

underwent L4-5 laminectomy, facetectomy and discectomy procedures which were authorized by the Office.

The results of August 3, 2004 magnetic resonance imaging (MRI) scan testing showed stable postsurgical changes at L4-5 with epidural enhancement along the right lateral aspect of the dural sac extending toward the right neural foramen compatible with epidural fibrosis, disc degeneration at L4-5 with Type 1 degenerative end plate changes and a mild annulus bulge at L4-5 with a small amount of extruded disc material extending three to four millimeters superior to the disc space and causing only mild indentation of the ventral dural sac and mild encroachment on the neural foramina.

On April 11, 2005 appellant returned to limited-duty work at the employing establishment for four hours per day. He stopped work on June 8, 2005 and claimed that he sustained a recurrence of total disability due to his April 4, 2002 employment injury.

On June 23, 2005 Dr. Keith L. Schaible, an attending Board-certified neurosurgeon, stated that appellant reported a recent worsening in back pain without “neurological issues” and he indicated that he was “unable to do work of any type.” The report for July 10, 2005 MRI scan testing indicated that there had “not been a significant change from the prior study on August 3, 2004” and provided findings similar to those contained in the August 3, 2004 report. On August 9, 2005 Dr. Schaible noted that appellant reported experiencing increased back and leg pain beginning in June 2005, particularly upon increased activity. He indicated that recent MRI scan testing was “not particularly different than the one he had last time.”

In an April 19, 2006 decision, the Office denied appellant’s claim that he sustained a recurrence of total disability on or after June 8, 2005 due to his April 4, 2002 employment injury. The Office found that he did not show a change in the nature and extent of his injury-related condition or a change in the nature and extent of his limited-duty job requirements.

Appellant submitted a May 9, 2006 report in which Dr. Schaible stated that it was not uncommon for patients with a “good discectomy” to continue to have disc pain and indicated that he was concerned that he required additional surgical stabilization. Dr. Schaible stated: “Again, it is my opinion that this is all related to the original injury.”

At a September 19, 2006 hearing before an Office hearing representative, appellant argued that the reports of Dr. Schaible showed that he could not work after June 8, 2005 due to his employment injury. After the hearing, he submitted more reports of Dr. Schaible. In a September 8, 2006 report, Dr. Schaible indicated that appellant continued to report back and leg pain and indicated that he was a candidate for L4-5 surgery. In a September 14, 2006 report, he stated that appellant had failed all conservative measures since his surgery and was “totally disabled indefinitely.”

In a decision dated a finalized November 29, 2006, the Office hearing representative affirmed the Office’s April 19, 2006 decision.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-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 show that he cannot perform such limited duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.¹

ANALYSIS

The Office accepted that appellant sustained a herniated disc at L4-5 on April 4, 2002. He returned to limited-duty work and then stopped work on June 8, 2005 and claimed that he sustained a recurrence of total disability due to his April 4, 2002 employment injury. The Board finds that appellant did not submit sufficient medical evidence to show that he sustained a recurrence of total disability on or after June 8, 2005 due to his April 4, 2002 employment injury.

In a June 23, 2005 report, Dr. Keith L. Schaible, an attending Board-certified neurosurgeon, stated that appellant reported a recent worsening in back pain without “neurological issues” and he indicated that he was “unable to do work of any type.” In an August 9, 2005 report, he noted that appellant reported experiencing increased back and leg pain beginning in June 2005, particularly upon increased activity. In a May 9, 2006 report, Dr. Schaible stated that it was not uncommon for patients with a “good discectomy” to continue to have disc pain and indicated that he was concerned that appellant required additional surgical stabilization. He stated: “Again, it is my opinion that this is all related to the original injury.” In September 8 and 14, 2006 reports, Dr. Schaible continued to indicate that appellant reported back and leg pain, stated that he was a candidate for L4-5 surgery and noted that he was “totally disabled indefinitely.”

In these reports, Dr. Schaible posited that appellant continued to have residuals of his April 4, 2002 employment injury and suggested that this condition disabled him from work beginning in June 2005. These reports, however, are of limited probative value on the relevant issue of the present case in that Dr. Schaible did not provide adequate medical rationale in support of his conclusion on causal relationship.² He did not describe how the findings on examination and diagnostic testing showed that appellant’s employment-related back condition had worsened such that he could not perform his limited-duty work on or after June 8, 2005. In fact, there are almost no objective examination findings listed in Dr. Schaible’s reports. The report for July 10, 2005 MRI scan testing indicated that there had “not been a significant change from the prior study on August 3, 2004” and Dr. Schaible acknowledged as much in his August 9, 2005 report.

¹ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

² See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

Dr. Schaible's opinion on appellant's back condition appears to be mostly based on appellant's own reporting of subjective symptoms. However, the Board has held that the fact that a condition manifests itself or worsens during a period of employment³ or that work activities produce symptoms revelatory of an underlying condition⁴ does not raise an inference of causal relationship between a claimed condition and employment factors. Dr. Schaible indicated that appellant's L4-5 disc might have destabilized after his surgery but he did not present diagnostic findings to support this assertion or explain how such a process could have constituted a recurrence of his employment-related condition.

For these reasons, appellant did not show a change in the nature and extent of his injury-related condition. He also did not allege or show a change in the nature and extent of his limited-duty job requirements. The Office, therefore, properly denied his recurrence of disability claim.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability on or after June 8, 2005 due to his April 4, 2002 employment injury.

³ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁴ *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 29 and April 19, 2006 decisions are affirmed.

Issued: August 7, 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