

found that the September 11, 2003 chart note from Dr. Michael R. Helms, a Board-certified family practitioner, was relevant to the issue of whether appellant's claimed recurrent disability, beginning on or about November 1, 2001 was causally related to the accepted employment injury and constituted new evidence not previously considered by the Office. Accordingly, the Board remanded the case to the Office to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a). The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.

Although the history of the case can be found in the Board's prior appeal, relevant facts and medical evidence regarding the current appeal will be summarized here. Appellant, then a 44-year-old distribution clerk, filed a claim on February 9, 2000 alleging that he hurt his back and legs while engaging in repetitive bending and lifting of magazines out of hampers. The Office accepted the claim for a lumbar strain with radicular symptoms. Appellant returned to work with restrictions and eventually stopped work on November 1, 2001.

On June 16, 2002 appellant filed a claim for a recurrence of disability commencing November 1, 2001 alleging that the worsening of his back condition included a lumbar disc herniation at L4-5 and protrusion to the S1 nerve root. Appellant returned to work on June 16, 2002. In support of his claim, appellant submitted return to work slips from Northwest Family Medicine dated November 8, 2001, April, 22, May 9 and June 12, 2002; a May 24, 2001 electromyography (EMG) scan, which revealed mild diffuse left lower extremity neuropathy and evidence of chronic, moderately severe left L4 and L5 radiculopathy; and an August 6, 2001 magnetic resonance imaging (MRI) scan, which revealed congenital canal stenosis, low lumbosacral degenerative changes which included a small central disc protrusion at the L5-S1 level transverting the S1 nerve roots. In an August 6, 2002 medical report, Dr. Steve DeLee, an osteopath, diagnosed chronic back pain with radiculopathy and degenerative disc disease based on a positive EMG of appellant's lower extremities and a positive MRI scan for disc disease. He opined that appellant was able to engage in the mild work which he had been doing with restrictions and limited physical work.

By decision dated September 26, 2002, the Office denied the claimed recurrence commencing November 1, 2001 as the evidence of record was insufficient to support a worsening of appellant's accepted work-related back condition.

In an October 25, 2002 letter, appellant requested an oral hearing of the Office's September 26, 2002 decision, which was held March 27, 2003. Appellant submitted a March 24, 2000 MRI scan report, which revealed a broad-based disc herniation at L4-5, work excuse slips for time off work during 2000 because of low back pain and physical therapy reports for his chronic low back pain. Numerous medical reports were also submitted. In a March 20, 2000 report, Dr. Todd A. Graham, a Board-certified physiatrist, noted that he treated appellant in 1998 for back pain and a back injury. He noted that appellant presented with back and right lower extremity. Dr. Graham noted restrictions and referred appellant for an MRI scan of the lumbar spine. In an April 10, 2000 report, Dr. Graham noted that a March 24, 2000 MRI scan revealed a broad disc herniation at L4-5, some lateral recess stenosis and moderate to severe central stenosis. In a separate report of April 10, 2000, Dr. Graham diagnosed a lumbar disc herniation, which he opined was work related by placing a check mark in the appropriate box on a form report.

Appellant also submitted a March 29, 2000 report, from Dr. John M. Hawrot, a Board-certified family practitioner, diagnosed low back pain, most likely disc bulge in the lumbar region as correlated with the MRI scan. No opinion was rendered on the cause of appellant's disc bulge. In May 15 and August 3, 2000 reports, Dr. DeLee noted appellant's status and current complaints of back symptoms. In a November 2, 2001 report, Dr. Helms noted that a March 2000 MRI scan showed a right sided disc herniation. He opined that appellant's back pain had components of both muscular and discogenic pain. No opinion was rendered with regard to causal relationship. In a December 18, 2001 report, Dr. Janice E. Morales, a family practitioner, noted a history of a herniated disc. In an April 22, 2002 report, Dr. Morales indicated that appellant had a herniated disc at L5 since May 2001 but did not want surgery. She noted that appellant "continues to work at the post office lifting 50 + pound bundles and he continues to aggravate and reinjure his leg."

In a September 30, 2002 report, Dr. DeLee noted that it was impossible to state whether appellant's injury sustained at work actually caused his disc herniation. Dr. DeLee stated that it was "possible and highly probable" that appellant's continued physical work activity outside his restrictions exacerbated his medical condition and chronic back pain.

In a March 10, 2003 report, Dr. Graham noted that he had not seen appellant since April 2000 and that appellant did not wish to pursue any aggressive treatment. Dr. Graham provided examination findings and opined that the broad based disc findings on MRI scan were attributable to some of the tasks that appellant had to do at work and appellant's exacerbation of back pain was attributable to job duties.

In a March 28, 2003 report, Dr. DeLee advised that appellant had chronic back pain with disc herniation and radiculopathy and opined that he was able to work at his current level, although he may intermittently have exacerbations of his back pain due to the nature of his work and illness. He opined that it was impossible to state whether appellant's work injury actually caused appellant's herniated disc, but stated that it was possible that continued physical work activity may exacerbate his symptoms from time to time. In an April 14, 2003 report, Dr. DeLee diagnosed an acute exacerbation of chronic low back pain. No opinion was rendered on the causation of such exacerbation.

In a June 20, 2003 decision, an Office hearing representative affirmed the Office's September 26, 2002 denial of appellant's recurrence claim. The Office hearing representative noted that appellant had originally hurt his back in 1991 and has filed several work-related back injuries since then.

On June 30, 2004 the Office received appellant's request for reconsideration of the Office's June 20, 2003 decision. Appellant submitted a September 11, 2003 chart note from Dr. Helms, which indicated that appellant still had to take occasional time off work due to his back pain which recurs. Dr. Helms opined that appellant's ongoing back pain was related to his injury in 2000. He noted that appellant had chronic problems documented by MRI scan findings and that he certainly felt there was a link. He further stated that appellant would continue to be treated in a conservative manner.

In a July 13, 2004 decision, the Office denied appellant's request for review without reviewing the merits of the claim.

Following the Board's decision in the prior appeal, noted above, appellant did not submit any additional evidence.

By decision dated June 1, 2005, the Office denied modification of its previous decisions on the basis that appellant failed to establish a causal relationship between his recurrence of disability claim beginning November 1, 2001 and his accepted 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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.² If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken and an appropriate new claim should be filed.³

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. In this case, appellant has the burden of establishing that he sustained a recurrence of a medical condition on or after November 1, 2001 causally related to his February 9, 2000 employment injury.⁴ As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁵ In order to establish that his claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between his present condition and the accepted injury must support the physician's conclusion of a causal relationship.⁶ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁷

² 20 C.F.R. § 10.5(x).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB ____ (Docket No. 03-205, issued June 19, 2003).

⁴ Recurrence of medical condition means 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) (2002).

⁵ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁶ *See Ricky S. Storms*, 52 ECAB 349 (2001).

⁷ *Id.*

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.⁸

ANALYSIS

The Office accepted that appellant sustained a lumbar strain with radicular symptoms as a result of his February 9, 2000 employment injury. Appellant filed a recurrence claim for the period November 1, 2001 to June 16, 2002. In the instant case, appellant has not provided sufficient medical reports, based on objective findings, which establish that there has been a change in the nature and extent of his condition such that he can no longer perform his light-duty job and also has provided no evidence to establish that there has been a change in the nature and extent of his light-duty job requirements commencing November 1, 2001.

Initially, the Board notes that there is evidence, as reflected in Dr. DeLee's reports of May 15 and August 9, 2000, of a potentially "new" injury following the February 9, 2000 employment injury. Dr. DeLee noted that appellant experienced a work stoppage from April 11 to 19 and May 25, 2000 due to back pain. He stated that he did not examine appellant during these stoppages, but indicated that the April stoppage came after appellant traveled for a family reunion. Dr. DeLee provided no information regarding the May 25, 2000 work stoppage. In other reports, dated September 30, 2002 and March 28, 2003, Dr. DeLee opined that it was impossible to state whether appellant's work injury caused the disc herniation. He did opine, however, that it was "possible" that appellant's continued physical work activity, either within or outside his restrictions, would exacerbate his symptoms. Dr. DeLee couched his opinion in speculative terms and offered no opinion to suggest that appellant's condition had changed or that his light-duty requirements had changed.⁹ Thus, his opinion is of diminished probative value to support the claim of a recurrence of total disability.

Dr. Graham also submitted several reports regarding appellant's condition. In an April 10, 2000 report, he opined with a check mark in the appropriate box that appellant's disc herniation was causally related to his work. The condition of disc herniation, however, has not been accepted by the Office. As previously noted, appellant bears the burden to establish causal relation for conditions not accepted by the Office as being employment related.¹⁰ Furthermore, the Board has held that a physician's form report which merely checks the box marked "yes" to the inquiry as to whether the condition for which treatment is rendered is causally related to the history of injury as given, is of diminished probative value as it constitutes a conclusion without the benefit of any medical rationale.¹¹ Accordingly, Dr. Graham's opinion on causal relationship is of diminished probative value and is insufficient to establish appellant's burden of proof. In his March 10, 2003 report, Dr. Graham opined that appellant's exacerbation of back pain was

⁸ *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁹ See *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

¹⁰ *Id.*

¹¹ *Barbara J. Williams*, 40 ECAB 649 (1989).

attributable to his job. However, Dr. Graham did not specifically relate this to the work injury of February 9, 2000 or provide medical reasoning for his opinion on causal relationship.¹² He did not attempt to explain how an accepted lumbar strain with radicular symptoms would cause or aggravate any of the other diagnosed conditions. Although Dr. Graham also opined that the broad based disc findings were attributable to some of the tasks that appellant had to do at work, the physician failed to provide any bridging evidence which would relate appellant's diagnosed herniated disc condition to the accepted lumbar strain or explain how appellant's condition was exacerbated by employment factors to result in these conditions. As previously noted, the Office has not accepted that appellant's herniated discs developed or were caused as a result of his February 9, 2000 work injury and there is no medical rationalized evidence to support such a conclusion.¹³

While Dr. Helms unequivocally opined in his September 11, 2003 chart note that appellant's ongoing back pain was causally related to his accepted work injury, he did not provide any medical rationale to support his conclusion. Dr. Helms noted that appellant's chronic problems referenced the MRI scan findings. However, in his earlier report of November 2, 2001, he failed to offer an opinion as to the etiology of the disc herniations he noted were present on the March 2000 MRI scan. Moreover, as the August 6, 2001 MRI scan noted evidence of degenerative changes, Dr. Helms needed to explain how the November 1, 2001 work injury would have caused, precipitated, accelerated or aggravated a disc herniation. Although Dr. Helms stated in his November 2, 2001 report, that appellant's back pain had components of both muscular and discogenic pain, there is no indication that Dr. Helms had any knowledge or awareness of appellant's work duties which caused the injuries or appellant's activities, both work and nonwork related, after his work injury. Furthermore, as previously noted, there exists a possibility of new injuries between the February 9, 2000 work injury and appellant's stoppage of November 1, 2001 and the Office has not accepted that appellant's herniated discs are work related. As Dr. Helms did not provide any medical rationales for his conclusions, his opinion on causal relationship is of little probative value.¹⁴

Other medical reports submitted by appellant did not specifically address causal relationship between his accepted condition and his claimed recurrence of disability or conditions.

Appellant also did not show that his light-duty work requirements changed on or after November 1, 2001. Although both Dr. Morales and Dr. DeLee recorded that appellant had engaged in work which exceeded his restrictions during the claimed recurrence period, appellant has not alleged that his light-duty work requirements changed and other factual evidence does not support that the light duty was changed or taken away from appellant.

¹² *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹³ *Alice J. Tysinger*, *supra* note 8.

¹⁴ *Jimmie H. Duckett*, *supra* note 12.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability beginning November 1, 2001 causally related to his accepted employment-related lumbar strain with radicular symptoms that occurred February 9, 2000.

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2005 decision of the Office of Worker' Compensation Programs is affirmed.

Issued: November 17, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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