

found that the Office, by its June 4, 1992 decision, abused its discretion in refusing to reopen appellant's case for a merit review. The Board remanded the case for a determination of whether a merit review of appellant's hand injury claim was warranted and for a merit review of his claim for a recurrence of his October 18, 1985 neck injury. It noted that the Office issued a decision on April 25, 1991 which found the medical evidence insufficient to establish that appellant's disability on and after November 7, 1990 was causally related to his August 30, 1989 hand injury. In the second appeal, the Board remanded the case to the Office for reconstruction and proper assemblage of the case as the case record had not been received as of January 6, 2000.² In the third appeal, the Board found that the Office failed to follow the Board's instructions in the two prior decisions.³ The Board noted that the Office denied appellant's request for reconsideration of a May 14, 2001 decision as the evidence submitted failed to establish a causal relationship between his left hand contusion and his degenerative back condition. The facts and the circumstances are set out in the prior decision and are hereby incorporated by reference.

Subsequent to the Board's remand order, the Office issued a decision dated August 18, 2005. It found that the medical evidence submitted by appellant failed to establish that he sustained recurrences of disability in September 1990 and November 1990 causally related to his accepted August 30, 1989 left hand contusion.

Appellant requested reconsideration which was denied by the Office in a merit decision dated February 27, 2006.

LEGAL PRECEDENT

Section 10.5(x) of the Office's regulations provides, in pertinent part:

"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."⁴

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she 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.⁵ 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

² Docket No. 99-1481 (issued January 6, 2000).

³ Docket No. 04-623 (issued March 23, 2005).

⁴ 20 C.F.R. § 10.5(x). See *Hubert Jones, Jr.*, 57 ECAB ____ (Docket No. 05-603, issued March 10, 2006).

⁵ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

related to the employment injury.⁶ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁷

ANALYSIS

The Office accepted appellant's claim for left hand contusion sustained in a fall at work on August 30, 1989. Appellant filed a claim for a recurrence of disability for medical treatment effective September 1990. He also filed a claim for a recurrence of disability for lost wages beginning November 7, 1990.

The Board finds that appellant did not submit medical evidence sufficient to establish that he sustained a recurrence of disability in September and November 1990 causally related to the August 30, 1989 employment injury. In order to establish a claim for a recurrence of disability, a claimant must establish that he sustained a spontaneous material change in the employment-related condition without an intervening injury.⁸

Appellant did not submit rationalized medical evidence establishing that his claimed recurrences of disability in September and November 1990 were causally related to the August 30, 1989 accepted employment injury. Dr. Gregory P. Mortimer diagnosed left hand spasm and concluded that appellant could perform modified work. Dr. Mary T. Norek noted that appellant sustained a hand injury on August 30, 1989 and concluded that he was capable of working with restrictions. She also concluded that his major disability was his cervical spine degenerative joint and disc disease. Appellant also submitted a September 18, 1990 report by Dr. Jeffrey Lemberg addressing appellant's left hand condition. However, Dr. Lemberg did not offer any opinion on the causal relationship between his medical condition and his accepted August 30, 1989 employment injury. He noted that appellant stated his symptoms began after he jammed his arm at work. Dr. Lemberg concluded that he was to continue in his modified light-duty job. Thus, none of the medical reports support that appellant was totally disabled in September or November 1990 due to his accepted August 30, 1989 employment injury.

Appellant also submitted a February 24, 1993 decision by a Social Security Administration (SSA) administrative law judge approving his claim for disability benefits. The Board notes that determinations of other federal agencies, such as the SSA, are not binding on the Office as they are based on different standards of medical proof and do not require that the disability be employment related.⁹

⁶ Section 10.104(a), (b) of the Code of Federal Regulations provides that, when an employee has received medical care as a result of the recurrence, he should arrange for the attending physician to submit a detailed medical report. The physician's report should include the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions and the prognosis. 20 C.F.R. § 10.104.

⁷ *Mary A. Ceglia*, 55 ECAB ___ (Docket No. 04-113, issued July 22, 2004); *Robert H. St. Onge*, *supra* note 5.

⁸ 20 C.F.R. § 10.5(x); *Theresa L. Andrews*, 55 ECAB 719 (2004).

⁹ *James E. Norris*, 52 ECAB 93 (2000); *Daniel Deparini*, 44 ECAB 657 (1993).

Appellant was advised by a January 7, 1991 letter of the medical and factual evidence needed to establish his claim for recurrence of disability. However, he did not submit such evidence. The Office properly found that appellant submitted insufficient evidence to meet his burden of proof in establishing the claimed recurrences of disability.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability due to his August 30, 1989 employment injury

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 27, 2006 and August 18, 2005 are affirmed

Issued: January 10, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board