

disability from January 12 to February 16, 2003. She returned to work on February 18, 2003 in a light-duty capacity.¹

On June 18, 2004 the Office asked Dr. Keolanui G. Chun, an attending Board-certified orthopedic surgeon, whether appellant's accepted lumbar strain had resolved. In a June 28, 2004 report, Dr. Chun diagnosed a chronic thoracolumbar strain. Appellant indicated that her symptoms were largely stress related. On physical examination, appellant had excellent range of motion. There was tenderness in the thoracolumbar junction, but no paraspinous muscle spasm or radiculopathy. Dr. Chun stated:

"A long and frank discussion was held with [appellant]. Her symptoms appear to be primarily exacerbated by the stress that she experiences at work. Physically, there are minimal to no findings.

"It was recommended to [appellant] that she complete her physical therapy and continue with her current modified duty. [Appellant] was asked to consider the possibility of seeking new employment; this is due primarily to what she relates to this examiner as stress and not to any physical limitation. [Appellant] will consider this."

In a June 28, 2004 report, Dr. Chun indicated that appellant's work restrictions included intermittent sitting, with standing when needed, no lifting over 10 pounds, intermittently, standing and walking limited to five minutes each hour and no climbing, kneeling, bending, stooping, twisting, pulling or pushing. He indicated that appellant was unable to case mail.

On August 9, 2004 Dr. Chun provided findings on physical examination and stated:

"[Appellant] is now coming up on two years since the injury, November 27, 2002. She has undergone extensive conservative management. Although [appellant] does remain symptomatic, I do feel that she has exhausted all nonoperative treatment at this time. I do not feel [that] she is an appropriate candidate for surgical intervention. [Appellant] has, therefore, achieved a point of maximum medical improvement. She will be released as permanent and stationary for her back today."

On April 21, 2005 Dr. Chun indicated that on April 19, 2005 appellant reached forward and felt a compression and pain in her lower back and had difficulty walking. On May 4, 2005 Dr. Chun diagnosed a chronic thoracolumbar strain and indicated that she was totally disabled from April 21 to May 4, 2005. Appellant could return to work in a light-duty capacity on May 5, 2005. He indicated that appellant's condition was caused or aggravated by her accepted November 27, 2002 lumbar strain. In a May 5, 2005 report, Dr. Chun indicated that she should

¹ Appellant's light-duty position was performed at a desk where she answered the telephone, assisted customers in the reception area, entered data into a computer, crossed out barcodes on letters, provided address correction information to mailers and returned undeliverable mail to senders. The physical restrictions of the job included no lifting, climbing, kneeling, bending, stooping, twisting, pulling, pushing or reaching above the shoulder. Standing and walking were limited to five minutes each hour. On December 5, 2003 the physical requirements of her job were changed to permit intermittent lifting up to 10 pounds and to exclude the activity of casing mail.

have a break from sitting every 15 minutes. On May 26, 2005 Dr. Chun indicated that appellant could return to her August 9, 2004 light-duty work status as of May 5, 2005.

On May 16, 2005 appellant filed a claim for a recurrence of total disability for the period April 25 to May 5, 2005.

By letter dated June 17, 2005, the Office advised appellant to submit medical evidence establishing a change in the nature and extent of her November 27, 2002 accepted lumbar strain or a change in the nature and extent of her light-duty requirements such that she could not perform her light-duty position. There was no response.

By decision dated July 28, 2005, the Office denied appellant's claim for a recurrence of total disability for the period April 25 to May 5, 2005.

Appellant requested reconsideration and submitted additional evidence.

In a September 1, 2005 report, Dr. Chun diagnosed a degenerative lumbar disc condition and indicated that appellant experienced a flare-up of work-related low back pain on April 19, 2005. He indicated that she was totally disabled from April 21 to May 5, 2005.² In a September 3, 2005 report, Dr. Chun diagnosed a chronic thoracolumbar strain and a disc bulge at L3-4 and L4-5. He indicated that the conditions were caused or aggravated by the November 27, 2002 lumbar strain. On October 19 and November 3, 11 and 17, 2005 Dr. Chun indicated that appellant was totally disabled through December 17, 2005.

On October 28, 2005 appellant filed a claim for lost wages for the period October 20 to December 17, 2005.

By decision dated December 23, 2005, the Office denied modification of the July 28, 2005 decision.

In a December 15, 2005 report, Dr. Chun diagnosed L3-S1 discogenic low back pain based on a December 12, 2005 discogram. On physical examination he found restricted range of motion in appellant's lumbar spine with tenderness to palpation over the posterior buttocks. There was no evidence of lumbar radiculopathy. Dr. Chun requested authorization to perform surgery consisting of anterior-posterior fusion from L3 to S1. He indicated that appellant was totally disabled beginning December 19, 2005 due to severe pain.

On December 15, 2005 appellant filed a claim for total disability for the period December 17, 2005 to January 6, 2006.

In a January 4, 2006 report, Dr. Chun indicated that appellant was placed on permanent light duty as of August 9, 2004 due to her November 27, 2002 employment-related lumbar strain. He indicated that she was totally disabled between April 1 and May 4, 2005 due to low back pain. Appellant was totally disabled again beginning October 17, 2005 due to low back pain and

² Dr. Chun indicated that appellant was totally disabled from April 21 to May 26, 2005 but in his September 29, 2005 report he corrected the period of total disability to April 21 to May 5, 2005.

remained off work pending surgery. Dr. Chun noted that lumbar discography on December 12, 2005 revealed degenerative disc changes at L3-4, L4-5 and L5-S1. He recommended a lumbar fusion.

On January 19, 2006 appellant filed a claim for recurrences of total disability on April 25 and October 20, 2005 causally related to her November 27, 2002 employment-related lumbar strain. She indicated that her total disability was caused by prolonged sitting in her light-duty position. Appellant stated that she could not sit for longer than 15 to 30 minutes due to lower back pain and spasms.

On January 20, 2006 the Office asked appellant to submit a comprehensive medical report explaining how her claimed disability from December 17, 2005 to January 6, 2006 was causally related to her November 27, 2002 employment-related lumbar strain.

By decision dated March 1, 2006, the Office denied appellant's claim for a recurrence of disability beginning April 25, 2005 and continuing.³

LEGAL PRECEDENT

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 total 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.⁴

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

ANALYSIS

To be entitled to compensation for total disability for the periods April 25 to May 5, 2005 and October 20, 2005 to January 6, 2006, appellant must provide medical evidence establishing that she was totally disabled due to a worsening of her accepted work-related condition, a lumbar strain or a change in her job duties such that she was unable to perform her light-duty work.

³ Appellant submitted additional evidence subsequent to the March 1, 2006 decision. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board has no jurisdiction to consider this evidence for the first time on appeal.

⁴ *Bryant F. Blackmon*, 57 ECAB ____ (Docket No. 04-564, issued September 23, 2005); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ 20 C.F.R. § 10.5(x).

Appellant alleged that her two periods of total disability in 2005 and 2006 were caused by prolonged sitting in her light-duty position, stating that she was unable to sit for longer than 15 to 30 minutes due to lower back pain and spasms. However, the work restrictions provided by Dr. Chun in 2004 indicated that appellant could stand and take a break from sitting whenever necessary. The evidence does not establish that there was a change in the nature and extent of appellant's job duties on April 25 or October 20, 2005, such that she was unable to take a break from sitting or was otherwise unable to perform her light-duty work.

The medical evidence does not establish a change in the nature and extent of her November 27, 2002 employment-related condition, a lumbar strain, such that she could not perform her light-duty work. In reports dated April 21 and May 4 and 5, 2005, Dr. Chun indicated that on April 19, 2005 appellant reached forward and felt a compression and pain in her lower back with difficulty walking. He indicated that she was totally disabled from April 21 through May 4, 2005 but could return to her August 9, 2004 restrictions on May 5, 2005. Dr. Chun indicated that appellant's condition was caused or aggravated by her accepted November 27, 2002 lumbar strain. However, Dr. Chun provided insufficient medical rationale explaining how appellant's claimed total disability from April 25 to May 5, 2005 was caused or aggravated by her work-related lumbar strain sustained more than two years previously. Therefore, these reports are not sufficient to establish that she sustained a work-related recurrence of total disability on April 25, 2005.

On September 1 and 3, 2005 Dr. Chun diagnosed a chronic thoracolumbar strain and degenerative lumbar disc condition. He indicated that appellant was totally disabled from April 21 to May 5, 2005 due to low back pain. Dr. Chun indicated that the conditions were caused or aggravated by the November 27, 2002 work-related lumbar strain. In reports dated October through December 2005 and January 2006, Dr. Chun indicated that appellant was totally disabled from October 17 through December 17, 2005 due to severe pain. He noted that lumbar discography on December 12, 2005 revealed degenerative disc changes at L3-4, L4-5 and L5-S1. However, Dr. Chun did not provide sufficient medical rationale explaining how appellant's total disability in April and May 2005 and October 2005 to January 2006 was caused or aggravated by her November 27, 2002 accepted lumbar strain. He failed to explain how there was a change in the nature and extent of her 2002 accepted lumbar strain such that it caused periods of total disability in 2005 and 2006. Therefore, these reports are not sufficient to establish that appellant sustained a recurrence of disability on April 25 or October 20, 2005 causally related to her November 27, 2002 employment-related lumbar strain.

Appellant failed to establish that she was totally disabled between April 25 and May 5, 2005 or October 20, 2005 to January 6, 2006 due to a worsening of her accepted work-related lumbar strain sustained on November 27, 2002 or a change in her job duties such that she was unable to perform her light-duty work. Therefore, she failed to meet her burden of proof and the Office properly denied her claim for a recurrence of total disability.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained recurrences of total disability between April 25 and May 5, 2005 and October 20, 2005 to January 6, 2006 causally related to her November 27, 2002 employment-related lumbar strain.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 1, 2006 and December 23 and July 28, 2005 are affirmed.

Issued: September 27, 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