

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

K.V., Appellant)	
)	
and)	Docket No. 06-1090
)	Issued: August 29, 2006
HOMELAND SECURITY, TRANSPORTATION)	
SECURITY ADMINISTRATION, O'HARE)	
INTERNATIONAL AIRPORT, Chicago, IL,)	
Employer)	
)	

Appearances:
K.V., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 4, 2006 appellant filed a timely appeal of the March 15, 2006 decision of the Office of Workers' Compensation Programs which denied modification of the denial of her recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on and after November 30, 2005 causally related to the accepted employment injury of December 27, 2004.

FACTUAL HISTORY

On December 27, 2004 appellant, then a 42-year-old baggage screener, filed a traumatic injury claim alleging that she felt pain in her back after lifting bags that day. The Office

accepted the claim for a low back strain and paid appropriate compensation. Appellant returned to her regular duties on April 29, 2005.

On December 6, 2005 appellant claimed a recurrence of disability of her condition commencing November 30, 2005.¹ She also claimed wage-loss compensation on and after December 2, 2005.

In a letter dated December 19, 2005, the Office advised appellant of the requirements of a recurrence claim, including the necessity of providing a rationalized medical report from a treating physician which explained how her employment-related condition worsened such that she could no longer perform her work duties. Appellant was provided 30 days to submit the requested factual and medical information.

The Office received a November 30, 2005 medical report from the Northwestern Memorial Hospital Emergency Department and a January 4, 2006 letter from Dr. Theri Griego Raby, a Board-certified internist, who advised that appellant had sustained a work-related back injury over one year prior and had reinjured her back on November 30, 2005 and not returned to work. Dr. Raby recommended that appellant see Dr. Michael Haak, an orthopedic surgeon, for further evaluation of her chronic lower back pain.

By decision dated February 9, 2006, the Office denied appellant's recurrence claim.

In a letter dated February 14, 2006, appellant requested reconsideration. She submitted an undated report from Dr. Raby, who reiterated that appellant sustained a work-related low back injury over a year prior on December 30, 2004 and that she reinjured her back on November 30, 2005. Dr. Raby advised that appellant has a lumbar disc herniation.

By decision dated March 15, 2006, the Office denied modification of the February 9, 2006 decision.

LEGAL PRECEDENT

As used in the Federal Employees' Compensation Act,² the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.³ A recurrence of disability is defined by Office regulations as an inability to work, caused by a spontaneous change in a medical condition resulting from a previous injury

¹ The record reflects that appellant has an accepted claim under file number 10-2047493 which the Office accepted for an August 14, 2005 upper back pain. She was released to full duty on August 28, 2005.

² 5 U.S.C. §§ 8101-8193.

³ *Prince E. Wallace*, 52 ECAB 357 (2001).

or illness without an intervening injury or new exposure to the work factors that caused the original injury or illness.⁴

An employee 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 she claims compensation is causally related to the accepted injury. This burden of proof requires the claimant to furnish 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 this conclusion with sound medical reasoning.⁵

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁶ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁷ 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.⁸ Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation. An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.⁹

ANALYSIS

The Office accepted that appellant sustained a low back strain on December 27, 2004. She returned to her regular duties on April 29, 2005 and subsequently claimed a recurrence of disability arising on November 30, 2005. The Board notes that, although appellant appears to have another back claim under Office file number 10-2047493, that claim is not before the Board on the present appeal.

The medical evidence of record is not sufficient to establish a recurrence of disability causally related to the December 27, 2004 accepted injury. The report of the Northwestern Memorial Hospital does not contain a diagnosis of appellant's condition or an opinion on causal

⁴ 20 C.F.R. § 10.5(x) (1999); see also *Bryant F. Blackmon*, 56 ECAB ____ (Docket No. 04-564, issued September 23, 2005); *Cecelia M. Corley*, 56 ECAB ____ (Docket No. 05-324, issued August 16, 2005); *Donald T. Pippin*, 54 ECAB 631 (2003).

⁵ See *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁷ For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 748 (1986).

⁸ See *Ricky S. Storms*, 52 ECAB 349 (2001).

⁹ *Patricia J. Glenn*, 53 ECAB 159 (2001); *Ausberto Guzman*, 25 ECAB 362 (1974).

relationship. The medical reports from Dr. Raby note the December 27, 2004 work injury and a November 30, 2005 reinjury to her back. He diagnosed a lumbar disc herniation. However, these reports do not provide a reasoned medical opinion of the relationship between the diagnosed condition and the December 27, 2004 work injury or provide an explanation as to how appellant would have a material worsening of her accepted condition. As noted above a medical opinion unsupported by medical rationale is of diminished probative value and is insufficient to establish causal relation. Furthermore, there is no bridging evidence which would relate appellant's diagnosed lumbar disc herniation to the accepted December 27, 2004 work injury. The Board notes that the Office never accepted a herniated disc as work related. Dr. Raby notes a reinjury on November 30, 2005 but does not provide any description of how appellant reinjured his back that day. The belief of a claimant that a condition was caused or aggravated by his or her employment is not sufficient to establish causal relation.¹⁰ A claimant has the burden of proof to establish that an injury is work related.

Consequently, the medical evidence is insufficient to establish that appellant sustained a recurrence of disability arising November 30, 2005. Appellant was advised by a December 19, 2005 letter of the evidence needed to establish her claim for recurrence of disability. However, she did not submit such evidence. The Office properly found that appellant submitted insufficient evidence to meet her burden of proof in establishing the claimed recurrence of disability arising on and after November 30, 2005.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability or a medical condition arising on and after November 30, 2005 causally related to her accepted December 27, 2004 employment injury.¹¹

¹⁰ *Robert A. Boyle*, 54 ECAB 381 (2003).

¹¹ On appeal, appellant submitted new evidence. However, the Board may not consider new evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the March 15 and January 11, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 29, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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