

truck. Appellant stopped work on August 9, 2003 and returned to light-duty work for the employing establishment on August 22, 2003. He stopped work again on August 22, 2003 and returned to light-duty work on December 22, 2003.

In an October 28, 2004 report, Dr. Robert Meyerson, an attending Board-certified orthopedic surgeon, indicated that appellant complained of low back and left shoulder pain and indicated that the diagnoses of left shoulder sprain and lumbar sprain were due to the August 9, 2003 employment injury. In a December 2, 2004 report, Dr. Meyerson noted that appellant continued to complain of back pain.¹

In December 2004, the Office accepted that appellant sustained an employment-related left shoulder sprain, lumbar sprain and contusions on August 9, 2003. The Office paid appropriate compensation for periods of disability.

The findings of March 21, 2004 magnetic resonance imaging (MRI) scan testing of the left shoulder showed a glenoid labrum tear and the findings of March 21, 2004 MRI scan testing of the spine revealed a herniation at L4-5 and bulges at L3-4, T9-10 and T10-11.

Appellant stopped work on April 9, 2004 and filed a claim alleging that his work stoppage constituted a recurrence of total disability due to his August 9, 2003 employment injury. He later claimed that in March 2004 his job hours and location changed and that the increased walking he was required to perform “added stress and more pain to my injury.” On the claim form, Grace Lobifaro, appellant’s supervisor, stated that his light-duty job since December 2004 involved sitting at a desk or booth and observing the entrance door and required “no physical labor at all.”²

In a form report dated March 31, 2005, Dr. Meyerson diagnosed lumbar radiculopathy and checked a “yes” box indicating that the condition was caused or aggravated by the August 9, 2003 injury. He indicated that appellant was totally disabled from March 31 to July 1, 2005.³

By decision dated July 15, 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 on or after April 9, 2005 due to his August 9, 2003 employment injury.

In an August 26, 2005 report, Dr. Meyerson stated that appellant continued to complain of “disabling pain in his left shoulder and lower back” and stated:

“Within a reasonable degree of medical certainty, the patient’s current symptoms are related to the accident of August 9, 2003. The injuries to his left shoulder and lumbosacral spine are progressive in nature and subject to periods of remission

¹ Dr. Meyerson noted appellant’s obesity and preexisting knee problems.

² In a June 21, 2005 letter, Ms. Lobifaro stated that since December 22, 2003 appellant had been working in a sedentary position, which was within the restrictions recommended by his physicians.

³ In other reports from this period, Dr. Meyerson stated that appellant’s radiculopathy was associated with an L4-5 disc herniation.

and exacerbation. The damage to his rotator cuff has progressed to the point that he requires arthroscopic surgery on his left shoulder. Furthermore, he sustained disc injuries as a result of the injury which have now progressed to the point that he requires more aggressive treatment of his lumbosacral spine. The patient continues to be totally disabled with respect to his regular job.”

Appellant requested a hearing before an Office hearing representative which was held December 16, 2005. He testified that beginning in January 2005 he was required to walk two or three blocks to get to and from his workplace and indicated that he stopped work in April 2005 due to severe shoulder, back and leg pain.⁴

Appellant continued to submit brief reports in which Dr. Meyerson stated that he was seen for a left shoulder rotator cuff tear and lumbosacral problems and indicated that he was totally disabled from his regular job.

By decision dated and finalized February 24, 2006, the Office hearing representative affirmed the Office’s July 15, 2005 decision.

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 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 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 an employment-related left shoulder sprain, lumbar sprain and contusions on August 9, 2003. In December 2004, appellant returned to sedentary light-duty work for the employing establishment. He stopped work on April 9, 2004 and filed a claim alleging that his work stoppage constituted a recurrence of total disability due to his August 9, 2003 employment injury.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability on or after April 9, 2005 due to his August 9, 2003 employment injury.

Appellant submitted an August 26, 2005 report in which Dr. Meyerson, an attending Board-certified orthopedic surgeon, stated that appellant continued to complain of “disabling

⁴ In a statement dated January 12, 2006, Ms. Lobifaro stated that appellant’s light-duty work was sedentary in nature and that he could have received a handicapped permit to park next to the “Air Train” service, which would have minimized the walking required to get to his work site.

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

pain in his left shoulder and lower back.” Dr. Meyerson noted that appellant’s “current symptoms are related to the accident of August 9, 2003” and that the “injuries to his left shoulder and lumbosacral spine are progressive in nature and subject to periods of remission and exacerbation.” He stated that the damage to appellant’s left rotator cuff had progressed to the point that he required arthroscopic surgery and indicated that “he sustained disc injuries as a result of the injury which have now progressed to the point that he requires more aggressive treatment of his lumbosacral spine.” Dr. Meyerson stated that appellant continued to be totally disabled from his regular job.

This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Meyerson did not provide adequate medical rationale in support of his conclusion on causal relationship.⁶ He suggested that appellant sustained a left rotator cuff injury and lumbar disc injuries due to the August 9, 2003 employment injury, but such conditions have not been accepted as employment related, nor did Dr. Meyerson provide a rationalized opinion establishing the existence of employment-related left rotator cuff and lumbar disc injuries or explain how an employment injury caused disability on or after April 9, 2005. Such medical rationale is particularly necessary in the present case as Dr. Meyerson did not mention rotator cuff or lumbar disc problems when he saw appellant several times in the months after the August 9, 2003 injury. He did not describe the employment injury in any detail or explain how it could have been competent to cause disability on or after April 9, 2005. Dr. Meyerson also did not explain why appellant’s continuing disability was not due to some nonwork problem, such as his obesity or knee condition.

In a form report dated March 31, 2005, Dr. Meyerson diagnosed lumbar radiculopathy and checked a “yes” box indicating that the condition was caused or aggravated by the August 9, 2003 injury. He indicated that appellant was totally disabled from March 31 to July 1, 2005. However, this report is also deficient in that it has not been accepted that appellant sustained a lumbosacral radiculopathy on August 9, 2003 and Dr. Meyerson did not explain how he could have sustained such an injury such that it caused disability in early 2005. Dr. Meyerson also did not mention radiculopathy problems when he saw appellant several times in the months after the August 9, 2003 injury.

Appellant suggested that changes in his light-duty requirements, such as increased walking beginning in December 2004, caused him to be totally disabled in April 2005. However, the record clearly reveals that the position appellant returned to in December 2003 was a sedentary position which continued to be within his medical restrictions. A supervisor indicated that appellant basically sat and watched an entrance during his workday and that he could have received a handicapped permit to park next to the “Air Train” service which would have minimized the walking required to get to his work site.

Therefore, appellant has not shown a disabling change in the nature and extent of the injury-related condition or a disabling change in the nature and extent of the light-duty job requirements.

⁶ 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).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability on or after April 9, 2005 due to his August 9, 2003 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 24, 2006 and July 15, 2005 decisions are affirmed.

Issued: October 4, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board