

On October 22, 2004 appellant filed a claim alleging a recurrence of disability as of October 18, 2004. He stated that, although he returned to work immediately following the accepted injury, he experienced continued pain and numbness and was unable to perform his regular duties in the same manner he performed them before the accident. Appellant was treated by Dr. John McClaren, a chiropractor, from June 23 through August 25, 2004. He was also treated by Dr. Jeffrey G. Meade (from December 23, 2003 through July 9, 2004) and Dr. Dana S. Farris (on October 19, 2004), both Board-certified in the area of family medicine. Appellant was promoted from PTF rural carrier to a regular rural carrier on January 10, 2004. He alleged that his neck pain worsened to the degree that Dr. Farris advised him to stop working on October 19, 2004. In an attached supervisor's report dated November 1, 2004, Pam Dickey stated that appellant returned to work the next workday following the December 20, 2003 accident and continued working until October 18, 2004. She indicated that the employing establishment accommodated his continued pain following the accident. The last day appellant worked for Ms. Dickey was January 9, 2004, when he was promoted.

In a report dated October 27, 2004, Dr. Stephen E. Doran, a Board-certified neurosurgeon, examined appellant on that date for pain in his neck and upper back, which radiated down his left arm. Dr. Doran provided an impression of cervical spondylosis and disc herniation, symptomatic, due to a work-related injury on December 20, 2003. He noted that a January 24, 2004 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated C5-6 and C6-7 degenerative spondylosis with disc herniation causing foraminal stenosis, and loss of normal cervical lordosis. Dr. Doran's examination of the cervical spine revealed moderately limited range of motion, especially on rotation to the left. Extension caused discomfort. Shoulder joints had full range of motion, with no crepitus or tenderness bilaterally. Dr. Doran found slight give away weakness of the dorsiflexor in the left side. Straight leg raises caused no pain on the left, but caused increased numbness in the foot. He recommended surgical intervention, based on the severity of symptoms, appellant's inability to safely work due to his pain medication, loss of mobility in his neck and arm weakness. In an accompanying duty status report, Dr. Doran diagnosed C5-6 and C6-7 radiculitis. He indicated by placing a checkmark in the "no" box that he did not advise appellant to return to full duty. Dr. Doran opined that appellant could work eight hours per day with restrictions, including lifting no more than 35 pounds continuously and 70 pounds intermittently; standing/sitting continuously from four to six hours; walking, bending, stooping, reaching above the shoulder, and driving intermittently four to six hours; climbing intermittently one to three hours; and pulling/pushing continuously for one hour.

On November 15, 2004 the Office informed appellant that the information submitted was insufficient to establish that he had sustained a recurrence of disability. The Office asked appellant to provide a copy all medical notes from February 6, 2004 forward, as well as all treatment notes relating to his preexisting C7 radiculopathy condition.

On November 12, 2004 Dr. Doran indicated that appellant's condition required a C5-6 and C6-7 anterior discectomy and fusion. Stating that appellant had no history of previous neck injuries prior to the accepted injury, he opined that the need for surgery was directly related to the December 20, 2003 motor vehicle accident. Appellant submitted a January 3, 2004 report of an MRI scan of the cervical spine.

Appellant submitted treatment notes from Dr. Meade dated December 23, 2003 through October 19, 2004. On December 23, 2003 Dr. Meade stated that appellant had a past history of acute vertebral disc disease. On January 2, 2004 Dr. Meade indicated that appellant had a past history of left arm pain due to a February 18, 1996 work injury, but that his condition had fully resolved and he had been pain-free for many years until the December 20, 2003 injury. Notes dated February 5 and July 9, 2004 reflected that appellant continued working, but continued to complain of neck pain. Notes dated October 19, 2004 reflected a diagnosis of exacerbation of persistent neck pain secondary to motor vehicle accident with evidence of progressive radiculitis. Dr. Meade stated, “[appellant] relates the symptoms had improved some but a few days ago when riding in a vehicle he felt something pop and his pain was increased significantly.”

Appellant underwent surgery on November 18, 2004. In a November 22, 2004 attending physician’s report, Dr. Doran stated that appellant was disabled as of November 18, 2004. He indicated that appellant was injured in a December 20, 2003 automobile accident at work, but that he did not have a preexisting condition. In a statement of disability, Dr. Doran indicated that appellant would be off work from November 17, 2004 through February 17, 2005. In a December 14, 2004 duty status report, Dr. Doran stated that appellant could return to work with restrictions.

In a January 14, 2005 decision, the Office denied appellant’s claim for a recurrence of disability. The Office found that the record did not contain a rationalized medical opinion supporting that appellant’s current diagnosed condition was causally related to the accepted employment injury.

On January 31, 2005 appellant requested a review of the written record. In a January 25, 2005 report, Julie R. Walsh, a physician’s assistant, stated that appellant’s preexisting condition related to his 1996 injury involved the same discs that were involved in his present condition. However, she indicated that the preexisting condition had resolved, and the December 20, 2003 injury was a reactivation of the old injury or a new injury. Ms. Walsh also stated that appellant’s symptoms had persisted and progressed since the 2003 injury.

Appellant submitted an undated report from his chiropractor, Dr. McClaren, who provided a history of injury and stated that appellant had been able to continue working after his 2003 injury, so long as he took pain medication. He reported moderate to severe reduction of the cervical curvature; no apparent fracture or other osseous pathology; moderate to severe degenerative changes at levels of C4-T2; and possible canal stenosis due to osteophyte formation at the levels of C5-T1.

On April 28, 2005 Dr. Doran opined that appellant’s disc herniation and subsequent need for surgery were a direct result of the December 20, 2003 motor vehicle accident. He reasoned that because his symptoms related to his 1996 neck injury had resolved prior to the December 2003 accident, the 1996 injury was not clinically significant. In a May 13, 2005 report, Dr. Doran opined that appellant was able to perform the duties of the position of regular rural carrier, as described in a May 13, 2005 physical requirements worksheet. Noting that the requirements of the position were within the detailed limits of an April 8, 2005 functional capacity evaluation, he released appellant to full duty.

By decision dated September 8, 2005, an Office hearing representative affirmed the January 14, 2005 decision. The representative found that the evidence of record was insufficient to support a causal relationship between the December 20, 2003 work-related accident and appellant's current cervical condition.

On September 30, 2005 appellant requested reconsideration of the September 8, 2005 decision. He submitted reports related to an August 18, 1996 work injury, including a report of an October 23, 1996 MRI scan of the cervical spine; an October 16, 1996 report of an x-ray of the cervical spine; and reports from Dr. Doran dated October 24 and 25, November 7 and December 17, 1996. On November 7, 1996 Dr. Doran reported that appellant's MRI scan revealed moderate to severe stenosis at C6-7 and moderate stenosis at C5-6 due to a spondylosis. He opined that, without surgical intervention, appellant would continue to experience chronic pain in his left arm with recurrent flares. On January 26, 2004 Dr. Meade stated that he had treated appellant on December 23, 2003 and January 2, 2004 for neck strain with right-sided radiculopathy. Noting that appellant had a preexisting C7 radiculopathy which had completely resolved, he indicated, by placing a checkmark in a "yes" box, that appellant's current condition was caused or aggravated by an employment activity. The record contains reports from Dr. Doran relating to appellant's November 18, 2004 surgical procedure, including a November 18, 2004 operative report; a November 19, 2004 discharge summary; a November 22, 2004 attending physician's report; and follow-up reports dated December 14, 2004 and January 3, March 2 and 29, 2005. In his November 22, 2004 attending physician's report, Dr. Doran diagnosed cervical spondylosis and cervical disc herniation and indicated by placing a checkmark in the "yes" box that appellant's condition was caused or aggravated by conditions of employment. The record also contains x-rays of the cervical spine dated December 14, 2004 and January 26, 2005; unsigned notes for the period from June 30, 2004 through September 30, 2005; a report of a March 30, 2005 x-ray of the cervical spine; and numerous copies of previously submitted reports.

By decision dated January 12, 2006, the Office denied modification of the September 8, 2005 decision. The Office found that appellant had not provided a well-rationalized opinion explaining how his claimed recurrent injury-related disability was causally related to the accepted December 20, 2003 injury.

On March 6, 2006 appellant requested reconsideration and submitted reports dated January 27 and February 17, 2006 from Dr. Farris. On January 27, 2006 Dr. Farris opined that appellant's worsened neck and arm pain were the result of exacerbation of an injury initially suffered in December 2003 while operating a motor vehicle. On February 17, 2006 he indicated that appellant required surgery for neck pain resulting from a motor vehicle accident, which exacerbated his underlying degenerative disc disease. On March 16, 2006 the Office acknowledged appellant's request for reconsideration, but advised him to follow the appeal rights attached to the January 12, 2006 decision. Appellant requested review by the Board. In an order dated August 28, 2006, the Board remanded the case to the Office, finding that the matter was in an interlocutory posture.¹

¹ Docket No. 06-1111 (issued August 28, 2006).

By decision dated September 15, 2006, the Office denied modification of its January 12, 2006 decision. The Office found that appellant had failed to establish that his claimed disability as of October 18, 2004 was causally related to the December 20, 2003 work injury.

On November 15, 2006 appellant filed a request for reconsideration. In a narrative statement dated July 17, 2006, appellant indicated that, following the accepted December 20, 2003 injury, he continued working until October 16, 2004, when he was injured on his way home from work. He stated that, after finishing his route on that date, “a car pulled out in front of me on at 84th and Giles which caused me to jerk and I felt something ‘pop’ in my neck and upper back right below my neck.” Appellant indicated that he experienced significant pain following the incident and was unable to go to work the following Monday, October 18, 2004 as a result of pain.

In a September 7, 2006 report, Dr. Farris indicated that he examined appellant on October 19, 2004. He stated that appellant suffered from increased neck and left upper extremity pain at that time, following a motor vehicle ride when he experienced “a sudden jarring and a popping sensation.” Dr. Farris opined that appellant’s “neck difficulties and pain and subsequent surgery as well as the exacerbation of his pain in October 2004, were all a direct result of his initial injury.”

By decision dated January 16, 2007, the Office denied modification of its previous decisions, finding that the medical evidence did not establish that there was a causal relationship between appellant’s current disability and the accepted employment injury.

LEGAL PRECEDENT

Section 10.5(x) of the Office regulation defines 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 had resulted from a previous injury or illness, without an intervening injury or new exposure to the work environment that caused the illness.² This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related injury or illness is withdrawn, (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.³

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position, or the medical evidence establishes that he can perform the light-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 light duty. As part of this burden, the employee must

² 20 C.F.R. § 10.5(x) (2002). See *Carlos A. Marrero*, 50 ECAB 117 (1998).

³ *Id.*

show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁴

ANALYSIS

Appellant has not established that he sustained a recurrence of disability as of October 18, 2004 causally related to his accepted December 20, 2003 injury.

Appellant alleged that he sustained a recurrence of disability on October 18, 2004. Although he reportedly experienced ongoing pain following his accepted injury, he continued working until October 16, 2004, when he re-injured his neck on his way home from work. Appellant stated that “a car pulled out in front of [him] on at 84th and Giles which caused [him] to jerk and [he]felt something ‘pop’ in [his] neck and upper back right below [his] neck.” As a result of the October 16, 2004 incident, appellant was unable to go to work the following Monday, October 18, 2004. Dr. Farris noted that when he examined appellant on October 19, 2004, he was experiencing increased neck and left upper extremity pain following a motor vehicle ride, when he sustained a sudden jarring and popping sensation. The October 16, 2004 incident constitutes an intervening injury, rather than a spontaneous change in appellant’s medical condition resulting from his accepted injury. Consequently, appellant did not, by definition, sustain a recurrence of disability, and the Office properly denied his claim.⁵

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that on October 18, 2004 he sustained a recurrence of disability that was causally related to his accepted injury.

⁴ *Conard Hightower*, 54 ECAB 796 (2003).

⁵ 20 C.F.R. § 10.5(x); *Philip L. Barnes*, 55 ECAB 426 (2004); *see also Carlos A. Marrero*, *supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the January 16, 2007 and September 15, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 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