

FACTUAL HISTORY

The Office accepted that on or before November 18, 1992 appellant, then a 40-year-old electrician, sustained a temporary aggravation of ankylosing spondylitis.¹ He was off work for an extended period in 1993 and remained under medical treatment.² In an August 2, 1993 report, Dr. Chuen P. Lau, an attending Board-certified physiatrist and family practitioner, diagnosed a bulging lumbar disc injury at L5-S1. He released appellant to full duty on August 3, 1993. Appellant returned to work in August 1993.

In an August 12, 1993 report, Dr. Rowin L. Lichter, a Board-certified orthopedic surgeon and second opinion physician, opined that the accepted aggravation of ankylosing spondylitis had ceased without residuals. By decision dated August 31, 1993, the Office denied additional compensation benefits after August 12, 1993, on the grounds that Dr. Lichter's report established that the accepted temporary aggravation of ankylosing spondylitis had resolved.

Appellant continued to seek treatment for back pain. In a January 4, 1994 report, Dr. L. A. Cone, an attending Board-certified allergist and immunologist, stated that an acute aggravation of neck and back pain had ceased and discharged appellant from care. He saw various physicians through January 1995. In a February 2, 1996 report, Dr. Lau released appellant to full duty.

The employing establishment terminated appellant effective May 22, 1996 for "disrespectful conduct and using unsuitable language (second offense)." He was on light duty at the time of his termination. Appellant continued to seek treatment for back pain through October 1997. In an October 7, 1997 report, Dr. Eddie Soliai, an attending internist, diagnosed a chronic lumbosacral strain. He submitted chart notes through January 8, 1998.³

On September 9, 1997 appellant claimed a recurrence of disability commencing May 5, 1996. By decision dated November 19, 1997, the Office denied this claim on the grounds that the medical evidence established that the accepted aggravation had ceased by August 12, 1993. Appellant requested a hearing on February 2, 1998, denied by the Office in an April 2, 1998 decision as untimely filed and on the grounds that the issues involved could be addressed equally well by submitting relevant evidence on reconsideration.

On September 8, 2003 appellant claimed a recurrence of disability commencing August 12, 1993, with chronic back pain interfering with sleep and activities of daily living. He

¹ Previously, the Office accepted a June 17, 1992 back strain and doubled that case record into the current record. On February 23, 1993 appellant filed an occupational disease claim for back condition beginning November 18, 1992 due to digging a trench. The disposition of this claim is not of record.

² A May 8, 1993 magnetic resonance imaging (MRI) scan showed degenerative dehydration and a disc bulge at L5-S1.

³ A March 16, 1998 electromyography (EMG) study of the right lower extremity and bilateral lumbosacral spinal musculature was normal. A May 19, 1998 MRI scan "[c]ongenitally short pedicles which cause mild central canal stenosis greatest at L3-4 and L4-5.

attributed his condition of being made to work outside of his restrictions when he returned to work in August 1993 until stopping work on May 17, 1996.

In a November 7, 2003 letter, the Office advised appellant of the evidence needed to establish his claim, including a detailed description of the causative work factors and a report from his attending physician explaining how and why those factors would cause the claimed disability for work. Appellant did not submit any additional medical evidence.

By decision dated March 20, 2004, the Office denied appellant's claim for recurrence of disability on the grounds that the medical record failed to establish any worsening of the accepted condition between August 1993 and May 1996. The Office noted that Dr. Lichter's opinion established that the accepted aggravation of ankylosing spondylitis ceased by August 12, 1993. The Office also found that appellant did not submit evidence that his May 1996 removal was due to the employing establishment's inability to accommodate his work restrictions.

Appellant requested a hearing which was scheduled for February 23, 2005. He did not attend as the Office failed to notify him that the hearing had been rescheduled for an earlier time. Appellant agreed to a telephonic hearing, which took place on March 18, 2005. During the telephonic hearing, he asserted that the light duty provided by the employing establishment had violated his work restrictions and that the foreman was "after him." Appellant last worked on May 17, 1996 prior to his May 22, 1996 termination for cause. The Office hearing representative advised appellant of the additional medical evidence needed to establish his claim for a recurrence of disability, including a rationalized medical report explaining how and why his condition was related to the accepted aggravation of ankylosing spondylitis.

The employing establishment submitted comments to the hearing transcript, asserting that appellant's light-duty assignments were within his medical restrictions and were monitored by a nurse to assure compliance with his work limitations. The employing establishment emphasized that appellant was terminated effective May 22, 1996 for improper conduct and not due to a lack of light-duty work.⁴

In an April 15, 2005 letter, Clement Kaiama, appellant's former supervisor, stated that appellant's light-duty assignment involved painting equipment in a sheet metal shop. "[He] was allowed to paint at his own pace, giving him reasonable time to complete the work." Mr. Kaiama asserted that appellant "was removed from employment due to disciplinary reasons and not due to his medical condition."

Following the hearing, appellant submitted reports dated from February 1999 to February 2005 from Dr. Soliai, describing his chronic back and bilateral knee pain. Dr. Soliai diagnosed degenerative joint disease of the lumbar spine and both knees and lumbar radiculopathy. He noted that appellant's low back pain was "exacerbated by a motor vehicle accident" on October 10, 2004. Dr. Soliai did not address his former federal employment or the accepted condition in his reports.

⁴ The employing establishment also submitted administrative documents and flow charts regarding injury reporting procedures and light-duty assignments.

By decision dated June 17, 2005, the Office affirmed the March 20, 2004 decision, finding that appellant did not establish that he sustained a recurrence of disability as alleged. The Office hearing representative found that appellant did not submit any evidence corroborating that his light-duty assignment exceeded his work restrictions or that he was terminated due to a lack of light-duty work. The hearing representative found that there was “no evidence to suggest that there was a change in the nature or extent of the light-duty assignment that would have impacted [appellant’s] medical condition.” The hearing representative noted that Dr. Soliai’s reports did not mention the accepted condition or relate his continued symptoms after 1996 to the accepted condition. It was noted that Dr. Lichter opined that the temporary aggravation of his preexisting ankylosing spondylitis ceased as of August 12, 1993.⁵

LEGAL PRECEDENT

The Office’s implementing regulations define a recurrence of disability as “an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”⁶ If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken, and an appropriate new claim should be filed.⁷

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or she 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.⁸ This includes the necessity of furnishing 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 employment factors and supports that conclusion with sound medical reasoning.⁹ An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant’s unsupported belief of causal relation.¹⁰

⁵ The record indicates that, following the June 17, 2005 decision, appellant requested reconsideration on August 31, 2005. There is no evidence of record regarding any decision that might have been issued prior to appellant filing his appeal with the Board on September 22, 2005.

⁶ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Philip L. Barnes*, 55 ECAB ____ (Docket No, 02-1441, issued March 31, 2004).

⁷ Federal (FECA) Procedure Manual, Chapter 2.1500.3 (May 1997), *supra note 6*; *Donald T. Pippin*, 54 ECAB 631 (2003).

⁸ *Albert C. Brown*, 52 ECAB 152 (2000); see also *Terry R. Hedman*, 38 ECAB 222 (1986).

⁹ *Ronald A. Eldridge*, 53 ECAB 218 (2001); see *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

¹⁰ *Patricia J. Glenn*, 53 ECAB 159 (2001).

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and that such a relationship must be supported with affirmative evidence, explained by medical rationale and be based on a complete and accurate medical and factual background of the claimant.¹¹ Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.¹²

ANALYSIS

The Office accepted that appellant sustained an aggravation of preexisting ankylosing spondylitis due to work factors on or before November 18, 1992. On September 8, 2003 he claimed a recurrence of disability commencing August 12, 1993, while on light duty, which he attributed to work being assigned outside of his restrictions. In order to prevail, appellant must establish either a worsening of his accepted condition as of August 12, 1993 or a change in the nature and extent of his light-duty job requirements such that he could no longer perform the position.¹³

The Board notes that appellant's claim attributed his disability, in part, to unspecified work factors from 1993 to May 17, 1996, incidents occurring after November 18, 1992. In essence, his assertions pertain to a claim for a new injury, not a recurrence of disability.

The Board finds a lack of rationalized medical evidence supporting the causal relationship asserted between work factors on or before November 18, 1992 and appellant's lumbar condition on and after August 12, 1993. He submitted reports dated October 1997 to February 2005 from Dr. Soliai, an attending internist, describing lumbar pain. However, Dr. Soliai did not mention any work factors or the accepted condition in his reports. He did not find a worsening of the accepted condition August 12, 1993 or find appellant totally disabled for work as of that date. Appellant has submitted insufficient medical evidence to establish the claimed recurrence of disability commencing August 12, 1993.

The Board notes that the medical record demonstrates that the accepted condition had resolved as early as August 3, 1993. Dr. Lau, an attending Board-certified physiatrist, released appellant to full duty with no restrictions on August 3, 1993. Dr. Lichter, a Board-certified orthopedic surgeon and second opinion physician, opined that the accepted aggravation of ankylosing spondylitis had ceased without residuals as of August 12, 1993. Dr. Cone, an attending Board-certified allergist and immunologist, found that appellant's back condition had ceased on or before January 4, 1994. The Board finds that appellant has not submitted sufficient

¹¹ *Conard Hightower*, 54 ECAB 796 (2003).

¹² *Albert C. Brown*, *supra* note 8.

¹³ *See supra* note 8.

rationalized medical evidence outweighing these opinions that his accepted condition had resolved.

The Board also notes that Dr. Soliai attributed an exacerbation of lumbar pain to an October 10, 2004 motor vehicle accident. This accident may represent an intervening cause, breaking the legal chain of causation from the accepted condition.¹⁴

Appellant was advised by a November 7, 2003 letter and during the March 18, 2005 telephonic hearing of the medical and factual evidence needed to establish his claim for recurrence of disability. However, he did not submit such evidence. The Office properly found that appellant submitted insufficient evidence to meet his burden of proof in establishing the claimed recurrence of disability commencing August 12, 1993.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability commencing August 12, 1993.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 17, 2005 is affirmed.

Issued: January 18, 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

¹⁴ *Donald T. Pippin, supra* note 7.