

she returned to full duty.¹ On February 27, 2002 a sacroiliac joint x-ray was unremarkable and a lumbar spine film was suggestive for age-generalized bone demineralization.

On May 24, 2004 appellant filed a recurrence of disability claim, stating that on February 13, 2004 she injured her knee and approximately one week later began having low back pain radiating into the right buttock and leg. She stopped work on March 5, 2004 and returned on May 17, 2004. In support of her claim, appellant submitted a March 4, 2004 magnetic resonance imaging (MRI) scan of the lumbar spine which was interpreted by Dr. Karl J. Plotkin, a Board-certified radiologist, as demonstrating a sizable disc herniation at L5-S1 on the right with involvement of the S1 nerve root. An employing establishment clinic note dated March 5, 2005 reported a history of the 2001 work injury and that appellant fell on her right knee while at home on February 13, 2004. The MRI scan findings were noted and appellant was told to go home.

In an unsigned March 17, 2004 report, Dr. Cynthia Z. Africk, Board-certified in neurosurgery, advised that she examined appellant on March 15, 2004. She related a history that appellant fell and twisted her knee a month previously, after which she experienced low back pain and sciatica. Physical findings included right hip weakness and decreased pinprick sensation in the right S1 dermatome with exquisitely positive straight leg and cross straight leg raising. Dr. Africk noted the MRI scan findings, diagnosed right S1 radiculopathy with herniated disc at L5-S1, provided restrictions to appellant's physical activity, and recommended surgery. On March 25, 2004 she performed a right L5-S1 hemilaminectomy and discectomy. In reports dated March 30 to May 24, 2004, Dr. Africk described follow-up care and placed continued restrictions on appellant's activity. On May 17, 2004 Dr. Schaffer noted that appellant had returned to duty with restrictions to her physical activity. He opined that it was questionable whether appellant's disc herniation was work related.

On July 2, 2004 appellant filed a Form CA-7 claim for compensation for the period March 15 through May 14, 2004 and requested leave buy-back. By letter dated October 27, 2004, the Office informed her that there was no evidence of record to show that her back condition was caused by the December 21, 2001 sacroiliac strain. It advised her of the evidence needed and to submit a narrative medical report with a physician's opinion regarding the relationship between her back condition and the December 21, 2001 injury.

On November 21, 2004 appellant submitted a November 17, 2004 report from Dr. Africk, who referred to her prior March 17, 2004 report regarding a history of injury and diagnosed a right L5-S1 disc herniation. She stated that it was possible that the disc was weakened at the time of the injury on December 21, 2001, but there was no way to prove this. Dr. Africk noted that appellant stated that her back did not begin to hurt until five days after her fall February 13, 2004. Appellant also submitted physical therapy notes dated March 8 to 25, 2002.

By decision dated December 8, 2004, the Office denied appellant's recurrence of disability claim on the grounds that the factual and medical evidence did not establish her disability commencing March 5, 2004 resulted from the December 21, 2001 employment injury.

¹ At that time appellant was under the care of Dr. Donald E. Schaffer, an employing establishment physician whose credentials could not be ascertained.

On December 24, 2004 appellant, through her attorney, requested a hearing that was held on May 25, 2005. At the hearing she described the December 2001 employment injury and testified that she returned to full duty after that injury. Appellant stated that she did pretty well from mid 2002 until in February 13, 2004 when she slipped and twisted her right knee at home. Several weeks later her back began to hurt. After her March 2004 surgery, she was off work for eight weeks and had to change her job because of her physical restrictions. Appellant submitted a January 8, 2005 report from Dr. Africk, who stated, “from the history that the patient gives, I can only conclude that the injury is directly related to the original injury, December 21, 2001.” In an August 4, 2005 decision, an Office hearing representative affirmed the December 8, 2004 decision. He found Dr. Africk’s medical opinion to be speculative and lacking medical rationale to support that appellant’s current back condition was causally related to the December 21, 2001 employment injury.

LEGAL PRECEDENT

A recurrence of disability means an 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.² 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.³

It is an accepted principle of workers’ compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee’s own intentional conduct.⁴ Regarding the range of compensable consequences of an employment-related injury, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of “direct and natural results” and of claimant’s own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. Thus, once the work-connected character of any condition is established, the subsequent progression of that condition remains compensable

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

³ *Id.*

⁴ *Mary Poller*, 55 ECAB ____ (Docket No. 04-31, issued May 3, 2004); *Charlet Garrett Smith*, 47 ECAB 562 (1996).

so long as the worsening is not shown to have been produced by an independent nonindustrial cause.⁵

ANALYSIS

The Board finds that appellant has not established that she sustained a recurrence of disability commencing March 5, 2004 causally related to the December 21, 2001 employment injury.

In order to establish a claim for a recurrence of disability, a claimant must establish that he or she suffered a spontaneous material change in the employment-related condition without an intervening injury.⁶ In this case, appellant reported that her back began to hurt several weeks after she fell at home on February 13, 2004, more than two years following her December 2001 employment injury. Her claim was accepted for a sacroiliac strain and she returned to full duty. A February 27, 2002 x-ray was unremarkable except for age-generalized bone demineralization.

Following the February 13, 2004 fall at home, a March 4, 2004 MRI scan revealed a herniated disc for which appellant underwent surgery. In a May 17, 2004 employing establishment clinic note, Dr. Schaffer opined that it was questionable whether appellant's disc herniation was work related. In a November 17, 2004 report, Dr. Africk opined that it was "possible" that the December 21, 2001 employment injury caused her herniated disc but noted that there was no way to prove this. On January 8, 2005 she advised that "from the history that the patient gives, I can only conclude that the injury is directly related to the original injury, December 21, 2001."

The Board finds that Dr. Africk's opinion lacks sufficient rationale to meet appellant's burden of proof. Her opinion is speculative with regard to the issue of causal relationship. She did not explain how the herniated disc found by the MRI scan after the February 2004 slip and fall at home was a consequence of the 2001 employment injury.⁷ Furthermore, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁸ In this case, the medical record contains no relevant medical evidence to bridge the period May 2002 when appellant returned to work following the December 2001 employment injury and March 2004 when her herniated disc was first diagnosed. Dr. Africk did not provide an explanation of why a diagnosed strain in December 2001 would cause a slip and fall in February 2004 or contribute to a herniated disc. The Board has held that, when diagnostic testing is delayed, uncertainty mounts regarding the

⁵ A. Larson, *The Law of Workers' Compensation*, § 13.11.

⁶ 20 C.F.R. § 10.5(x); *Theresa L. Andrews*, *supra* note 2.

⁷ See *John W. Montoya*, 54 ECAB 306 (2003). (The physician must provide an opinion on whether the employment incident described caused or contributed to the claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rational.) See also *Charles W. Downey*, 54 ECAB 421 (2003). (The Board held that appellant did not submit sufficient probative medical evidence to establish that his diabetes was a consequence of his accepted employment injuries.)

⁸ *Ricky S. Storms*, 52 ECAB 349 (2001).

cause of the diagnosed condition and a question arises as to whether that testing in fact documents the injury claimed by the employee. The greater the delay in testing the greater the likelihood that an event not related to employment has caused or worsened the condition for which the employee seeks compensation.⁹ In this case, the lumbar spine MRI scan that demonstrated the herniated disc at L5-S1 was not done until March 4, 2004, more than two years after the December 21, 2001 employment injury. Regarding the publications submitted by appellant, newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and a claimant's federal employment, as such materials are of general application and are not determinative of whether the specific condition claimed is related to particular employment factors or incidents.¹⁰

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 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 such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹¹ It is well established that medical reports must be in the form of a reasoned opinion by a qualified physician¹² and must explain from a medical perspective how the current condition is related to the injury.¹³ Dr. Africk provided insufficient explanation for her stated conclusion that appellant's herniated disc was caused by the employment injury. Her opinion does not establish that the herniated disc condition was caused by the December 21, 2001 employment injury or establish appellant's disability commencing March 5, 2004 was due to the 2001 injury appellant's recurrence claim. The record in this case does not contain a medical report providing a reasoned medical opinion that appellant's claimed back condition or recurrence of disability were caused by the December 21, 2001 employment injury.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that her disability as of March 5, 2004 or consequential injury on February 13, 2004 were causally related to her December 21, 2001 employment injury.

⁹ *Mary A. Ceglia*, 55 ECAB ____ (Docket No. 04-113, issued July 22, 2004).

¹⁰ *Willie M. Miller*, 53 ECAB 697 (2002).

¹¹ *Pamela J. Glenn*, 53 ECAB 159 (2001).

¹² *William D. Farrior*, 54 ECAB 566 (2003); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹³ *Tomas Martinez*, 54 ECAB 623 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 4, 2005 be affirmed.

Issued: May 3, 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