

On January 9, 2006 appellant filed a claim alleging a recurrence of his January 7, 2004 injury on April 26, 2005. Specifically, he alleged that since his injury, he had missed approximately 15 to 28 days of work due to chronic neck stiffness and pain. Appellant alleged, "My injury is reoccurring and neck and shoulder motion is constantly limited." He indicated that he takes ibuprofen for the pain.

By letter dated February 6, 2006, the Office requested further information. In response, appellant submitted an accounting of some of the leave he took from June 20 to December 28, 2005. He further submitted leave request forms for time missed between January 30 and February 10, 2006.

In a medical report dated January 26, 2006, Dr. Eugene Kitts, a chiropractor, discussed appellant's x-rays of January 6, 2006 and diagnosed cervical sUBLUXATION, cerviothoracic segmental dysfunction sUBLUXATION and unspecified sprain/strain of right shoulder. On February 3, 2006 Dr. Kitts requested a magnetic resonance imaging (MRI) scan for appellant. In a note dated February 8, 2006, he certified that appellant could return to regular light-duty work from January 27 to February 10, 2006, not to exceed 20 hours per week. In physician's report forms dated February 1 and March 1 and 17, 2006, Dr. Kitts indicated that he began treating appellant on January 5, 2006 and checked a box indicating that his January 7, 2004 accident was the only cause of appellant's condition. He noted in progress charts that he manipulated cervical and thoracic sUBLUXATIONS on January 21 and February 1, 8 and 28, 2006. In a progress report dated February 15, 2006, Dr. Kitts indicated that appellant was currently under therapeutic care, that his progress had been slow and that his prognosis was guarded.

On February 28, 2006 the Office accepted appellant's claim for contusion to forehead and cheek.

By decision dated March 6, 2006, the Office denied appellant's claim for recurrence.

On March 13, 2006 appellant responded to questions by indicating that he is in receipt of a 40 percent disability with the Department of Veterans Affairs for cervical C5 and C6 osteophytic changes with disc bulges. He contended that the employment injury of January 7, 2004 aggravated that injury. Appellant further noted that prior to January 7, 2004 he had not experienced locking of the neck, neck spasms or severe shoulder pain.

In a progress note dated March 17, 2006, Dr. Kitts indicated that appellant's prognosis was favorable but that remissions and exacerbations are prevalent.

On March 30, 2006 appellant had an MRI scan of the cervical spine which was interpreted by Dr. Gary Sato, a Board-certified radiologist, as showing: (1) disc protrusions, bulges and osteophyte complexes causing central canal narrowing and neural foraminal narrowing; and (2) very mild marrow heterogeneity possibly due to red marrow reconversion or artifact. For comparison purposes, appellant also submitted the results of a February 14, 2002 MRI scan. By letter dated April 3, 2006, appellant argued that these two MRI scans, separated by appellant's car accident on January 7, 2004 showed a difference.

On April 14, 2006 appellant requested reconsideration. On June 29, 2006 the Office denied modification of the March 6, 2006 decision.

LEGAL PRECEDENT

To establish a recurrence of disability, a claimant must establish that she experienced a spontaneous material change in the employment-related condition without an intervening injury or new exposure to the work environment that caused the illness.¹ A claimant's burden of proof includes the necessity of furnishing medical evidence from a 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 and supports the conclusion with sound medical rationale. Where no such rationale is present, the medical evidence is of diminished probative value.²

ANALYSIS

Appellant alleged a recurrence of disability on or about April 26, 2005 causally related to his accepted injury of contusion to the forehead and cheek as a result of her employment-related motor vehicle accident of January 7, 2004. However, he has not submitted medical evidence sufficient to establish that this recurrence occurred. Dr. Kitts, a chiropractor,³ never indicated that appellant experienced a spontaneous material change in his injury on or about April 25, 2005. He does not provide a rationalized explanation as to why his treatment was related to the initial injury that occurred two years before his treatment notes. Appellant submitted two MRI scans, but neither of these address the causation of his injury. There are no medical records submitted contemporaneous with the claimed April 25, 2005 recurrence. Appellant makes several arguments with regard to MRI scans and submitted accountings of the time he missed from work that he alleges was related to the accepted injury. However, he must submit medical evidence in support of his claim.

An award of compensation may not be based on surmise, conjecture, speculation or upon a claimant's own belief that there is a causal relation between his claimed injury and his employment.⁴ To establish a casual relationship, a claimant must submit a physician's report in which, the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his opinion.⁵

¹ *Philip L. Barnes*, 55 ECAB 426 (2004); *Carlos A. Marrero*, 50 ECAB 117 (1998); 20 C.F.R. § 10.5(x).

² *Mary A. Ceglia*, 55 ECAB 626 (2004).

³ Section 8101(2) of the Federal Employees' Compensation Act provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. 5 U.S.C. § 8101(2); *see also Merton J. Sills*, 39 ECAB 572, 575 (1988). As Dr. Kitts' notes indicate that x-rays showed a cervical subluxation and he indicated that he manipulated cervical and thoracic subluxations, the Board will treat Dr. Kitts as a physician under the Act in this case.

⁴ *Donald W. Long*, 41 ECAB 142 (1989).

⁵ *Id.*

CONCLUSION

The Board finds that appellant has not established a recurrence of disability on or about April 26, 2005 causally related to his accepted work injury of January 7, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 29 and March 6, 2006 are affirmed.

Issued: April 6, 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