

FACTUAL HISTORY

Appellant, a 31-year-old maintenance worker, filed a traumatic injury claim alleging that, on October 31, 1988, he strained his back while loading logs into a trailer for disposal. He stopped work on the date of injury and returned to regular duty work on November 1, 1988. By letter dated April 4, 1989, the Office accepted appellant's claim for lumbar subluxation.

On August 2, 2004 appellant filed a claim alleging that he sustained a recurrence of disability from June 21, 1995 to March 26, 2002.¹ He stated that, following the October 31, 1988 employment injury, he could not pick up heavy things anymore and he had difficulty walking around trails. Appellant stopped mowing grass as much as he used to because he could hardly walk after doing so.

By letter dated September 1, 2004, the Office advised appellant that the evidence of record was insufficient to establish that he sustained the claimed recurrence of disability. It further advised him about the factual and medical evidence he needed to submit to establish his claim.

In an undated letter received by the Office on September 20, 2004, appellant stated that he sustained a recurrence of disability because his back and neck never improved. He used annual and sick leave as a result of his October 31, 1988 employment-related injury and when he returned to work on November 1, 1988 he still experienced problems with his back. Appellant was assigned light-duty work for some time and used annual and sick leave. He stated that he reinjured his back on June 21, 1995 and March 26, 2002.

By decision dated October 8, 2004, the Office found that appellant did not sustain a recurrence of disability from June 21, 1995 to March 26, 2002 causally related to the accepted October 31, 1988 employment-related injury. Appellant failed to submit any medical evidence to establish his claim. The Office noted that he may have sustained a new injury on June 21, 1995 and March 26, 2002 and that timely claims should have been filed for these injuries.

On October 13, 2004 appellant requested an oral hearing before an Office hearing representative. He submitted an unsigned x-ray report dated March 26, 2002, which contained the typed name of Dr. Walter C. Whitehurst, Jr., a Board-certified radiologist, who found that the alignment of appellant's lumbar spine was preserved and that he had facet arthritis.

Treatment notes of Dr. Dale W. Caughey, Jr. a family practitioner, dated March 29, 1999, October 21, 2003 and December 23, 2004 indicated that appellant had a history of hypertensive cardiovascular disease, osteoarthritis with joint pain, dysuria or abdominal pain, generalized aches and pains and fatigue or malaise, complaints of abnormal laboratory evaluations, peptic ulcer disease with hiatal hernia and mental disorder. He reported normal findings on physical examination of his chest, heart, extremities, joints and spine. In reports dated December 4, 2003 and March 11, 2004, Dr. Caughey stated that an x-ray of appellant's lumbosacral spine with

¹ On August 31, 2004 the employing establishment advised the Office that it believed that appellant left work in the middle of July 1999 due to allergies. It further advised that he retired on disability sometime in 2000.

obliques demonstrated osteophytic spurring marked at the posterior at L3-4. In another x-ray report dated December 4, 2003, he found a normal cervical spine.

An unsigned report dated July 12, 2004 contained the typed name of Dr. Steven W. Arle, a neuroradiologist, who performed a computerized tomography (CT) scan of appellant's lumbar spine. The CT scan demonstrated mild stenosis at L3 from facet hypertrophy and a moderate partially calcified generalized disc bulge.

In an October 13, 2000 report, Dr. Hoke D. Pollock, a Board-certified otolaryngologist, noted appellant's complaints of dizziness when getting up at night and leaning over and a history of vertigo 5 years ago and a neck injury sustained 10 years ago. He reported normal findings on neuro-otologic examination with the exception of Weber lateralizing to the right. Dr. Pollock also reported normal laboratory test results. He diagnosed dizziness secondary to sequela of viral labyrinthitis. On October 13, 2000 appellant underwent an audiological examination due to complaints of being off balance, staggering when he walked and hearing a water sound in his ears. Dr. Pollock's October 13, 2000 electronystagmography report found right unilateral weakness which indicated a right peripheral vestibular pathology.

Treatment notes dated January 31, 1987 and March 9, 1989 from Dr. Joseph W. Davis, a chiropractor, addressed appellant's lumbar and cervical problems. In an April 10, 1990 report, he stated that appellant had chronic cervical subluxation complex with right brachia neuralgia. Dr. Davis opined that this condition appeared to be permanent and that exacerbations could be expected in direct proportion to activity. His August 3, 2004 report found that appellant sustained a work-related injury in October 1988. Dr. Davis noted a CT scan report of Dr. Sidney C. Smith, Jr. an attending Board-certified internist, which revealed a calcified disc bulge at L3 and facet hypertrophy. He stated that this report demonstrated a long-term injury.

A May 24, 1995 magnetic resonance imaging (MRI) scan report contained the typed name of Dr. Joseph W. Fischer, a Board-certified radiologist, who reported minimal cervical spondylosis predominating at C5-6 with slight prominence of the intact disc annulus at C4-5 and C5-6. He stated that there was no evidence of soft disc herniation or cervical stenosis.

Following an October 18, 2005 hearing, appellant submitted Dr. Davis' April 20, 1990 report, which noted appellant's complaints of lower cervical pain with radiation into the right shoulder. He stated that his progression had reached a plateau. Dr. Davis further stated that, if further progress were to be attained then, appellant required approximately 10 to 15 treatments at more frequent intervals. He recommended consultation with a neurosurgeon if adequate progress was not demonstrated. In treatment notes dated April 27 and 29, 1993 and March 28 and 30 and April 25, 2002, Dr. Davis indicated that appellant was treated with spinal manipulation for his cervical and lumbar spine pain and spasms.

In an April 28, 2005 report, Dr. Caughey provided essentially normal findings on physical and x-ray examination with the exception that appellant's arthralgic joints were worse in the spine and knees and he had a supple spine with pain. He diagnosed severe unipolar psychotic depression, asthmatic bronchitis and urticaria, hypertensive cardiovascular disease, hyperlipidemia and peptic ulcer disease. Dr. Caughey stated that appellant sustained work-related disc disease in 1986, 1988 and 1995. He opined that appellant was unable to perform his

job due to these “OTJ [on the job]” injuries. Dr. Caughey noted that appellant had experienced depression due to his back and neck injuries and had fallen apart. He concluded that, since 1999, appellant had been unable to work and no improvement was expected.

A January 21, 1992 report from J. Thaddeus Coin, Ph.D., a Board-certified neurologist, provided essentially normal findings on neurological, physical, mental and sensory examination. He opined that appellant’s symptoms seemed to point to bilateral, right greater than left, carpal tunnel syndrome although his neck pain suggested the possibility of radiculopathy. Due to this uncertain clinical picture and progressive difficulties using the right arm, Dr. Coin performed a nerve conduction study. The January 21, 1992 study confirmed the diagnosis of bilateral carpal tunnel syndrome which was borderline on the right and electrically slightly worse on the left.

An unsigned report dated April 25, 2002, provided findings on chiropractic, orthopedic and neurological examination of appellant’s cervical and lumbar spines.

In a May 15, 1989 report, Dr. Davis found that appellant sustained an acute cervical subluxation complex with evidence of cervical nerve root irritation and cervical vertebral segmental dysfunction accompanied by lumbar vertebral segmental dysfunction with right sciatic neuritis. He opined that his prognosis was good but he may have permanent impairment of the cervical spine.

An unsigned MRI scan report dated December 20, 2004 contained the typed name of Dr. G. William Eason, a Board-certified radiologist. He found L3-4 broad-based disc herniation with concomitant right paracentral involvement extending to the right lateral recess angle.

Dr. Caughey’s September 27, 2001 report reiterated the diagnoses set forth in his April 28, 2005 report.

By decision dated December 13, 2005, an Office hearing representative affirmed the October 8, 2004 decision. The hearing representative found the medical evidence of record insufficient to establish that appellant sustained a recurrence of disability from June 21, 1995 to March 26, 2002 causally related to his October 31, 1998 employment injury.

By letter dated January 27, 2006, appellant requested reconsideration, stating that “I have additional evidence not previously considered” and “I want to submit new evidence.”

In a February 7, 2006 decision, the Office denied appellant’s request for reconsideration. The request neither raised substantive legal questions nor included new and relevant evidence and, thus it was insufficient to warrant a merit review of the Office’s prior decisions.

On April 3, 2006 appellant requested reconsideration. In undated letters, he stated that he continued to experience problems due to his work-related back injury and neck injury.

By decision dated April 26, 2006, the Office denied appellant’s request for reconsideration on the same grounds as stated in its February 7, 2006 decision.

LEGAL PRECEDENT -- ISSUE 1

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

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which he claims compensation is causally related to the accepted employment injury.³ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.⁴ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.⁵ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁶

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁷ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁸ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁹

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a lumbar subluxation while in the performance of duty on October 31, 1988. On August 2, 2004 he sought compensation for his ongoing back and cervical problems. The Board finds that appellant has failed to submit rationalized medical evidence establishing that his claimed recurrent back condition was caused or aggravated by his accepted employment-related lumbar subluxation.

² 20 C.F.R. § 10.5(x).

³ *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

⁴ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁵ *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

⁶ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

⁷ *See Ricky S. Storms*, *supra* note 5; *see also* Federal (FECA) Procedure Manual, Part 2 -- *Claims*, Causal Relationship, Chapter 2.805.2 (June 1995).

⁸ For the importance of bridging information in establishing a claim for a recurrence of disability, *see Richard McBride*, 37 ECAB 748 at 753 (1986).

⁹ *See Ricky S. Storms*, *supra* note 5; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

The unsigned reports which contained the typed names of Drs. Whitehurst, Arle, Fischer and Eason and the unsigned report dated April 25, 2002 have no probative value as the author(s) cannot be identified as a physician.¹⁰ As these reports lack proper identification, the Board finds that they do not constitute probative medical evidence sufficient to establish appellant's burden of proof.¹¹

Dr. Caughey's March 29, 1999 treatment notes, Dr. Pollock's October 13, 2000 reports, Dr. Davis' January 31, 1987, March 9, 1989 and April 27 and 29, 1993 treatment notes and May 15, 1989, April 10 and 20, 1990 reports and Dr. Coin's January 21, 1992 reports, which addressed appellant's dizziness, cervical and lumbar symptoms and bilateral carpal tunnel syndrome predate the alleged recurrence of disability from June 21, 1995 to March 26, 2002. Thus, this evidence does not discuss whether the described cervical and lumbar problems are causally related to the October 31, 1988 employment-related injury.

Dr. Caughey's October 21, 2003 and December 23, 2004 treatment notes provided that appellant had a history of hypertensive cardiovascular disease, osteoarthritis with joint pain, dysuria or abdominal pain, generalized aches and pains and fatigue or malaise, complaints of abnormal laboratory evaluations, peptic ulcer disease with hiatal hernia and mental disorder. He, however, reported normal findings on physical examination of appellant's chest, heart, extremities, joints and spine. Because Dr. Caughey did not opine that appellant has any current cervical or lumbar spine problems causally related to his October 31, 1988 employment-related injury, the Board finds that his treatment notes are insufficient to establish appellant's claim.

Dr. Caughey's September 27, 2001 report stated that appellant sustained severe unipolar psychotic depression, asthmatic bronchitis and urticaria, hypertensive cardiovascular disease and hyperlipidemia. However, he did not address whether the diagnosed conditions were caused by the October 31, 1988 employment-related injury. The Board finds that Dr. Caughey's report is insufficient to establish appellant's claim.

In an April 28, 2005 report, Dr. Caughey reiterated the diagnosis set forth in his September 27, 2001 report. He also diagnosed peptic ulcer disease. Dr. Caughey noted that appellant sustained work-related disc disease in 1986, 1988 and 1995. He opined that appellant was unable to perform his job due to these "OTJ" injuries. Dr. Caughey further opined that since 1999, he had been unable to work and no improvement was expected. He did not address how appellant's disability beginning in 1999 was caused by the accepted employment-related injury. The Board finds that Dr. Caughey's report is insufficient to establish appellant's claim.

Dr. Davis' March 28 and 30 and April 25, 2002 treatment notes indicated that appellant was treated with spinal manipulation for his cervical and lumbar spine pain and spasms. He did not address whether appellant's cervical and lumbar spine problems were caused by the accepted employment-related injury. The Board finds that Dr. Davis' treatment notes are insufficient to establish appellant's claim.

¹⁰ *Ricky S. Storms, supra* note 5.

¹¹ *Vickey C. Randall*, 51 ECAB 357, 360 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (reports not signed by a physician lack probative value).

In an August 3, 2004 report, Dr. Davis found that appellant sustained a work-related injury in October 1988 and that he had a calcified disc bulge at L3 and facet hypertrophy as demonstrated by Dr. Smith's CT scan report. He opined that this condition constituted a long-term injury. However, Dr. Davis did not address how the diagnosed conditions were causally related to the October 31, 1998 employment injury. The Board finds that his report does not establish appellant's claim.

Appellant failed to submit rationalized medical evidence establishing that his disability from June 21, 1995 to March 26, 2002 resulted from the effects of his employment-related lumbar subluxation. The Board finds that he has not met his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,¹² the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹⁴ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS -- ISSUE 2

As noted, in decisions dated October 8, 2004 and December 13, 2005, the Office found that appellant did not sustain a recurrence of disability from June 21, 1995 to March 26, 2002 causally related to his October 31, 1988 employment-related lumbar subluxation. On January 27 and April 3, 2006 he disagreed with these decisions and requested reconsideration. The relevant underlying issue in this case is whether appellant sustained a recurrence of disability from June 21, 1995 to March 26, 2002 causally related to his October 31, 1988 employment-related lumbar subluxation.

Appellant did not submit any relevant or pertinent new evidence not previously considered by the Office in support of his requests for reconsideration. Further, he did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Appellant's requests merely noted that he wished to submit new medical evidence. He did not submit any evidence or argument to the

¹² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

¹³ 20 C.F.R. § 10.606(b)(1)-(2).

¹⁴ *Id.* at § 10.607(a).

Office to support his requests. As appellant did not meet any of the necessary regulatory requirements, the Board finds that he was not entitled to a merit review.¹⁵

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a recurrence of disability during the period June 21, 1995 through March 26, 2002 causally related to his October 31, 1998 employment injury. The Board further finds that the Office properly denied appellant's January 27 and April 3, 2006 requests for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the April 26 and February 7, 2006 and December 13, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 18, 2007
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

¹⁵ See *James E. Norris*, 52 ECAB 93 (2000).