

In developing the medical evidence, the Office referred appellant to Dr. Martin Barschi, a Board-certified orthopedic surgeon, to resolve a conflict of medical opinion that arose with regard to whether appellant's work restrictions and continuing need for a limited-duty position were causally related to the June 8, 1999 injury. In a report dated November 20, 2002, Dr. Barschi noted the history of injury, appellant's complaints and his findings on examination. Dr. Barschi opined that appellant presented with purely subjective complaints of a soft tissue lumbosacral injury which was sustained on June 8, 1999 with no objective evidence of ongoing orthopedic disability to his lower back. Dr. Barschi recommended a magnetic resonance imaging (MRI) scan of the lumbosacral spine to assess whether appellant was capable of returning to his regular work as a letter carrier without restrictions and whether there were any remaining residuals related to the June 8, 1999 injury. In a January 13, 2002 addendum report, Dr. Barschi stated that appellant's MRI scan of December 30, 2002 revealed multilevel degenerative disc disease with disc bulging from L1 through S1 with no disc herniations, defects in the pars, loss of normal alignment, or mass effect of the disc bulges on the spinal nerve roots. Based on the MRI scan findings and his November 20, 2002 examination, Dr. Barschi opined that appellant's injury-related condition had resolved as there were no objective orthopedic findings. He found that appellant was able to perform full duties as a letter carrier.

By decision dated March 4, 2003, the Office terminated appellant's compensation benefits effective March 7, 2003 on the grounds that the weight of the medical evidence, as represented by Dr. Barschi, established that his injury-related disability had ceased and he was able to perform full-time duties as a letter carrier.¹ Appellant returned to his regular position as a letter carrier on or about March 3, 2003.

On September 10, 2003 appellant filed a notice of recurrence of disability claiming that his disability on September 6, 2003 was causally related to the June 8, 1999 injury as he experienced the same symptoms. Appellant stopped work on September 9, 2003. He submitted a September 9, 2003 note from Christopher Malynowski, a physician's assistant, and September 9, 2003 medical notes from Dr. Olivera Pekovic, Board-certified in physical medicine and rehabilitation, who diagnosed lumbar spine derangement and radiculopathy with right foot drop.

In an October 16, 2003 letter, the Office advised appellant that additional factual and medical evidence were required. Appellant was provided 30 days in which to submit the requested evidence. Appellant resubmitted the September 9, 2003 notes from Mr. Malynowski and Dr. Pekovic.

By decision dated October 28, 2003, the Office denied appellant's claim for recurrence of disability on the grounds that he did not submit sufficient medical evidence to establish that his disability on or after September 6, 2003 was causally related to the accepted employment injury of June 8, 1999.

In a September 23, 2004 letter, appellant requested reconsideration. In an October 26, 2003 letter, appellant set forth his medical symptoms on September 6, 2003. He claimed that his condition worsened on September 6, 2003 after he performed his duties. Appellant additionally

¹ Appellant did not appeal or otherwise pursue any of his review options following issuance of this decision.

reported that, since the original injury, he had stiffness in his back and would sometimes stumble while delivering the mail because he did not have control of his foot. In a November 5, 2003 medical report, Dr. Behzad Maghsoudlou, a Board-certified neurologist, noted that appellant had chronic lower back pain for the last three years in 1998 to 2001 and, on September 6, 2003, a recent onset of right foot drop and numbness in the right distal leg. An impression of right L5 radiculopathy with right foot drop was provided with a recommendation for further testing to determine the amount of radiculopathy. In a December 3, 2003 report, Dr. Maghsoudlou advised that the electrodiagnostic study revealed evidence of right-sided L5 radicular dysfunction based on denervation of the paraspinal muscles and the right tibialis anterior.

In an October 27, 2004 letter, the Office referred appellant back to Dr. Barschi for a reevaluation. By letter dated October 27, 2004, the Office supplied Dr. Barschi with a list of questions and statement of accepted facts.

In a November 29, 2004 report, Dr. Barschi noted that appellant returned to light duty five to six months after September 6, 2003 and was currently working four to six hours a day as that was all that was available. Dr. Barschi reviewed the medical record and set forth appellant's examination findings, noting that he walked with a mild drop foot gait, was unable to stand on the heel of his right foot and had decreased sensation along the lateral aspect of his right leg and lateral aspect of his right foot. Straight leg raising was negative bilaterally without any low back pain or radicular pain. Dr. Barschi found that there were no other positive or relevant orthopedic findings and stated that the remaining portion of his orthopedic examination was unchanged from his previous report. He confirmed that appellant developed a right foot drop around September 6, 2003, but advised that he needed to review the MRI scan films of the lumbosacral spine taken on November 11, 2003 to determine whether appellant's present right foot drop was causally related to his work. Dr. Barschi opined that, while appellant was not capable of performing his normal letter carrier duties, appellant could perform light duty without long walking, heavy carrying or heavy lifting over 20 pounds or frequent bending.

In a letter dated December 6, 2004, the Office advised appellant that his attorney was contacted to assist him in obtaining the MRI scan films for review by Dr. Barschi. Appellant was accorded 15 days to provide the MRI scan films and informed of the provisions under section 8123 of the Act for obstruction of an examination, noting that the effect of not providing the MRI scan films would result in a denial of his reconsideration request. The Office did not receive the MRI scan films.

By decision dated December 23, 2004, the Office denied appellant's reconsideration request, finding that he obstructed a medical examination ordered under section 8123(d). In a January 4, 2005 letter to appellant, the Office noted that it received the x-ray films and that a decision on the merits would be issued upon receipt of Dr. Barschi's report.

In a January 13, 2005 addendum report, Dr. Barschi advised that the November 12, 2003 MRI scan films revealed an L5-S1 disc herniation which was central and left sided. The disc herniation was not large and there was not much mass effect on the left S1 nerve root. Based on his review of the MRI scan films and his reevaluation of appellant on November 10, 2004, Dr. Barschi opined that appellant's right foot drop was not causally related to his back injury or

his federal employment as the relatively small disc herniation was left sided and there were no findings of compression of any nerve roots on the right side.

By decision dated February 7, 2005, the Office denied modification of its October 28, 2003 decision, finding that appellant did not submit sufficient medical evidence to establish a causal relationship between his claimed recurrence of disability and his employment 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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.² A claimant has the burden of establishing that he sustained a recurrence of a medical condition causally related to his accepted employment injury.³

An employee who claims a recurrence of disability due to an accepted employment-related injury, 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.⁴ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁵ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

ANALYSIS

The medical evidence of record fails to establish that appellant's disability commencing on or about September 6, 2003 is related to his accepted 1999 injury. The record lacks a well-

² 20 C.F.R. § 10.5(x).

³ Section 10.5(y) of the Office's regulations defines recurrence of a medical condition as a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment. 20 C.F.R. § 10.5(y). As previously noted, appellant returned to regular duties as a letter carrier on or about March 3, 2003. Moreover, his treatment for the lumbar derangement was not continuous but appeared to stop after Dr. Barschi's November 20, 2002 examination.

⁴ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁵ *See Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000).

reasoned narrative from appellant's physicians relating his condition to his accepted employment injury.

Although Dr. Pekovic diagnosed lumbar spine derangement and radiculopathy with right foot drop on September 9, 2003, his report fails to address the causal relationship between appellant's medical condition on September 6, 2003 and the accepted injury of June 8, 1999. Similarly, Dr. Maghsoudlou's report failed to address the causal relationship between appellant's right L5 radiculopathy and right foot drop and the employment injury sustained on June 8, 1999. Mr. Malynowski is a physician's assistant and not a physician. Therefore, his September 9, 2003 notes are not considered probative medical evidence.⁷

The Office referred appellant to Dr. Barschi for an evaluation of his current medical condition. Dr. Barschi examined appellant on November 29, 2004 and reviewed the recent November 12, 2003 MRI scan films. He opined that appellant's right foot drop was not causally related to his previous back injury based on the fact that the disc herniation was left sided and there were no findings of compression on the nerve roots on the right side. Although Dr. Barschi opined that appellant could perform light duty with restrictions, he attributed appellant's disabling condition to the right foot drop. The Office has not accepted that appellant's conditions of right foot drop or the herniated disc at L5-S1 developed, or were caused as a result of his June 8, 1999 work injury and there is insufficient medical evidence to support such a conclusion.⁸ Dr. Barschi did not attribute appellant's work stoppage of September 6, 2003 to any employment factors arising from the accepted injury. Accordingly, Dr. Barschi's report is not sufficient to establish that appellant's disability on or after that date is causally related to his June 8, 1999 work injury.

The medical evidence of record fails to establish a causal relationship between the September 6, 2003 employment incident and appellant's diagnosed back condition. Appellant failed to establish his claim for a recurrence of his medical condition.

CONCLUSION

The Board finds that appellant has not met his burden to establish that he was entitled to compensation for a recurrence of disability as of September 6, 2003 causally related to his accepted June 8, 1999 employment injury. Appellant did not submit the requisite medical evidence to establish his claim.

⁷ See 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

⁸ For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated February 7, 2005 is affirmed.

Issued: November 9, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board