United States Department of Labor
Employees' Compensation Appeals Board

THOMAS J. SCHWARTZ, Appellant	)	
and	)	**Docket No. 06-143**
	)	**Issued: February 6, 2006**
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Yellowstone National Park, WY, Employer	)	

Appearances:
Thomas J. Schwartz, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 27, 2005 appellant filed a timely appeal of the August 15, 2005 merit decision of the Office of Workers' Compensation Programs, which denied his claim for a recurrence. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained a recurrence of a medical condition causally related to his February 8, 1999 employment injury.

FACTUAL HISTORY

Appellant, a 38-year-old park ranger, has an accepted occupational disease claim for cervical disc displacement and somatic dysfunction of the cervical and thoracic regions. His employment-related conditions arose on or about February 8, 1999. Appellant continued to perform his regular duties while undergoing chiropractic manipulation from April 2000 to June 2003.

Dr. David W. Waldram, a Board-certified orthopedic surgeon and Office referral physician, examined appellant on July 31, 2003 and diagnosed chronic cervical strain. In an August 2, 2003 report, Dr. Waldram noted only minimal loss of motion in the neck on physical examination. He found that appellant was stable and stationary without any need for current medical care. Dr. Waldram also noted that appellant was performing heavy labor at work and was able to continue his normal duties without limitation. He indicated that appellant's need for continuing treatment would be based on a waxing and waning of cervical spine symptoms, but no mid-back or low-back treatment was anticipated.

After a seven-month hiatus, appellant resumed chiropractic manipulation and electric stimulation therapy on January 23, 2004. The Office authorized treatment through March 23, 2004. On May 20, 2004 appellant's treating physician, Dr. Ronald N. Hecht, a chiropractic orthopedist, requested authorization for additional therapy through August 2004.[1] He noted that appellant was entering a busy period at work that required increased sitting on vehicles and more labor-intensive work. The Office denied further medical authorization because appellant's case was reportedly closed in December 2003.

On June 2, 2004 the Office advised appellant that it recently received evidence indicating the possibility of a recurrence in his case. The Office provided a brief description of what constituted a recurrence of disability as distinguished from a new traumatic injury or new occupational disease claim. Appellant was advised to file a notice of recurrence (Form CA-2a) with his employer if he believed his situation met the description of a recurrence.

On October 27, 2004 appellant filed a recurrence claim for medical treatment only. However, he did not submit any medical evidence with his claim. By letter dated November 18, 2004, the Office requested additional information, including a narrative medical report from a treating physician. He was afforded 30 days to submit the requested information. Appellant did not respond within the allotted time.

In a decision dated December 27, 2004, the Office denied appellant's recurrence claim. The Office found that there was insufficient evidence to establish that appellant's current condition was due to the accepted work injury.

On June 12, 2005 appellant requested reconsideration. He submitted a February 14, 2005 report from Dr. Bradley L. Aylor, a Board-certified physiatrist, who diagnosed cervical facet joint dysfunction and possible degenerative joint disease. Dr. Aylor recommended physical therapy, cervical facet joint injections and additional diagnostic studies.

By decision dated August 15, 2005, the Office denied modification of the December 27, 2004 decision.

[1] The request sought retroactive authorization for treatment administered on March 31, April 20 and 24, and May 6, 2004. Dr. Hecht also requested authorization for 15 additional treatment sessions through August 2004.

LEGAL PRECEDENT

A recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.[2] Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment.[3] The claimant bears the burden of establishing a causal relationship between the accepted employment injury and the claimed recurrence of a medical condition.[4]

ANALYSIS

The record indicates that from the time appellant filed his claim in April 2000 through June 4, 2003 he continued to undergo therapy, which included chiropractic manipulation and electric muscle stimulation. When Dr. Waldram examined appellant on July 31, 2003, he was not undergoing any specific medical treatment at the time and Dr. Waldram did not believe there was a need for any additional treatment. He also noted that appellant had been performing his regular duties and was capable of continuing in that capacity without limitation. Dr. Waldram indicated that appellant might require future treatment based on a "waxing and waning" of cervical spine symptoms.

Seven months passed before appellant returned to Dr. Hecht for additional treatment on January 23, 2004. In the interim, the Office closed appellant's claim based on Dr. Waldram's August 2, 2003 report and the lack of evidence of ongoing medical treatment.[5] In February 2004, the Office authorized additional therapy for the period January 23 to March 23, 2004.[6] Appellant received treatment on eight occasions during that eight-week period, the last of which occurred on February 24, 2004. When Dr. Hecht subsequently requested authorization for 15 additional therapy sessions through August 2004. The Office declined on the basis that appellant's claim had been closed in December 2003.

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[2] 20 C.F.R. § 10.5(y) (1999).

[3] *Id.*

[4] *Joan R. Donovan*, 54 ECAB 615, 619-20 (2003). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

[5] The regulations authorize the termination of medical benefits without prior written notice when a physician indicates that further medical treatment is not necessary or has ended. 20 C.F.R. § 10.540 (b) (1999).

[6] On the February 6, 2004 authorization request, Dr. Hecht reported a gradual worsening of appellant's "original cervical and thoracic symptoms."

Although it is apparent from the record that appellant continued to receive the same or similar type of chiropractic manipulation and muscle stimulation therapy for more than four years, this alone does not establish that Dr. Hecht's May 20, 2004 authorization request was for "continuous treatment of the original condition or injury."[7] The one-page authorization request did not identify any current findings referable to appellant's February 8, 1999 injury, but merely noted that appellant was entering a busy period at work, which required increased sitting on vehicles and more labor-intensive work. Dr. Hecht appears to have been readying appellant for possible aggravation of his cervical spine due to an upcoming busy season at work. This, however, does not establish a recurrence of a medical condition causally related to the originally accepted employment injury.

Dr. Aylor's February 14, 2005 report is also insufficient to establish a recurrence of a medical condition. He diagnosed cervical facet joint dysfunction and possible degenerative joint disease and recommended physical therapy, cervical facet joint injections and additional diagnostic studies. While Dr. Aylor reported complete and accurate employment and medical histories, he commented that his diagnosis of cervical facet joint dysfunction was not supported by any diagnostic studies. He also indicated that appellant's physical examination revealed no objective neurologic abnormalities that would support a diagnosis of degenerative joint disease. Neither of the two medical conditions Dr. Aylor identified in his February 14, 2005 report was supported by sufficient objective evidence nor accepted by the Office in this case. He characterized appellant's physical examination as "relatively unremarkable." Dr. Aylor did not specifically attribute appellant's current complaints to his February 8, 1999 employment injury.

The Board finds that neither Dr. Hecht nor Dr. Aylor provided sufficient medical evidence of an ongoing condition causally related to appellant's February 8, 1999 employment injury. As such, appellant failed to meet his burden and the Office properly denied his claim for recurrence of a medical condition.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of a medical condition causally related to his February 8, 1999 employment injury.

[7] 20 C.F.R. § 10.5(y) (1999).

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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