found a “tiny left paracentral focal protrusion/tiny herniation at the L5-S1 level fairly similar to December 2002. No other abnormalities are appreciated.”

By June 3, 2004, Dr. Skene determined that, although there was a small herniated disc at L5-S1, he would be able to return to light duty on June 7, 2004.

By letter of June 3, 2004, the Office advised appellant that the evidence of record was insufficient to establish his claim and requested additional information. Following that request, Dr. Skene provided the Office with a June 15, 2004 report and opined that appellant’s pain was discogenic in origin. He noted that “I feel that his current flare-up is an exacerbation of his previous work-related injury.” Dr. Skene further provided treatment notes for appellant from June 14, 2004 dating back to December 12, 2002. These reports indicated that, since the December 11, 2002 injury, appellant had two back-related injuries. According to the records of Dr. Skene, the first occurred in March 2003 whereby he had an altercation with an “emotionally disturbed” man in the park during which he was kicked in the thigh and received treatment from Dr. Skene for back pain. The second incident occurred in June 2003 whereby he injured his back when he was lifting his young daughter. Dr. Skene noted, “He has prior evidence of a small left-sided [L5-S1] disc herniation which responded well to physical therapy and epidural steroid injections.”

In a decision dated July 12, 2004, the Office denied appellant's claim for recurrence finding that the May 23, 2004 incident was a new injury.

LEGAL PRECEDENT

A claimant seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.² In this case, appellant has the burden of establishing that he sustained a recurrence of a medical condition on May 23, 2004 causally related to his December 2002 employment injury. This burden includes the necessity of furnishing medical evidence from a 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 and supports that conclusion with sound medical rationale.³ Where no such rationale is present, the medical evidence is of diminished probative value.⁴

Further, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁵ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of causal relationship.⁶

ANALYSIS

The Office accepted appellant's December 2002 claim for left thoracic/lumbosacral neuritis or radiculitis. It therefore remains for appellant to establish that his claimed recurrent condition is causally related to that injury.

The record in this case lacks a well-reasoned narrative from a physician relating appellant's claimed recurrent condition to the 2002 accepted condition. Dr. Skene, in the medical records surrounding the original injury, diagnosed an acute left L5-S1 herniation with left L5 radiculopathy due to the accepted injury. By treatment note dated March 13, 2003, Dr. Skene noted an intervening incident of appellant's wrestling an emotionally disturbed man to the ground which caused him to have a 'return of his symptoms.' Following this incident, Dr. Skene released appellant to full duty with no restrictions. There is no evidence in the record to suggest that the altercation incident was claimed to be or was causally related to the original injury.

¹ 5 U.S.C. §§ 8101-8193

² *Ronald A. Eldridge*, 53 ECAB 218, 220 (2001).

³ *Id.*

⁴ *Albert C. Brown*, 52 ECAB 152, 155 (2000).

⁵ *See Ricky S. Storms*, 52 ECAB 349, 352 (2001)

⁶ *Id.*

Subsequent to his return to full-time work, the treatment notes of Dr. Skene note that appellant had another incident with his low back and left buttock and thigh when he lifted his daughter. Although Dr. Skene noted that there had been prior evidence of a small left-sided herniation, he noted that appellant had responded well to physical therapy and steroid injections. There is no evidence in the record to suggest that this incident was claimed to be or was causally related to the original injury.

Following appellant's claim for recurrence, Dr. Skene submitted his June 15, 2004 report suggesting that the May 24, 2004 incident was "an exacerbation of his previous work-related injury." This report lacks a well-reasoned narrative from appellant's physicians relating appellant's claimed recurrent condition to the 2002 accepted employment injury. Although there are treatment reports from Dr. Skene from December 2002 to June 2004, this does not verify that appellant had been under Dr. Skene's care for the accepted injury for the last two years. Rather, the treatment notes verify that the work-related injury was resolved on March 13, 2003 when he was released to full duty with no restrictions. This evidence lacks the bridging medical evidence needed to relate the current symptomatology to the accepted condition. As such this reduces the probative value of Dr. Skene's opinion.

The Board has held that the subsequent progression of an employment-related condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.⁷ However, the radiology reports do not reflect that there has been any worsening of the accepted condition over the past five years. In fact, the reports reflect that there has been little to no change since 2002.

The emergency room and hospital reports simply restate appellant's history but make no finding on causal relationship between the May 23, 2004 incident and the December 2002 injury. There is no other medical evidence in the record addressing the causal relationship of appellant's current condition with that of his December 11, 2002 accepted injury. Accordingly, appellant has failed to meet his burden of proof to substantiate his recurrence claim.

CONCLUSION

The Board affirms the Office's June 12, 2004 decision denying appellant's claim for recurrence as there is insufficient rationalized medical evidence to establish that the May 23, 2004 incident was causally related to the accepted December 11, 2002 employment injury.

⁷ *Raymond A. Nester*, 50 ECAB 173, 175 (1998).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 12, 2004 be affirmed.

Issued: May 20, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member