

compression. On June 1, 2002 appellant underwent a cord decompression surgical procedure which was authorized by the Office.

In late 2002, appellant returned to limited-duty work for the employing establishment per the recommendations of Dr. David P. Suchard, an attending physician Board-certified in occupational medicine, and Dr. Richard Martin, an attending Board-certified orthopedic surgeon. The position restricted appellant from lifting more than 10 pounds, standing more than 2 hours per shift, and engaging in bending, squatting and kneeling, but required him to frequently grasp, perform repetitive hands motions and reach above his shoulders.

Appellant stopped work for periods between April 10 and October 11, 2003 and claimed that this work stoppage was due to his accepted employment injury. In several statements, appellant argued that his limited-duty work actually required him to perform duties which were outside the work restrictions recommended by his physicians and contained in the official job description.¹ For example, he claimed that he was required to stand for 7½ hours per day and push mail carts weighing up to 500 pounds.²

Appellant submitted a form report dated April 10, 2003 in which Dr. Martin diagnosed cervical myelopathy and adjustment disorder and indicated that he should remain off work on April 10 and 11, 2003. In a form report dated July 1, 2003, Dr. Martin indicated that appellant should remain off work from June 28 to July 1, 2003 and, in a form August 7, 2003, he stated that appellant should remain off work on August 6, 2003. In several reports dated in September and October 2003, Dr. Martin indicated that appellant could only stand or walk for 10 minutes per hour. In form reports dated September 4 and October 28, 2003, Dr. Martin stated that appellant was totally disabled from August 6 to September 9, September 13 to 17 and September 24 to October 11, 2003 due to his cervical myelopathy.³

The Office referred appellant to Dr. Michael M. Bronshvag, a Board-certified neurosurgeon, for evaluation of his medical condition and ability to work. In reports dated June 4 and July 14, 2003, Dr. Bronshvag stated that the magnetic resonance imaging (MRI) scan testing from June 2003 did not show any spinal cord damage.⁴ He indicated that appellant exhibited limited neck motion and some extremity weakness on examination and noted that electromyogram (EMG) testing he obtained was normal. Dr. Bronshvag stated that appellant had

¹ The record contains a November 14, 2003 settlement agreement issued in connection with an Equal Employment Opportunity (EEO) complaint which addresses appellant's request for accommodation, but it contains no finding that he was required to work beyond his restrictions.

² In September 2003 appellant filed a claim alleging that he sustained an adjustment disorder due to his accepted physical employment injury. This claim was developed under a separate file (claim number 132088221) and was denied by the Office in a December 3, 2003 decision. Appellant's emotional condition claim is not the subject of the present appeal.

³ In reports dated in August and September 2003, Dr. Martin noted that appellant complained that his work duties were beyond his restrictions.

⁴ The record contains the results of June 30, 2003 MRI scan testing which revealed degenerative and postoperative changes at C4 and C6 and some encroachment upon the right foramina at C5-6 secondary to hypertrophic osteophytes.

cervical degenerative joint and disc disease, status post surgery, with some residual headaches and radicular symptoms in the extremities, and indicated that these conditions were employment related. He noted that appellant could continue to perform his usual limited-duty work for 8 hours per day, including lifting up to 10 pounds and standing up to 2 hours per shift.⁵

By decision dated February 9, 2004, the Office denied appellant's claim on the grounds that he did not meet his burden of proof to establish that he sustained a recurrence of total disability for periods between April 10 and October 11, 2003 due to his accepted employment injury.

Appellant continued to argue that he sustained a recurrence of total disability for periods between April 10 and October 11, 2003 because his accepted employment injury had worsened and he was required to work beyond his restrictions. He submitted numerous reports, dated between January 2004 and February 2005, in which Dr. Martin and Dr. Suchard discussed his cervical condition. None of the reports addressed appellant's ability to work between April and October 11, 2003.

By decision dated May 4, 2005, the Office affirmed its February 9, 2004 decision.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.⁶

ANALYSIS

The Office accepted that appellant sustained an employment-related C4-5 disc herniation with cord compression. On September 17, 2002 he returned to limited-duty work for the employing establishment. Appellant stopped work for periods between April 10 and October 11, 2003 and claimed that this work stoppage was due to his accepted employment injury.

Appellant did not submit sufficient medical evidence to show that he sustained a recurrence of total disability for periods between April 10 and October 11, 2003 due to his accepted employment injury.

Appellant submitted several form reports in which Dr. Martin, an attending Board-certified orthopedic surgeon, diagnosed cervical myelopathy and indicated that he had total

⁵ He also noted on a form report that appellant could not engage in repetitive elbow or wrist motion and that he could not reach above the shoulders for more than two hours per shift.

⁶ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

disability for periods between April 10 and October 11, 2003. For example, in form reports dated April 10, July 1 and August 7, 2003, Dr. Martin stated that appellant should remain off work on April 10 and 11, June 28 to July 1, and August 6, 2003. These reports, however, are of limited probative value on the relevant issue of the present case in that Dr. Martin did not provide adequate medical rationale in support of his conclusion on the extent and cause of appellant's disability.⁷ Dr. Martin's reports are brief and lacking in any notable findings on examination or diagnostic testing. They do not contain rationale explaining how appellant's employment-related condition could have worsened to the point that he was unable to perform the limited duties of his job such that he was totally disabled for the claimed periods.

In several reports dated in September and October 2003, Dr. Martin indicated that appellant could only stand or walk for 10 minutes per hour, but he provided no reasoning for this prescription. In form reports dated September 4 and October 28, 2003, Dr. Martin stated that appellant was totally disabled from August 6 to September 9, September 13 to 17 and September 24 to October 11, 2003 due to his cervical myelopathy. Dr. Martin provided no medical rationale in support of these opinions and these reports are similarly brief and lacking in any notable findings on examination or diagnostic testing.

In reports dated June 4 and July 14, 2003, Dr. Bronshvag, a Board-certified neurosurgeon and Office referral physician, stated that appellant had cervical degenerative joint and disc disease, status post surgery, with some residual headaches and radicular symptoms in the extremities, and indicated that these conditions were employment related. However, Dr. Bronshvag noted that appellant could continue to perform his usual limited-duty work for 8 hours per day, including lifting up to 10 pounds and standing up to 2 hours per shift.⁸

Appellant further alleged that his job required him to perform duties which were beyond his work restrictions, including standing for 7½ hours and pushing mail carts weighing up to 500 pounds. However, appellant did not submit sufficient evidence to support these claims. The record contains a November 14, 2003 settlement agreement issued in connection with an EEO complaint which addresses appellant's request for accommodation, but it contains no finding that he was required to work beyond his restrictions. Appellant has not shown that there was a change in the nature and extent of the light-duty job requirements.

For these reasons, appellant has not shown that he sustained an employment-related recurrence of total disability for periods between April 10 and October 11, 2003.⁹

⁷ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980).

⁸ Dr. Bronshvag also noted on a form report that appellant could not engage in repetitive elbow or wrist motion and that he could not reach above the shoulders for more than two hours per shift. However, it is unclear whether he felt these restrictions were required due to a worsening of appellant's employment-related condition.

⁹ Appellant submitted additional evidence after the Office's May 4, 2005 decision, but the Board cannot consider such evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability for periods between April 10 and October 11, 2003 due to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 4, 2005 decision is affirmed.

Issued: November 21, 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