

hand four times in his low to mid back area.¹ He stopped work on October 1, 2003 and returned to light-duty work on October 12, 2003. The Office accepted that appellant sustained a lumbosacral strain and paid compensation for periods of disability.

Appellant intermittently stopped work and then returned to light-duty work for the employing establishment. He received treatment from Dr. Fred Blackwell, an attending Board-certified orthopedic surgeon, who noted his back complaints and recommended work restrictions. In a number of reports dated in the first half of 2004, Dr. Blackwell indicated that, despite periodic pain flare-ups, appellant was making excellent progress with his range of back motion and overall functional ability. He continued to recommend restrictions on such activities as lifting, bending and kneeling.

Appellant stopped work on September 8, 2004 and returned to light-duty work on September 25, 2004. He claimed a recurrence of total disability for the period September 8 to 24, 2004 due to his September 30, 2003 employment injury.

In a report dated September 14, 2004, Dr. Blackwell indicated appellant reported that he was off work since September 8, 2004 after awaking with severe back pain. He stated that appellant exhibited very restricted range of back motion in that he could not bring his fingertips past his knees, his extension was 0 and appellant's lateral bend was 10 to 15 degrees bilaterally. Dr. Blackwell noted that he advised appellant to stay off work for another week.²

In a form report dated September 30, 2004, Dr. Blackwell diagnosed "acute lumbosacral strain and sprain with acute exacerbation" and indicated that this condition and disability from September 8 to 25, 2004 were related to appellant's September 30, 2003 employment injury.³

By decision dated January 5, 2005, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability for the period September 8 to 24, 2005 due to his September 30, 2003 employment injury.

Appellant submitted a January 18, 2005 report in which Dr. Blackwell indicated that diagnostic testing showed that he had degenerative disc disease at L5-S1 and a possible compression fracture at L2 of undetermined age.

In a report dated January 24, 2005, Dr. Blackwell indicated the fact that appellant's back condition exhibited a "substantial change" in September 2004 supported the finding that he sustained an employment-related recurrence of disability at that time. He stated that chronic

¹ The form contains the statement of a witness who stated that the coworker made about four "hand slaps down [appellant's] back as if to massage the spine," that the slaps made hollow sounds and that it was her impression that they constituted "playful contact."

² The record contains a similar report of Dr. Blackwell dated September 21, 2004. He recommended that appellant resume his modified work on September 26, 2005.

³ Regarding the September 30, 2003 injury, he stated, "Struck in back by fellow employee, recent flare-up."

conditions such as that experienced by appellant were characterized by periods of exacerbation that vary in degree.

By decision dated May 10, 2005, the Office affirmed its January 5, 2005 decision.

Appellant submitted a May 26, 2005 report in which Dr. Blackwell again noted his increased findings in September 2004 and stated that this condition was employment related. He indicated that appellant's lumbosacral sprain and strain were associated with his degenerative joint disease.

By decision dated June 27, 2005, the Office affirmed its prior decisions.

Appellant stopped work on May 23, 2005 and then returned to his light-duty work on May 28, 2005 and claimed that he sustained a recurrence of total disability for the period May 23 to 27, 2005 due to his September 30, 2003 employment injury.⁴

On June 14, 2005 appellant submitted an undated report in which Dr. Blackwell indicated that appellant visited his office on May 24, 2005 and exhibited very restricted back motion. He indicated that he gave appellant a disability slip for the period May 23 to 26, 2005.

By decision dated September 26, 2005, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability for the period May 23 to 27, 2005 due to his September 30, 2003 employment injury.

LEGAL PRECEDENT

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 of record establishes that he can perform the light-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 light-duty job requirements.⁵

ANALYSIS

The Office accepted that appellant sustained a lumbosacral strain at work on September 30, 2003 and paid compensation for periods of disability. The Office denied his claim that he sustained a recurrence of total disability for the periods September 8 to 24, 2004 and May 23 to 27, 2005 due to his September 30, 2003 employment injury.

⁴ Appellant's recurrence claim indicated that he was claiming disability for the period May 17 to 30, 2005, but other evidence of record shows that the period he was claiming was May 23 to 27, 2005.

⁵ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability for the periods September 8 to 24, 2004 and May 23 to 27, 2005, due to his September 30, 2003 employment injury.⁶ In support of his claim that he sustained an employment-related recurrence of total disability for the period September 8 to 24, 2004, appellant submitted several reports of Dr. Blackwell, an attending Board-certified orthopedic surgeon.

Appellant submitted a form report dated September 30, 2004 in which Dr. Blackwell diagnosed “acute lumbosacral strain and sprain with acute exacerbation” and indicated that this condition and disability from September 8 to 24, 2004 were related to his September 30, 2003 employment injury.⁷ In a report dated January 24, 2005, Dr. Blackwell explained that the fact that appellant’s back condition exhibited a “substantial change” in September 2004 supported the finding that he sustained an employment-related recurrence of disability at that time.

However, these reports are of limited probative value on the relevant issue of the present case in that Dr. Blackwell did not provide adequate medical rationale in support of his conclusion on causal relationship.⁸ He did not describe appellant’s September 30, 2003 injury in any detail or explain how a soft-tissue injury would have been competent to cause a recurrence of total disability for the period September 8 to 24, 2004. The Board has held that the fact that a condition manifests itself or worsens during a period of employment⁹ or that work activities produce symptoms revelatory of an underlying condition¹⁰ does not raise an inference of causal relationship between a claimed period of disability and an employment injury. Dr. Blackwell reported limited objective findings to support his opinion on causal relationship and he did not explain why appellant’s back problems during the claimed period of recurrence were not due to some nonwork condition. Dr. Blackwell’s opinions on causal relationship are somewhat contradictory in that he also indicated in a May 26, 2005 report, that appellant’s lumbosacral sprain and strain were associated with his degenerative joint disease rather than his original lumbar strain. The Office has not accepted that appellant sustained degenerative joint disease on September 30, 2003.

In support of his claim that he sustained an employment-related recurrence of total disability for the period May 23 to 27, 2005, appellant submitted an undated report in which Dr. Blackwell indicated that he visited his Office on May 24, 2005 and exhibited very restricted

⁶ The Board also notes that appellant did not claim a change in his light-duty requirements.

⁷ In a report dated September 14, 2004, Dr. Blackwell indicated that appellant reported that he was off work since September 8, 2004 after awaking with severe back pain. He stated that appellant exhibited very restricted range of back motion in that he could not bring his fingertips past his knees, appellant’s extension was 0 and his lateral bend was 10 to 15 degrees bilaterally.

⁸ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

⁹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹⁰ *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

back motion. He stated that he gave appellant a disability slip for the period May 23 to 26, 2005. Dr. Blackwell did not provide any opinion of the cause of this disability and, therefore, this report would not establish appellant's claim that he sustained an employment-related recurrence of total disability for the period May 23 to 27, 2005. He did not submit any medical evidence relating this claimed period of disability to his September 30, 2003 employment injury.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability for the periods September 8 to 24, 2004 and May 23 to 27, 2005 due to his September 30, 2003 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' September 26, June 27, May 10 and January 5, 2005 decisions are affirmed.

Issued: February 9, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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