

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

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**M.F., Appellant**

**and**

**DEPARTMENT OF THE NAVY, NAVAL  
TRAINING CENTER, Orlando, FL, Employer**

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**Docket No. 06-1832  
Issued: December 27, 2006**

*Appearances:*  
*Ronald Webster, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 7, 2006 appellant filed a timely appeal from the December 30, 2005 and June 30, 2006 decisions of the Office of Workers' Compensation Programs. The June 30, 2006 decision denied modification of the December 30, 2005 hearing representative's decision finding that she failed to establish the recurrence of an accepted work injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(1), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant established that she sustained a recurrence on July 8, 2003 causally related to her accepted September 1, 1995 employment injury. In support of her appeal to the Board, appellant submitted a brief arguing that the misplacement of her original file and the medical evidence was the reason that the Office had no evidence as to whether the original injury was severe enough to cause degenerative changes. For this reason, her case should be remanded to develop the evidence.

## **FACTUAL HISTORY**

On September 1, 1995 appellant, then a 47-year-old secretary, filed a traumatic injury claim alleging that she injured her back when she slipped and fell at work. The record reveals that she stopped work that day. She received appropriate benefits based on the Office's acceptance of the claim for lumbar strain and contusion.<sup>1</sup>

On May 12, 2004 appellant filed a notice of recurrence, Form CA-2a.<sup>2</sup> She alleged that on July 8, 2003 she had a recurrence of the accepted lower back injury that was sustained on September 1, 1995.<sup>3</sup> Responding to the question of how and when the recurrence happened, appellant claimed that she had never recovered from the original accident and that she was in pain all of the time. She indicated that she had been in a car accident in January 2000 and that whiplash was the only injury she had sustained. Appellant included records tracking the sick and annual leave she had taken from her current employer, the Orlando Veterans Administration Healthcare Center. In a letter, Nancy Miller, appellant's supervisor since February 2004, indicated that she had frequently been out with "back problems and other illnesses."

On June 14, 2004 the Office requested additional information, finding that the submitted evidence was insufficient to establish a recurrence. On the same date, the Office sent a letter informing appellant that the file related to her September 1, 1995 employment injury had been misplaced. It requested that appellant provide copies of documents and medical evidence relating to the original claim.

In response to these requests, appellant sent two medical reports from Dr. Thomas A. Stanford, a Board-certified orthopedic surgeon, who treated her since January 2000. In a June 22, 2004 report to the Civil Service Retirement System, he summarized appellant's diagnosis and treatment. Dr. Stanford indicated that he first saw appellant in January 2000, following an automobile accident on December 13, 1999. He diagnosed cervical and lumbar strain and sciatic neuropathy/neuritis. A magnetic resonance imaging (MRI) scan performed in 2000 showed disc bulging, facet spurring and disc dehydration in the lumbar spine at L4-5 and L5-S1. Dr. Stanford stated that in 2004 appellant still had low back pain and sciatic neuritis. He also stated that the arthritis he found in her neck and lower back in 2000 had worsened by 2004. Dr. Stanford recommended that appellant discontinue working.

The report dated June 29, 2004 consisted of notes and a medical history taken April 15, 2004. Dr. Stanford reported that a 2004 MRI scan showed appellant had spondylosis in the lumbar area. He also stated that appellant had a slip-and-fall accident in 1995, which resulted in two years of temporary disability. Dr. Stanford indicated that appellant's lower back pain had

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<sup>1</sup> The Board notes that, as the Office had to reconstruct appellant's file, the exact periods appellant received compensation are unclear.

<sup>2</sup> The record indicates that appellant filed two other claims of recurrence. She filed a claim on March 19, 2002, alleging a recurrence on July 20, 2001, which was denied on August 6, 2002. Appellant also filed a claim on July 29, 2004 alleging a recurrence of disability. The July 29, 2004 claim is still pending.

<sup>3</sup> At the time appellant filed the recurrence claim, she was employed by Orlando Veterans Administration Health Care.

been continuously present from that time. She was unable to lift or bend on a continuous basis. Dr. Stanford again gave his opinion that because it would take “all of her nervous energy to live with the chronic pain that she has in her cervical and low back area,” appellant was totally disabled.

By decision dated July 27, 2004, the Office denied appellant’s claim on the grounds that the medical evidence did not demonstrate that the claimed medical condition was related to the September 1, 1995 employment injury. It found that the 1995 claim had been accepted for soft tissue injuries of lumbar strain and contusion of the back. The Office held that Dr. Stanford had not shown how the 1995 employment injury caused or aggravated appellant’s current claimed medical condition.

Appellant timely requested an oral hearing before an Office hearing representative. The hearing was set for October 27, 2005. In preparation for the hearing, she provided several medical records relating to Dr. Stanford’s treatment from January 2000 to February 2005. Appellant also provided medical reports Dr. Stanford ordered and used in his diagnoses. The reports that address appellant’s lower back include unsigned progress reports, dated January 28 to March 15, 2000, from Physical Therapist Larry Pinkas; a January 30, 2000 MRI scan report from Dr. James B. Ball, a Board-certified diagnostic radiologist; a June 4, 2000 diagnostic report from Dr. Pedro T. Oliveros, Board-certified in physical medicine and rehabilitation; a January 26, 2004 MRI scan report from Dr. Samuel Cort, Jr., a Board-certified diagnostic radiologist; and a diagnostic report dated February 9, 2004 from Dr. Matthew Imfeld, who is Board-certified in physical medicine and rehabilitation

Dr. Stanford’s patient records indicate that he treated appellant regularly from January to June 2000 for injuries arising out of an automobile accident. On her first visit, Dr. Stanford indicated that appellant had lumbosacral arthritis and spinal stenosis. He diagnosed a lumbar strain and sciatic neuritis. An MRI scan obtained at that time showed a minimal diffuse disc bulge at L4-5 and disc dehydration at L5-S1. He treated her again on June 18, 2003, when she complained of increased lower back pain that radiated to her lower extremities. An x-ray examination of her lower back showed facet arthritis at L5-S1 and L4-5, interspace settling and a spur surrounding the L5-S1 joint. Dr. Stanford indicated that the foramen in her back were narrowed, which resulted in sciatic pain. In his January 2004 notes, Dr. Stanford stated that because of the loss of height between her discs, spurring around the joint, hypertrophy of the ligamentum flavum and facet arthritis, appellant had spinal stenosis at L5-S1. In April 2004, he indicated that there had been a gradual worsening of the joints between 2000 and 2004. In July 2004, Dr. Stanford stated that appellant had a pathology related to a “serious injury to her low back” that was “aggravated somewhat” by her 1999 car accident.

At the October 27, 2005 hearing, appellant argued that Dr. Stanford’s medical reports showed that her 1999 automobile accident aggravated her September 1, 1995 work injury. The records also showed that “her condition has been ongoing since her date of injury.” It was argued that appellant had presented a *prima facie* claim that the Office should be required to develop.

The Office hearing representative issued a decision on December 30, 2005, finding that appellant had not submitted sufficient evidence to establish that the claimed recurrence of July 8, 2003 was causally related to the accepted employment injury of September 1, 1995. He noted that Dr. Oliveros' June 6, 2000 report indicated that appellant reported feeling pain in her lower back following the impact of her automobile accident in 1999 and that Dr. Stanford's treatment records did not address or confirm the alleged July 8, 2003 recurrence. The hearing representative found the weight of the medical evidence established that appellant's lower back condition was due to her 1999 automobile accident and preexisting degenerative arthritis, rather than the "minor lumbar injury" she sustained in 1995.

On March 20, 2006 appellant requested reconsideration of the Office hearing representative's decision and submitted a new report from Dr. Stanford. He stated that appellant had subjective complaints of back pain that became worse with bending and lifting. Dr. Stanford also stated that she injured her back in the 1995 work fall and that "the joint goes through a healing process which is settling of the interspace and enlarging of the facets. As this occurs, there is crowding of the nerve roots which causes chronic inflammation and chronic low back discomfort." He asserted "any time there is a traumatic insult to a joint, there is the beginning of degenerative changes. If there is another injury, such as a car accident, the original injury is accelerated. This is what happened to this patient." Dr. Stanford indicated that the automobile accident aggravated the lower back injury that occurred in 1995.

In a June 30, 2006 decision, the Office denied modification of the December 30, 2005 decision. It found that there was no evidence to show that the September 1, 1995 employment injury was anything other than a soft tissue injury involving strain and contusion. The Office found that Dr. Stanford initially diagnosed appellant's lower back problems as "simply early arthritis" and, in his later reports, he related appellant's back pain and disability to the 1995 work injury only because appellant told him that they were related. It held that Dr. Stanford's contention that the car accident exacerbated degenerative changes wrought by the earlier fall was unpersuasive, as there was no evidence that the 1995 injury was sufficient to initiate degenerative changes.

### **LEGAL PRECEDENT**

A claimant seeking compensation under the Federal Employees' Compensation Act<sup>4</sup> has the burden of establishing the essential elements of her claim by the weigh of reliable, probative and substantial evidence.<sup>5</sup> To establish a claim for recurrence of disability, a claimant must establish that she experienced a spontaneous material change in the employment-related condition without an intervening injury.<sup>6</sup> A claimant's burden of proof includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate

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<sup>4</sup> 5 U.S.C. §§ 8181-8193.

<sup>5</sup> *Edward W. Spohr*, 54 ECAB 806 (2003).

<sup>6</sup> *Carlos A. Marrero*, 50 ECAB 117 (1998); *Philip L. Barnes*, 55 ECAB 426 (2004); 20 C.F.R. § 10.5(x).

factual and medical history, concludes that the condition is causally related to the employment injury and supports the conclusion with sound medical rationale. Where no such rationale is present, the medical evidence is of diminished probative value.<sup>7</sup>

### ANALYSIS

Appellant has alleged that the degenerative changes in her back were caused by the accepted injury resulting from a fall at work in 1995. The injury accepted by the Office was contusion and strain of the lumbar spine. Appellant received temporary disability compensation for approximately two years for this injury until the Office found she was no longer disabled and could perform her regular duties as a secretary.

The Board finds that appellant has not met her burden of proving that a spontaneous material change occurred on July 8, 2003. Appellant has provided no narrative evidence as to her activities at the time of the alleged recurrence that would indicate that she experienced a spontaneous change in her condition on the day in question. This information is critical to the Board's determination of whether the change in condition was spontaneous and not the result of other, intervening causes.

Intervening causes are pertinent in this case because of appellant's 1999 automobile accident.<sup>8</sup> The record shows that Dr. Stanford, a Board-certified orthopedic surgeon, first diagnosed a lumbar sprain following the accident. This subsequent injury and diagnosis raise the issue of whether appellant's current condition is the effect of the September 1, 1995 employment injury or the 1999 car accident injury. Dr. Stanford thereafter opined that the car accident "accelerated" degenerative changes caused by the September 1, 1995 fall at work. The Board has held that subsequent progression of an injury is not compensable when the worsening is shown to have been produced by an independent, nonwork cause.<sup>9</sup> For the foregoing reasons, the Board finds that appellant has not demonstrated that she sustained a spontaneous recurrence of disability on July 8, 2003.

Appellant has not provided the necessary rationalized evidence to demonstrate the causal connection between the September 1, 1995 employment injury and the alleged recurrence. Dr. Stanford reported that appellant's current back pain was related to her September 1, 1995 employment-related injury. However, he did not provide the reasoned analysis necessary to give these statements probative effect. For example, on July 19, 2004, Dr. Stanford stated that the arthritis he diagnosed in appellant's neck and lower back following the car accident in 2000 was

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<sup>7</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>8</sup> *See Robert W. Meeson*, 44 ECAB 834 (1993) (finding an intervening back injury broke the claim of causation when appellant's automobile struck a deer).

<sup>9</sup> *Id.* at 835, 839 (the Board found injury was not compensable when appellant's doctor opined that injury in automobile accident was an aggravation of previous accepted injury); *see also Larson, The Law of Workers' Compensation* § 10.02

caused by the 1995 employment injury.<sup>10</sup> His opinion is of diminished probative value, as there is no way to determine its accuracy. Dr. Stanford did not provide an explanation of how or why the mechanism of the September 1, 1995 employment injury caused or contributed to the arthritis. The record does not establish that he provided treatment contemporaneous to the 1995 fall at work, accepted for a lumbar sprain and contusion.

He did not identify the factual basis on which he concluded that appellant's current condition was caused by her September 1, 1995 employment injury. In a February 16, 2006 letter, he discussed the healing process of joints and the consequences of the physical changes that healing entails. However, he did not say how contusion or strain were types of injury that could give rise to degenerative changes in the spine. Dr. Stanford stated that "traumatic insult" to a joint leads to degenerative changes, but, again, did not explain how contusion and strain from a slip and fall would constitute a traumatic insult to a joint sufficient to cause arthritis in this case.

The other medical evidence in the record is also insufficient. The medical reports from Drs. Imfeld, Oliveros, Cort and Ball are purely diagnostic in nature and provide no opinion on causal relationship between the 1995 employment injury and appellant's diagnosis. Mr. Pinkas' physical therapy reports are of no probative value because a physical therapist is not a "physician" as defined under the Act.<sup>11</sup> He is not competent to provide medical opinion.

For these reasons, the Board finds that appellant has not provided sufficient rationalized evidence that her current condition is related to her accepted injury.

### CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability on July 8, 2003 causally related to the September 1, 1995 employment injury.

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<sup>10</sup> Despite the fact that appellant is claiming recurrence only for her lower back injury, Dr. Stanford several times links the arthritis in appellant's cervical vertebrae to the 1995 fall, as well. As the Office did not accept any cervical conditions as part of the 1995 claim, the burden of proof is on appellant to establish a causal relationship. *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>11</sup> 5 U.S.C. § 8101(2); *Barbara J. Williams*, 40 ECAB 649 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 30, 2006 is affirmed.

Issued: December 27, 2006  
Washington, DC

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

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board