

The Office denied the claim for compensation by decision dated July 10, 2002. By decision dated May 1, 2003, an Office hearing representative found that appellant had established fact of injury based on the definition of subluxation and the reports of Dr. Slakman. The Office accepted the claim for displaced vertebra.

In a report dated April 22, 2003, Dr. Slakman recommended that appellant be excused from work on April 21 and 22, 2003 “in order to avoid aggravation of her condition.” He indicated that she could return to work on April 23, 2003 with restrictions. Appellant returned to work in a light-duty position. Dr. Slakman continued to indicate that she could work with restrictions. A magnetic resonance imaging (MRI) scan dated May 14, 2003 reported an L5-S1 disc herniation, with smaller herniations at L3-4 and L4-5. By report dated May 27, 2003, Dr. Slakman again recommended that appellant be off work from May 27 to June 2, 2003 to avoid aggravation of her condition. He reported that she had increased pain but reduced numbness.

On July 17, 2003 appellant filed a recurrence of disability claim (Form CA-2a) commencing April 21, 2003. In a report dated August 5, 2003, Dr. Slakman indicated that appellant could return to regular duty on August 11, 2003.

By decision dated October 27, 2003, the Office denied the claim for a recurrence of disability. The Office found that the medical evidence was insufficient to meet appellant’s burden of proof. Appellant requested a hearing before an Office hearing representative, which was held on March 26, 2004. She submitted an April 23, 2004 report from Dr. Slakman stating that she had been treated for some time for injuries “sustained at work.” Dr. Slakman reported that appellant had made a good recovery, but could aggravate her condition with lifting.

In a decision dated June 8, 2004, the hearing representative affirmed the October 27, 2003 decision. Appellant requested reconsideration of her claim. She submitted a report dated January 14, 2005 from Dr. Slakman recommending that she maintain a light-duty position.

By decision dated June 8, 2006, the Office reviewed the case on its merits and denied modification.

LEGAL PRECEDENT

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”¹

A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the

¹ 20 C.F.R. § 10.5(x).

disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

ANALYSIS

The record indicated that appellant had returned to regular duty and filed a CA-2a form alleging a recurrence of disability as of April 21, 2003. She was off work on April 21 and 22, 2003, returned to light duty, then was again off work for several days commencing May 27, 2003. It is appellant's burden of proof to establish that the claimed periods of disability were causally related to the employment injury.

With regard to the medical evidence, the Board notes that a chiropractor is only a physician to the extent that the treatment is for a diagnosed subluxation as demonstrated by x-rays.³ The Office did accept that Dr. Slakman diagnosed a subluxation and was a physician under the Act, as the definition of subluxation included a misalignment or dislocation of the vertebra.⁴ He is, however, a physician only with respect to a subluxation diagnosis. The record contains an MRI scan with a diagnosis of herniated discs and any opinion from Dr. Slakman regarding this diagnosis would be of no probative value.⁵

Appellant did not submit probative medical evidence to establish a recurrence of disability on April 21 or May 27, 2003. Dr. Slakman briefly stated in his April 22, 2003 report that appellant should be off work on April 21 and 22, 2003 in order to avoid aggravation of her condition. The Board notes that the possibility of a future injury does not constitute an injury under the Act and therefore no compensation can be paid for such a possibility.⁶ Dr. Slakman does not provide additional detail and provide a rationalized opinion on causal relationship between disability and the employment injury. His May 27, 2003 report noted that appellant had increased pain, again without providing a rationalized opinion on the relationship between any disability and the employment injury.

In the absence of probative medical evidence, the Board finds that appellant did not meet her burden of proof. The Office therefore properly denied the claim for a recurrence of disability in this case.

CONCLUSION

Appellant did not meet her burden of proof to establish a recurrence of disability commencing April 21, 2003.

² *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

³ 5 U.S.C. § 8101(2).

⁴ The term subluxation means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae. 20 C.F.R. § 10.5(bb).

⁵ *See Pamela K. Guesford*, 53 ECAB 726 (2002).

⁶ *Gaetan F. Valenza*, 39 ECAB 1349, 1356 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 8, 2006 is affirmed.

Issued: April 19, 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