United States Department of Labor
Employees' Compensation Appeals Board

G.C., Appellant	)	
and	)	**Docket No. 06-1001**
	)	**Issued: September 7, 2006**
DEPARTMENT OF VETERANS AFFAIRS, SYRACUSE MEDICAL CENTER, Syracuse, NY, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 23, 2006 appellant, through his attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated August 1, 2005 and March 7, 2006 denying his recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability causally related to his August 19, 2004 employment injury.

FACTUAL HISTORY

On August 24, 2004 appellant, then a 45-year-old nurse, filed a notice of traumatic injury alleging that on August 19, 2004 he injured his lower back lifting a patient. He stopped work. The Office requested additional information in support of appellant's claim on September 23, 2004.

Appellant accepted a limited-duty position on September 24, 2004 and returned to work on October 4, 2004. His duties were administering influenza vaccines and inputting patient information into a database. The position required lifting and carrying of less than three pounds intermittently for eight hours a day, sitting and standing intermittently for eight hours a day and walking intermittently for less than one hour. Appellant's work schedule was from 8:00 a.m. until 4:30 p.m.

On October 21, 2004 appellant noted that he had a previous diagnosis of sciatica predating his work injury by one year. He submitted a note from his attending physician, Dr. Daniel B. Rancier, a Board-certified family practitioner, releasing him from work on September 7, 2004. On September 13, 2004 Dr. Rancier referred appellant for physical therapy due to right side low back pain.

On November 22, 2004 appellant accepted a modified work position which involved care plans, nursing admission assessment, data capture, team meetings and chart checks. The physical requirements were sitting, standing and walking for no more than two hours at a time. His work hours were from 7:30 a.m. until 4:00 p.m., Monday through Friday, with a 15-minute break in both the morning and the afternoon as well as 30 minutes for lunch. Appellant accepted a similar modified position on December 3, 2004 with a schedule change to Monday through Friday with rotating weekends and shifts, 7:30 a.m. to 4:00 p.m. and 3:30 p.m. to 12:00 a.m. including two breaks and lunch. On January 12, 2005 Dr. Rancier stated that appellant was able to administer medications with other nursing duties.

Dr. Rancier completed notes on March 7 and 17, 2005 indicating that appellant was unable to work.

Appellant filed a notice of recurrence of disability on March 29, 2005 alleging on March 1, 2005 he sustained a recurrence of total disability causally related to his August 19, 2004 employment injury.

By decision dated April 21, 2005, the Office accepted that appellant's August 19, 2004 employment injury resulted in lumbar sprain and strain.

On April 21, 2005 the Office also requested factual and medical evidence regarding appellant's claim for recurrence of disability. Appellant's response included a report dated March 14, 2005 from Dr. Rancier, who provided a history of an August 14, 2003 employment injury which resulted in a diagnosis of sciatica. Dr. Rancier noted that appellant believed that he had an exacerbation of pain because he had to work too hard and to recently shoveling snow. He noted that appellant had stopped work on his recommendation with no significant improvement in his back pain. Dr. Rancier referred appellant for a magnetic resonance imaging (MRI) scan on May 6, 2005 which revealed chronic degenerative disc disease at L4-5 with only minimal impression on the thecal sac in the midline and mild impression on the thecal sac posterolaterally. The MRI scan revealed no evidence of nerve root compression.

On May 3, 2005 appellant described his history of injury and that he had to work in October 2004 following the August 19, 2004 employment injury. He worked long days and experienced pain in his lower back as well as shooting pain down his legs. Appellant required

additional pain medication to work. Following the closure of the influenza clinic, he returned to a modified position on the nursing home care unit with no direct patient contact. Appellant again experienced increasing pain and required additional pain medication. In January his nurse manager stated that he would be more useful if he could administer medications. Appellant informed Dr. Rancier who released him to perform this duty. He stated, "Six weeks after I was cleared to administer medications, on March 1, 2005, I awoke to an intense aching pain in my lower back and a sharp numbing pain shooting down my right leg to my toes." Appellant asserted that his work duties compounded his pain and that he was standing on his feet most of the eight-hour shift.

In a note dated May 9, 2005, Dr. Rancier diagnosed chronic low back pain and noted that appellant was not experiencing any change in his low back pain.

On May 19, 2005 the Office requested additional factual and medical evidence regarding appellant's alleged recurrence of total disability. Dr. Rancier completed a report on June 21, 2005 and stated that appellant's diagnoses included sciatica and low back pain which existed concurrently. He stated, "This is all related to his previous injury and there is nothing significantly new going on with this condition."

Dr. Craig Montgomery, a Board-certified neurosurgeon of professorial rank, completed a report on June 23, 2005 and noted appellant's employment injury "two years ago." He stated that appellant was able to work until August 2004 when he reinjured his back. Appellant performed modified work until March 1, 2005, when he tried to increase his workload which caused him excruciating back pain. X-rays revealed significant degenerative disc disease with no evidence of instability or misalignment. Dr. Montgomery diagnosed low back pain secondary to degenerative disc disease and spondylosis. He recommended physical therapy and aggressive pain management.

By decision dated August 1, 2005, the Office denied appellant's claim for recurrence of total disability. It found that appellant had not submitted sufficient evidence to establish either a change in the nature and extent of his employment-related condition or a change in the nature and extent of his light-duty job requirements.

Appellant requested an oral hearing on August 22, 2005. He submitted a report dated August 19, 2005 from Dr. Rancier diagnosing chronic low back pain with radiation down the right leg. Dr. Rancier noted that appellant denied any significant change in his chronic low back pain. On August 22, 2005 he diagnosed chronic low back pain with radiation down the legs and stated that appellant had improved since stopping work. Dr. Rancier stated that work which required any lifting, twisting, bending or an excessive amount of time standing or sitting would exacerbate appellant's back pain. He concluded that appellant was still disabled from his regular duties. On October 4, 2005 Dr. Rancier noted that appellant alleged that, although he was placed on restricted duty following his August 19, 2004 employment injury, he was expected to do far more than what his restricted duty stated. He stated:

> "Therefore, I do feel the injury [appellant] sustained at work prior to his first visit with me for this on August 14, 2003 is the cause of his back pain and that the restricted duty he had was never adhered to/fully granted and the reason for his

persistent pain/recurrent back pain is all related to the initial injury for which I same him August 14, 2003…."

Dr. Rancier stated that injured workers who return to work with restricted duty were often forced to do much more than described in the modified positions, but admitted that he had no proof that appellant was asked to do more than the duties of modified position.

On October 28, 2005 the Office received an undated report from Dr. Rancier noting that he had examined appellant monthly since August 14, 2003. Dr. Rancier noted that appellant worked in the clinic administering vaccines until early November at which point he returned to his original floor to perform limited-duty assignments. During this period, appellant requested additional pain medication and occasional excuses from work to recover from pain that occurred from performing his duties. Dr. Rancier stated, "[Appellant's] pain and disability is a permanent condition due to spinal compression related to the presence of degenerative disc disease."

The Office's Branch of Hearings and Review scheduled appellant's oral hearing for December 21, 2005. In a letter dated December 2, 2005, appellant's attorney requested a review of the written record.

In a report dated September 28, 2005, Dr. Joseph Gaffney, a Board-certified anesthesiologist, stated that appellant had a three-year history of lower back pain with an unknown inciting event and a slow insidious onset. He diagnosed degenerative disc disease with radiculopathy to the right in the lumbar region. Dr. Gaffney did not discuss an employment connection to appellant's condition. Appellant also submitted additional reports detailing the treatment of his back condition as well as a psychiatric evaluation.

By decision dated March 7, 2006, the Office hearing representative denied appellant's claim for a recurrence of disability finding that there was insufficient medical evidence to establish that his disability after March 1, 2005 was due to his accepted work injury. The hearing representative noted that the medical evidence did not establish that appellant's condition worsened on or after March 1, 2005 such that he could no longer perform the duties of his limited-duty assignment.

LEGAL PRECEDENT

A recurrence of disability is defined 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. This term also means an inability to work that takes place 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 or when the physical requirement of such an assignment are altered so that they exceed his or her established physical limitations.[1]

[1] 20 C.F.R. § 10.5(x).

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that he cannot perform such limited-duty work. 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 limited-duty job requirements.[2]

ANALYSIS

The Office accepted that appellant sustained a lumbar strain and sprain as a result of lifting a patient on August 19, 2004. Appellant returned to light-duty work and worked through March 1, 2005. The Board finds that the medical evidence does not establish that appellant's recurrence of total disability is due to a change in the nature and extent of his accepted employment-related condition of August 19, 2004.

Appellant's attending physician, Dr. Rancier, a Board-certified family practitioner, diagnosed low back pain on March 14, 2005. He noted that appellant was first seen for this condition which was diagnosed as sciatica on August 14, 2003. On June 21, 2005 Dr. Rancier diagnosed sciatica and low back pain related to appellant's "previous injury." He attributed appellant's condition to an August 14, 2003 back injury, rather than the accepted injury of August 19, 2004 in his October 4, 2005 report. In an undated report, Dr. Rancier stated that appellant's current condition was due to spinal compression related to degenerative disc disease.

Dr. Rancier's reports do not support a change in the nature and extent of appellant's accepted condition of lumbar sprain and strain, but instead attribute his current condition and disability to an injury in August 2003 which resulted in a diagnosis of sciatica.[3] Although appellant attributes his current condition to his August 19, 2004 employment injury, the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that a condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by employment duties is sufficient to establish causal relationship.[4] Dr. Rancier did not provide a history of appellant's accepted lumbar strain/sprain of August 19, 2004 or any opinion on a causal relationship between appellant's accepted employment injury of August 19, 2004 and his currently diagnosed conditions of degenerative disc disease, sciatica and low back pain. Without an accurate history of injury, and a medical opinion of describing a causal relationship between appellant's current conditions and his accepted employment injury, supported by medical reasoning, Dr. Rancier's reports are not sufficient to meet appellant's burden of proof to establish a change in the nature and extent of appellant's accepted employment-related condition of lumbar strain/sprain on or after March 1, 2005.

[2] *Joseph D. Duncan*, 54 ECAB 367 (2003); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[3] Appellant admitted that he had been diagnosed with sciatica one year before his August 19, 2004 employment injury.

[4] *Lucrecia M. Nielson*, 42 ECAB 583 (1991).

Dr. Montgomery, a Board-certified neurosurgeon of professorial rank, described both an injury which allegedly occurred at work in 2003 and appellant's August 19, 2004 employment injury. He stated that appellant was able to perform modified work until March 1, 2005 when he tried to increase his workload. This caused appellant to experience more excruciating back pain. Dr. Montgomery diagnosed low back pain secondary to degenerative disc disease and spondylosis. Although he did mention the accepted employment injury on August 19, 2004 he did not explain how appellant's degenerative disc disease or spondylosis was caused or contributed to by the accepted injury or its relationship to disability commencing March 2005. Dr. Montgomery described an increase in appellant's workload on March 1, 2005 which is not consistent with the factual history provided by appellant. Appellant has not indicated that his work duties changed after January 2005 when Dr. Rancier released him to administer medications. Dr. Montgomery did not provide an accurate history of injury. His opinion on the causal relationship between the accepted employment injury on August 19, 2004 and appellant's current diagnosis is of diminished probative value to establish a change in the nature and extent of appellant's injury-related condition of lumbar sprain/strain.

Appellant also submitted a report from Dr. Gaffney, a Board-certified anesthesiologist, indicating that appellant had a three-year history of back pain. He stated that the cause of this was unknown and that appellant had experienced a slow onset of pain. This report did not mention appellant's accepted employment injury or describe the alleged recurrence of total disability. It does not establish a change in the nature and extent of appellant's accepted employment-related condition resulting in a recurrence of total disability. Without an accurate factual background, this report is of diminished probative value.[5]

The Board finds that there is insufficient evidence to establish that appellant experienced a change in the nature and extent of the light-duty requirements or was required to perform duties which exceeded his medical restrictions. Appellant returned to light-duty work in October 2004 administering vaccines. His light-duty assignment was changed in November 2004[6] to include care plans, nursing admission assessment, data capture, team meetings and chart checks. Dr. Rancier permitted him to administer medications beginning in January 2005. There is no evidence that appellant's light-duty job requirements changed again after January 12, 2005. Appellant stopped work on March 1, 2005 and alleged a recurrence of total disability attributing this to working too hard, working long days, standing on his feet[7] all day as well as administering medication. As noted above, in order to meet his burden of proof in a recurrence claim after returning to light duty, appellant must establish either a change in the nature and extent of the job requirements or a change in the nature and extent of his injury-related condition.

Appellant submitted a report from Dr. Rancier which noted that he was working light duty but reported that his employer did not follow the light-duty restrictions. Dr. Rancier also

[5] Medical conclusions based on inaccurate or incomplete histories are if diminished probative value. *Beverly R. Jones*, 55 ECAB ___ (Docket No. 03-1210, issued March 26, 2004).

[6] Although appellant signed an additional limited job description in December 2004, the duties of the position remained the same, only the work hours changed. Appellant does not attribute his recurrence of total disability to this change. *Compare Michael S. Adams*, Docket No. 06-786, issued July 25, 2006.

[7] Appellant's position description required sitting, standing and walking for no more than two hours a time.

noted that injured workers were frequently required to work beyond their physical limitations and that he believed that appellant was required to do so. Dr. Montgomery noted that appellant tried to increase his workload on March 1, 2005 and this resulted in more back pain. However, Drs. Rancier and Montgomery appear merely to be repeating appellant's assertions regarding his work duties. The evidence of record does not establish that appellant's work exceeded his light-duty restrictions. Thus, the physician's opinion on causal relationship, due to a change in light-duty requirements, is of diminished probative value.[8] The record is void of evidence indicating that there was a change in the nature and extent of the light-duty requirements on or around March 1, 2005 or that he was required to perform duties which exceeded his medical restrictions. Rather the record reflects that the only change in appellant's light-duty position was that appellant was permitted by Dr. Rancier to administer medications beginning January 12, 2005. Neither physician attributed appellant's disability on or after March 1, 2005 to this requirement of his employment.

Appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit him from performing the light-duty position he assumed after he returned to work.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability on March 1, 2005 causally related to his accepted employment-related injury of August 19, 2004.

[8] *Johnson*, *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2006 and August 1, 2005 decisions of the Office of Workers' Compensation Programs are herby affirmed.

Issued: September 7, 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