

approximately 1992, required to travel overnight on December 10 and 21, 1993 and that he disliked the employing establishment's total quality management program.¹ Appellant was off work from November 1994 to mid-August 1995, when he returned to full duty.

Dr. Maurice Cerul, an attending Board-certified psychiatrist and neurologist, submitted periodic letters and reports from January 2, 2003 to February 2004 noting appellant's daily attendance at 12-step meetings as part of his treatment. He opined that appellant still had chronic depressive disorder but that his addictions were in remission. Dr. Cerul prescribed medications.

On July 16, 2004 appellant plead guilty to a misdemeanor drug possession charge related to a July 7, 2004 incident in which he purchased crack cocaine from an undercover police officer in a post office parking lot.

In a July 19, 2004 letter, Dr. Cerul opined that appellant's July 4, 2004 relapse and July 7, 2004 arrest were "directly related to his work-related illness."

On September 9, 2004 appellant filed a notice of recurrence of disability (Form CA-2a) asserting that he was disabled for work from July 4, 2004 onward due to the accepted depression and substance abuse. He was working full duty at the time of the claimed recurrence of disability. Appellant explained that, in approximately January 2004, he became depressed and began using alcohol and cocaine. He contended that the employing establishment was aware of his difficulties as he used excessive unscheduled leave from January to June 2004. The Office advised appellant of the evidence needed to establish his claim.²

In a September 10, 2004 letter, the employing establishment stated that appellant did not request accommodation due to his accepted conditions. Appellant met the requirements of his position for the previous six years and did not mention any stress to his supervisor.

In a November 29, 2004 letter, the employing establishment advised appellant that he would be removed from federal employment effective December 10, 2004 due to his conviction on drug charges. Appellant retired voluntarily effective December 11, 2004.

Dr. Cerul submitted periodic reports dated from October 15, 2004 to April 25, 2005 noting appellant's continued treatment for chronic depressive reaction and substance abuse

¹ The Office initially denied the claim by decision dated August 18, 1995. Following a hearing and subsequent development, the Office accepted a single episode of major depression from approximately December 7, 1994 to August 5, 1995, in remission. By decision dated August 22, 1997, the Office denied changing the date of injury from November 4, 1994 to October 10, 1993. By decision dated September 18, 1998, an Office hearing representative remanded the case to determine whether appellant's alcoholism and substance abuse were also work related. Following a hearing, by decision dated August 13, 1999, the Office remanded the case to determine whether there was a compensable injury prior to November 4, 1994. By letter decision dated October 26, 1999, the Office changed the date of injury from October 19, 1994 to October 10, 1993 and accepted the conditions of alcoholism and substance abuse in addition to depression.

² Appellant initially filed an occupational disease claim (Form CA-2). The Office explained to appellant in a September 2, 2004 letter of the difference between a claim for recurrence of disability and a claim for occupational disease. The Office also noted the type of evidence needed to establish these claims. Appellant then withdrew his occupational disease claim and filed a claim for recurrence of disability.

disorder. He opined that appellant's removal was directly related to the deterioration of his accepted conditions. Dr. Cerul also attributed appellant's condition to harassment and discrimination at the employing establishment and his supervisor's failure to refer him for counseling.

By decision dated May 18, 2005, the Office denied appellant's claim for recurrence of disability on the grounds that causal relationship was not established. The Office found the medical evidence was insufficient to establish that the accepted conditions, which concerned workplace events on or before October 1993, disabled him for work on and after July 4, 2004. The Office noted that appellant submitted evidence addressing events occurring only on and after July 7, 2004.

In a June 6, 2005 letter, appellant requested a hearing, held telephonically on January 27, 2006. During the hearing, appellant asserted that, after he returned to work in August 1995, he was denied permission to attend 12-step meetings during work hours. He attributed his condition on and after July 4, 2004 to an increased workload beginning in late 2001 when he was made responsible for automation projects in five additional states. Appellant asserted that the additional stress worsened his depression in December 2003, leading to alcohol and drug use beginning in February 2004. He also noted stress from nonoccupational family issues and financial pressures.

In letters dated February 21, 2005 to March 20, 2006, Dr. Cerul noted that appellant returned to full, unrestricted duty in August 1995. He explained that relapses of substance abuse disorder and alcoholism were common.³

By decision dated and finalized April 13, 2006, the Office hearing representative affirmed the denial of appellant's claim for recurrence of disability on the grounds that causal relationship was not established. The hearing representative found that appellant implicated new, intervening employment incidents alleged to have caused his condition, thereby alleging a new injury and not a recurrence of disability.

In a May 8, 2006 letter, appellant requested reconsideration.⁴ He again attributed the claimed recurrence of disability to an increased workload and leave use matters after August 1995. Appellant submitted additional evidence.

In a September 10, 2004 letter, John G. Theurer, appellant's supervisor since 1998, stated that appellant was able to perform his duties without apparent difficulty and did not request accommodations or complain of stress.

³ Appellant also submitted excerpts from medical literature. The Board has held that excerpts from publications and medical literature are not of probative value in establishing causal relationship as they do not specifically address the individual claimant's medical situation and work factors. *Gloria J. McPherson*, 51 ECAB 441 (2000).

⁴ On May 8, 2006 appellant filed an occupational disease claim (Form CA-2), reiterating assertions made in his claim for recurrence of disability. As there is no final decision of record regarding this claim, it is not before the Board on the present appeal.

In a May 3, 2006 report, Dr. Cerul opined that stress from the additional workload in 2002 “could have caused a recurrence of [appellant’s] depression, alcoholism and substance abuse disorder.” He submitted letters through August 21, 2006 stating that appellant’s depression, alcoholism and substance abuse disorders were work related.

By decision dated August 29, 2006, the Office affirmed the April 13, 2006 decision on the grounds that the evidence submitted on reconsideration was insufficient to establish the claimed recurrence of disability. The Office found that appellant established an increased workload after his return to work in August 1995, thereby implicating new employment factors. Therefore, he alleged a new injury and not a recurrence of disability.

LEGAL PRECEDENT

The Office’s implementing regulations define a recurrence of disability as “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.”⁵ The Office’s procedure manual provides that a recurrence of disability includes a work stoppage caused by an objective, spontaneous, material change in the accepted condition, a recurrence or worsening of disability due to an accepted consequential injury; or withdrawal of a light-duty assignment made to accommodate the work-related condition, for reasons other than misconduct or nonperformance.⁶

When an appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. 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. Moreover, sound medical reasoning must support the physician’s conclusion.⁷ An award of compensation may not be based on surmise, conjecture or speculation or on appellant’s unsupported belief of causal relation.⁸

ANALYSIS

The Office accepted that appellant sustained alcoholism, substance abuse, long-term drug use, depression and an unspecified mental disorder due to work factors on or before October 10, 1993. He claimed to have sustained a recurrence of disability commencing July 4, 2004, causally related to the accepted conditions. In order to prevail, appellant must demonstrate

⁵ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). *See also Philip L. Barnes*, 55 ECAB 426 (2004).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997). *See also Steven A. Andersen*, 53 ECAB 367 (2002).

⁷ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁸ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

a spontaneous change in the nature and extent of his accepted emotional conditions without an intervening injury or new exposures.⁹

The record demonstrates that appellant attributed the claimed recurrence of disability to new work factors after August 1995, not the accepted work incidents occurring on or before October 10, 1993. Appellant asserted that an increased workload beginning in 2001 worsened his depression in December 2003, culminating in illicit drug use by July 2004. He also alleged that, after he returned to work in August 1995, the employing establishment harassed and discriminated against him by refusing to allow him to attend 12-step meetings “on the clock.” The Board notes that Dr. Cerul also attributed appellant’s condition to these new incidents.

Appellant’s own statements and the factual record demonstrate that he was exposed to new work factors after he returned to work in August 1995. He alleged that these new incidents worsened his depression, alcohol and substance abuse beginning in December 2003. Appellant thus asserts a new injury. He has not established that he sustained a recurrence of disability commencing July 4, 2004 related to the accepted work factors occurring on or before October 10, 1993. Therefore, appellant has not met his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability as alleged.

⁹ *Philip L. Barnes, supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 29 and April 13, 2006 are affirmed.

Issued: August 15, 2007
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