

Appellant received treatment following injury. On October 22, 2001 x-rays of the lumbar spine revealed four lumbar vertebrae with the fifth reported as sacralized. Spondylolysis of the fourth lumbar vertebrae was noted with anterior spondylolisthesis of the L4 on the transitional L5 vertebrae. Dr. L. Thomas Cashio, a Board-certified orthopedic surgeon, diagnosed a lumbar strain superimposed on Grade 1 spondylolisthesis. Dr. Lilibeth C. Rochon, an attending family practitioner, recommended restrictions on lifting greater than 15 pounds. On November 29, 2001 Dr. Cashio noted some localized tenderness in the lower lumbar area with negative straight leg raising to 90 degrees. She was returned to light-duty work for half days with no lifting greater than 15 to 20 pounds. Appellant was also treated conservatively with physical therapy.

Dr. Cashio referred appellant for consultation with Dr. Paul Dash, a neurologist. In a January 17, 2002 report, Dr. Dash reviewed the history of injury and reported tenderness to palpation in the area of the right buttock with negative straight leg raising. Sensory examination revealed no abnormalities. Dr. Dash advised that appellant did not have any clear-cut nerve root injury and noted depression. He recommended continuing physical therapy. On February 7, 2002 Dr. Cashio noted that appellant had finished physical therapy and advised that she could perform light duty for five hours a day until February 11, 2002, when she was returned to unrestricted duty. On February 28, 2002 Dr. Cashio noted that appellant returned with complaint of pain and numbness radiating down the right leg. He noted that x-rays of the pelvis were negative and injected the right trochanteric bursa and recommended she see Dr. Dash. On March 11, 2002 Dr. Cashio noted that prior x-rays of 1996 had revealed a Grade 1 spondylolisthesis at L4-5 and that the x-rays had not changed significantly when compared to recent studies.

The December 11, 2002 report of Dr. Steven T. Atkins, a Board-certified neurologist, listed appellant's complaint of a burning sensation across her left buttock when she stood for more than several hours.¹ He noted low back spasms with tenderness in the right sciatic notch and right paraspinous muscles of the lumbar region. Dr. Atkins advised that a magnetic resonance imaging (MRI) scan would be obtained.

On May 2, 2005 she filed a recurrence of disability claim commencing April 13, 2005. Appellant advised that her work hours were reduced to prevent prolonged standing and she was given a 24-hour work schedule. On May 13, 2005 appellant underwent an MRI scan, which revealed narrowing of the intervertebral disc at L5-S1 with first degree spondylolisthesis of L5 on S1, considered secondary to diffuse facet arthritis bilaterally. The remaining facet joints were reported as unremarkable. In a May 17, 2005 note, Dr. Rochon reviewed appellant's prior medical treatment in 2001 through 2002.²

By letter dated September 2, 2005, the Office advised appellant to submit additional evidence in support of her claim. She was asked to describe her work and any light-duty assignment and submit medical evidence explaining how she became disabled due to a worsening of her medical condition.

¹ The record reflects that Dr. Atkins is associated with the neurological clinic where Dr. Dash was formerly employed.

² Dr. Rochon referred appellant to Dr. Dhanpat C. Mohnot, a Board-certified neurologist, for consultation.

In a November 11, 2005 report, Dr. Mohnot noted that appellant sustained injury in October 2001 and had experienced low back pain with right leg numbness. He noted that prolonged standing increases her back pain and that she had received epidural injections. Dr. Mohnot advised that physical therapy had provided some relief but her pain would increase after standing for about two hours. He reviewed the 2005 MRI scan and noted spondylolisthesis of L5 on S1 secondary to severe facet arthritis. Electrodiagnostic studies of June 7, 2005 revealed possible right L5-S1 radiculopathy. On physical examination, appellant revealed limitation in flexion and extension movements of the low back with difficulty walking on her tip toes and heels. Positive straight leg raising was noted with tenderness in the lumbosacral paraspinal muscles on the right side. He noted that, due to a worsening of her symptoms, she was unable to perform her work duties as of April 2005. Dr. Mohnot stated that the worsening of appellant's condition was related to the injury of October 2001.

In a November 30, 2005 statement, appellant noted that, following the 2001 injury, she participated in physical therapy and underwent an injection of medication into her back on February 28, 2002. She described recurring back pain which ran down her right thigh and leg. She stopped work on April 14, 2005 because her symptoms increased and she was unable to stand for more than an hour or two at the cash register. The five-hour workweek was given to her in response to the light duty recommended in 2001.

On December 19, 2005 the Office issued a decision denying appellant's claim. It noted that her claim was accepted for a lumbar strain arising from the October 20, 2001 injury and that the medical evidence did not establish that her claimed recurrence of disability resulted from the accepted injury. The Office noted that the recent reports from Dr. Rochon and Dr. Mohnot did not reference the prior history of Grade 1 spondylolisthesis noted by Dr. Cashio to date back to 1996.

LEGAL PRECEDENT

A recurrence of disability is defined as the inability to work caused by a spontaneous change in a medical condition which results from a previous injury or illness without an intervening injury or new exposure in the work environment that caused the illness.³ An employee who claims a recurrence of disability due to an accepted employment injury has the burden of proof to establish that the disability for which she seeks compensation is causally related to the accepted injury.⁴ Whether a particular injury causes disability for work is primarily a medical question.⁵ A physician must provide a reasoned opinion on the issue of causal relationship that is based upon a complete and accurate factual and medical history.⁶

³ See 20 C.F.R. § 10.5(x); *Donald T. Pippin*, 54 ECAB 631 (2003).

⁴ See *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁵ See *Laurie S. Swanson*, 53 ECAB 517 (2002).

⁶ See *Carol S. Madsen*, 54 ECAB 331 (2003).

ANALYSIS

Appellant sustained an injury on October 20, 2001, accepted by the Office for a lumbar strain. She received medical treatment from Dr. Cashio, who reported that diagnostic studies revealed a lumbar strain superimposed on a Grade 1 spondylolisthesis at L5. Appellant was initially returned to light-duty work for half days and to unrestricted duty on February 11, 2002. On March 11, 2002 Dr. Cashio noted that prior x-rays of 1996 had revealed the Grade 1 spondylolisthesis and that the diagnostic studies had not changed in any significance when compared with more recent studies.

Appellant claimed a recurrence of disability commencing April 13, 2005, stating that her work hours had been reduced because she was not able to stand for a prolonged period of time. The May 13, 2005 MRI scan again revealed a Grade 1 spondylolisthesis of L5 on S1, secondary to facet arthritis. She was requested by the Office to submit a medical report from an attending physician addressing the relationship of her disability in 2005 to the accepted injury. Dr. Rochon, an attending family practitioner, provided a May 17, 2005 note which reviewed appellant's medical treatment. However, the physician did not provide any discussion addressing how appellant's disability and need for medical treatment in April 2005 was caused or contributed to by the 2001 employment injury. In this regard, the Board notes that the condition accepted by the Office in 2001 was a lumbar strain. The Office has not accepted that the 2001 injury caused or aggravated the diagnosed Grade 1 spondylolisthesis of appellant's lumbar spine. As noted, appellant was released to return to work by Dr. Cashio in 2002 at unrestricted duty.

Dr. Mohnot provided a report, addressing appellant's symptoms of low back pain with right leg numbness following the October 2001 injury. He indicated that prolonged standing at work increased her back pain. The 2005 MRI scan was reviewed and L5-S1 radiculopathy noted by the June 7, 2005 diagnostic tests. Dr. Mohnot noted findings on examination and stated that appellant became unable to perform her duties in April 2005 due to a worsening of her condition, which he related to the October 2001 injury. The Board finds that the report of Dr. Mohnot is of diminished probative value. As noted, a recurrence of disability is defined as a spontaneous change in an accepted condition without new exposures in the work environment. The history related by Dr. Mohnot attributed appellant's low back pain and numbness to prolonged standing in her work as a cashier during the period immediately prior to April 2005. This does not support a spontaneous recurrence of disability.⁷ Dr. Mohnot diagnosed Grade 1 spondylolisthesis but did not distinguish this condition from the lumbar strain accepted by the Office in 2001. Dr. Cashio provided medical reports which note a history of the Grade 1 spondylolisthesis dating to 1996. Dr. Cashio indicated that the lumbar strain sustained in 2001 was superimposed on this condition and that a comparison of the x-rays between 1996 and 2001 did not reveal any significant changes. The more recent diagnostic reports attributed appellant's condition to underlying facet arthritis. Dr. Mohnot did not provide any discussion explaining how the 2001 injury caused or contributed to the diagnostic findings reported in 2005 or provide a full review of the prior medical reports of record. The Board finds that the medical evidence

⁷ The record reveals that appellant also filed a new injury claim pertaining to her disability in April 2005. As this has not been adjudicated by the Office, it is not an issue before the Board in the present appeal.

submitted by appellant is not sufficient to establish that she sustained a recurrence of disability on April 13, 2005 causally related to her October 20, 2001 lumbar strain.

CONCLUSION

Appellant has not met her burden of proof to establish that her disability for work commencing April 13, 2005 is causally related to her October 20, 2001 injury.

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 8, 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