



In a May 8, 2003 report, Dr. David Kutob stated that appellant was discharged from treatment for his back injury and could return to his regular work without restrictions.

In an August 24, 2004 report, Dr. David A. Krant, an attending Board-certified orthopedic surgeon, stated that on August 20, 2004 appellant experienced severe back pain. He noted that appellant had a work injury in April 2003 when he was struck in the back by heavy bags and was last treated by a physician in May 2003. Dr. Krant stated that appellant had a chiropractic adjustment on August 20, 2004 but did not recall any specific problem at that time. An August 26, 2004 magnetic resonance imaging (MRI) report prepared for Dr. Krant indicated that appellant had degenerative disc changes in his lumbar spine.

In clinical notes dated August 31 to September 28, 2004, Dr. Krant indicated that appellant had back pain radiating into his legs and was totally disabled. In notes dated October 12, 2004, he indicated that appellant could perform work which did not require lifting more than 10 pounds. On November 2, 2004 Dr. Krant stated that appellant's back pain had worsened after a recent long car ride but he could perform light work with no lifting over 10 pounds.

On November 8, 2004 appellant filed a claim for a recurrence of disability on August 22, 2004 causally related to his April 20, 2003 employment injury. He indicated that Dr. Krant told him that ruptured or slipped discs tend to break down over time when exposed to the pressure and strains of lifting, the continued lifting of luggage broke down his lumbar discs and the April 20, 2003 lumbar contusion was most likely the cause of his pain.<sup>1</sup> In a statement dated January 13, 2005, appellant stated that he began receiving chiropractic treatment in late spring 2004 for lower back discomfort. On August 21, 2004 while he was at home, he experienced a "sudden bout" of severe pain in his lower back, lower left leg and left testicle and was referred to Dr. Krant on August 24, 2004 after receiving pain medication from another physician on August 23, 2004.

In a report dated November 30, 2004, Dr. Krant stated:

"In my opinion, [appellant's] present status is related to the work injury that occurred in April of 2003. He sustained a back injury at that time which improved somewhat so that he was able to return to work. However, he continued to have intermittent chiropractic treatment related to the injury. He has subsequently developed increasing back pain, which, again in my opinion, is related to his work activity and injury in April of 2003.

"At this time, he is unable to lift more than ten pounds and is being treated for lumbar disc disease. He is unable to do his regular work."

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<sup>1</sup> The statements appellant indicated that Dr. Krant made to him regarding his disc condition are not included in Dr. Krant's reports.

By decision dated April 18, 2005, the Office denied appellant's recurrence claim on the grounds that the medical evidence did not establish that he sustained a recurrence of disability on August 22, 2004 causally related to his April 20, 2003 employment-related lumbosacral strain.<sup>2</sup>

### **LEGAL PRECEDENT**

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>3</sup> 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 disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>4</sup>

*“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.”<sup>5</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>6</sup>

### **ANALYSIS**

Appellant sustained a lumbosacral strain on April 20, 2003. His attending physician discharged him from medical treatment and opined that he could return to work without restrictions. Appellant filed a claim for a recurrence of disability on August 22, 2004 which was denied by the Office.

In an August 24, 2004 report, Dr. Krant stated that on August 20, 2004 appellant had experienced severe back pain and had undergone a chiropractic adjustment on that date but did not recall any specific back problem. However, he did not indicate that appellant's condition was causally related to his April 20, 2003 employment injury. In notes dated August 31 to September 28, 2004, Dr. Krant indicated that appellant had back pain radiating into his legs and was totally disabled but, again, did not opine as to the cause of the condition. In notes dated

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<sup>2</sup> Appellant submitted additional evidence subsequent to the Office decision of April 18, 2005. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

<sup>3</sup> *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

<sup>4</sup> *Lourdes Davila*, 45 ECAB 139 (1993).

<sup>5</sup> 20 C.F.R. § 10.5(x).

<sup>6</sup> *Walter D. Morehead*, 31 ECAB 188 (1979).

October 12 and November 2, 2004, Dr. Krant indicated that appellant could perform work which did not require lifting more than 10 pounds but did not provide an explanation as to the cause of his partial disability, except to note that his condition had worsened after a recent long car ride. In a November 30, 2004 report, Dr. Krant stated his opinion that appellant's lumbar disc disease was causally related to his April, 20, 2003 work-related lumbosacral strain. However, lumbar disc disease has not been accepted by the Office as a work-related condition and Dr. Krant did not provide sufficient explanation as to how the lumbar disc disease was related to the April 20, 2003 lumbosacral strain. Such explanation is particularly important in light of the fact that in May 2003 appellant was discharged from medical care and returned to work without restrictions. It is appellant's burden to establish a causal relationship between the lumbar disc disease and the accepted employment injury. As Dr. Krant failed to provide a rationalized medical opinion explaining how appellant's lumbar disc disease, diagnosed more than one year following his return to full duty after the April 20, 2003 back strain, was related to the employment injury, appellant has not met his burden of proof. The Board finds that appellant has not submitted the necessary rationalized medical evidence to substantiate that his lumbar disc disease was causally related to the April 20, 2003 employment injury.

### **CONCLUSION**

The Board finds that appellant failed to establish that he sustained a recurrence of disability on August 22, 2004 causally related to his April 20, 2003 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 18, 2005 is affirmed.

Issued: November 16, 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