

problems were employment related.² The Office accepted the claim for aggravation of degenerative disc disease, myofascial lumbar ligament injury and authorized surgery for transabdominal retroperitoneal interbody fusion at L5-S1, which occurred on June 13, 2003. Appellant returned to limited-duty working three days a week on January 14, 2004 and stopped on July 13, 2004.³

On August 26 and September 1, 2004 appellant filed claims for a recurrence of disability beginning July 12, 2004.⁴ On September 19, 2004 she filed a claim for compensation for the period August 14 to September 17, 2004 due to her February 3, 2003 employment injury.

In an October 22, 2004 report, Dr. Robert E. Schultz, Sr., a treating Board-certified neurological surgeon, stated that appellant “had not fully recovered from spinal surgery when, while working limited duty, she fell and fractured her wrist and fibula.” He noted that she was subsequently released to limited duty when, “after a period of time, her condition began to deteriorate until she came to my office on July 13, 2004 in severe pain.” Dr. Schultz determined that appellant was unable to work and ordered a magnetic resonance imaging (MRI) scan. He opined that her depression was related to her constant pain due to disc problems, fibula fracture and a scaphoid fracture that had not healed properly. In treatment notes dated June 26, 2003 and July 13, 2004, Dr. Schultz listed a diagnosis of low back and leg pain.

In a November 3, 2004 disability note, Dr. Gregory J. Simmons, a treating orthopedic surgeon, diagnosed left wrist and ankle fracture and indicated that appellant was disabled.

In a July 13, 2004 treatment note, Dr. Schultz related that appellant was “having marked increased back pain and spasm” which was attributed to driving a mail truck and continuously turning to her left side to retrieve the mail and then to the right side to put the mail in the mailbox. He concluded that she was totally disabled. Dr. Schultz reported lower extremity burning “relative to where appellant’s fibular fracture was.” On August 26, 2004 he indicated that appellant was applying for disability retirement and that she experienced pain when she “does not watch what she does” and continued to have pain due to her fall in February when she fractured her fibula.

In a decision dated December 20, 2004, the Office denied appellant’s claim for a recurrence of disability on and after July 12, 2004 due to her accepted February 3, 2003 employment injury.

² This was assigned claim number 10-2021039. On May 17, 2004 the Office combined claim numbers 10-2021039, 11-2008626 and 11-2008384 with 10-2021039 as the master file number.

³ On December 20, 2004 the Office of Personnel Management approved appellant’s disability retirement. She retired from the employing establishment effective February 14, 2005.

⁴ Appellant noted claim numbers 10-2021039 with an injury date of February 8, 2002; 10-2021039 with an injury date of February 3, 2003; 10-2021048 with an injury date of March 7, 2003; and 10-203987 with an injury date of February 17, 2004.

On December 28, 2004 the Office received a December 1, 2004 MRI scan which found moderate osteoarthritis, mild L3-4 disc desiccation, L5-S1 Grade 1 spondylolisthesis and L5-S1 fusion.

On January 10, 2005 the Office received a claim for compensation for the period December 4 to 17, 2004.

In a September 27, 2004 report, Dr. Simmons reported that appellant “tried to get back to work, but was having difficulty with the pain and swelling.” He noted that her “back problems have been exacerbated by the recent injury.” Dr. Simmons opined that appellant would “have difficulty with turning, twisting, bending, climbing, pushing and pulling.”

In a November 23, 2004 treatment note, Dr. Schultz stated that appellant had increased back and leg pain and that an MRI scan revealed L5-S1 postoperative changes. He was not sure why appellant’s pain continued increasing. Dr. Schultz reported that she attributed the “worsening of her back and leg condition to an event that occurred sometime in July when appellant was working in the mail truck. He opined that she was permanently disabled and was probably going to be retired on disability.

On December 28, 2004 the Office received a December 1, 2004 MRI scan.

On March 17, 2005 the Office received appellant’s January 11, 2005 request for a review of the written record by an Office hearing representative.

On May 6, 2005 the Office received treatment notes dated August 26, November 23 and December 3, 2004 by Dr. Schultz. He stated that appellant was seen for increased leg and back pain. An MRI scan revealed “some minimal early changes of degenerative disc disease.”

In a decision dated August 16, 2005, the Office hearing representative affirmed the December 20, 2004 denial of appellant’s recurrence claim.

LEGAL PRECEDENT

A recurrence of disability is defined under the Office’s implementing federal regulations as the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵ This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁶

⁵ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB ____ (Docket No. 04-887, issued September 27, 2004).

⁶ *Elaine Sneed*, 56 ECAB ____ (Docket No. 04-2039, issued March 7, 2005).

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she 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 disability and that she cannot perform the light-duty position. As part of this burden of proof, the employee must show either 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.⁷

ANALYSIS

The Board finds that appellant did not submit medical evidence sufficient to establish that she sustained a recurrence of disability on July 13, 2004 causally related to the February 3, 2003 employment injury. In order to establish a claim for a recurrence of disability, a claimant must establish that she suffered a spontaneous material change in the employment-related condition without an intervening injury.⁸

Appellant submitted treatment notes and reports dated March 12 and 15, July 13, August 26 and October 22, 2004 by Dr. Schultz. He indicated that she was applying for disability retirement and that she experienced pain when she did not watch what she does and pain due to appellant's fall in February when she fractured her fibula. On October 22, 2004 Dr. Schultz diagnosed depression which he attributed to constant pain due to the disc problems, fibula fracture and a scaphoid fracture that had not properly healed. He noted that appellant fell and fractured her fibula and wrist while working limited duty and that subsequent to this injury she was released to limited duty. Dr. Schultz determined that appellant was unable to work due to her pain on July 13, 2003 and ordered a diagnostic scan. On December 3, 2004 he stated that appellant was seen for increased leg and back pain. The Office did not accept that appellant sustained a fractured wrist or fibula as a result of her February 3, 2003 work injury and there is insufficient medical rationalized evidence to support such a conclusion.⁹ Dr. Schultz did not explain how appellant's ongoing back condition was a recurrence of the February 3, 2003 injury. He did not provide medical reasoning addressing how the accepted aggravation of her degenerative disc disease progressed following her return to limited duty so as to result in disability as of July 12, 2004. Dr. Schultz does not explain the nature of appellant's disc problems or address the L5-S1 fusion. He obtained an MRI scan stating that it revealed postoperative changes but acknowledged that he did not know why her pain symptoms continued.¹⁰

⁷ *Bryant F. Blackmon*, 57 ECAB ____ (Docket No. 04-564, issued September 23, 2005); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁸ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, *supra* note 5.

⁹ For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁰ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

Additionally, the opinions of Dr. Schultz and Dr. Simmons implicate a possible new injury rather than a spontaneous recurrence of disability. Dr. Schultz attributed the claimed recurrence of disability to “appellant driving a mail truck and continuously turning to her left side to retrieve the mail and then to the right side to put the mail in the mailbox on July 13, 2004. In a November 23, 2004 report, he indicated that appellant attributed the worsening of her back and leg condition to an event that occurred in July when she was working in the mail truck. Dr. Simmons, in a September 27, 2004 report, opined that appellant’s back problems had been exacerbated by a recent injury. These reports do not support spontaneous recurrence of disability.¹¹

Reports of diagnostic testing submitted by appellant, such as MRI scan, do not offer any opinion on causal relationship between her medical condition and her reported recurrence and, thus, are of no probative value.

The November 3, 2004 disability note of Dr. Simmons diagnosed left wrist and ankle fracture and concluded that appellant was disabled. The Office did not accept that appellant sustained a fractured wrist or fibula as a result of her February 3, 2003 work injury. Dr. Simmons did not address the accepted injury or provide rationale as the cause of appellant’s disability. The Board has held that an opinion not fortified by rationale is of diminished probative value.¹² Thus, his opinion is insufficient to establish that appellant sustained a recurrence of disability commencing after July 12, 2004 due to her accepted February 3, 2003 employment injury.

As appellant failed to submit the necessary factual and rationalized medical evidence to establish that her claimed recurrence of disability is causally related to the accepted employment injury, the Office properly denied her claim for compensation.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a recurrence of disability July 13, 2004 causally related to her accepted employment injuries.

¹¹ *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); *Donald T. Pippin*, 54 ECAB 631 (2003).

¹² *Cecelia M. Corley*, 56 ECAB ____ (Docket No. 05-324, issued August 16, 2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 16, 2005 is affirmed.

Issued: June 1, 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