

July 7, 2005 appellant filed a traumatic injury claim alleging that he sustained a low back injury due to lifting a bag of mail in the performance of duty on July 6, 2005. The Office accepted this claim for sprain/strain of the lumbar region on November 18, 2005. Appellant returned to modified work on July 21, 2005.

Appellant reported difficulties obtaining continuation of pay and completed claims for compensation. In a letter dated January 20, 2006, the Office instructed the employing establishment to aid him in completing his claim forms. On April 12, 2006 the Office received a letter from the employing establishment noting that appellant was entitled to continuation of pay for his initial absences from work, that he had not correctly completed his claims for compensation following that date and recommended that appellant file a notice of recurrence of disability.

Appellant filed a notice of recurrence of disability on April 25, 2006 alleging that he sustained a recurrence of his March 4, 1996 employment injury on July 6, 2005. He stated that he had sustained a recurrence of pain in his lower back.

In a report dated May 8, 2006, Dr. Jesse W. Cheng, an internist, noted appellant's complaint of severe back pain. He stated that appellant's low back sprain/strain had not healed within the expected time period as he had an underlying condition of degenerative disc disease and hypertrophic facet degenerative changes. Dr. Cheng stated:

“This underlying condition is exacerbated by [appellant's] work stresses as a mail clerk lifting 70-pound parcels and having to bend repetitively at the waist to lift objects at floor level or slightly higher. This activity would certainly aggravate his underlying condition.... [Appellant's] low back pain was likely due to this underlying condition in addition to the strain and sprain of the lumbar spine diagnosed in the original injury.”

In a letter dated May 15, 2006, the Office requested additional factual and medical evidence in support of appellant's claim for recurrence of disability.

Dr. Cheng completed a report on May 22, 2006 and noted that appellant's initial injury on March 4, 1996 was diagnosed as muscle spasm secondary to motor vehicle accident. He stated that appellant had additional conditions of degenerative discogenic disease and degenerative hypertrophic facet arthritic disease as demonstrated on magnetic resonance imaging (MRI) scan dated December 20, 2005. Dr. Cheng repeated his conclusions that these conditions were aggravated by appellant's employment duties. He emphasized that degenerative disc disease and facet arthritis would not be visible on x-ray. Dr. Cheng stated that appellant's recovery was delayed due to his age and work activities which were “gradually wearing out his low back.” He opined that appellant's chronic low back pain was a natural consequence of his discogenic disease. Dr. Cheng stated that the discogenic disease was “likely first started after his motor vehicle accident.” He concluded, “[Appellant's] low back pain was likely due to this underlying condition in addition to the strain and sprain of the lumbar spine diagnosed in the original injury.” Dr. Cheng supported disability from July 20, 2005 through February 13, 2006.

In a letter dated July 17, 2006, the Office stated that the evidence established that appellant's lumbar strain of July 6, 2005 remained active and that his claim remained open for medical care of the accepted lumbar strain. The Office recommended that appellant file a notice of occupational disease due to Dr. Cheng's conclusion that his low back complaints were due to his work duties aggravating his diagnosed degenerative disease over a period of time.

By decision dated July 17, 2006, the Office denied appellant's claim for recurrence of disability on or after July 6, 2005. The Office found that Dr. Cheng's report was not sufficiently rationalized to establish that appellant's March 1, 1996 employment injury resulted in degenerative disc disease as opposed to the normal effects of aging. The Office further found that Dr. Cheng did not explain how a lumbar strain in 1996 would cause intermittent disability for work.¹

LEGAL PRECEDENT

A recurrence of disability is the 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 which caused the illness. The 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.²

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or 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. The burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concluded that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician's conclusion³ including an explanation from a medical perspective of how the current condition is related to her injury.⁴

ANALYSIS

Appellant submitted a report from Dr. Cheng, an internist, dated May 22, 2006 supporting a causal relationship between his March 4, 1996 employment injury and his current

¹ Following the Office's July 17, 2006 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

² 20 C.F.R. § 10.5(x).

³ *Ricky S. Storms*, 52 ECAB 349 351-52 (2001).

⁴ *Joan R. Donovan*, 54 ECAB 615, 620 (2003).

condition and disability. Dr. Cheng described appellant's initial injury on March 4, 1996 and asserted that his additional conditions of degenerative discogenic disease and degenerative hypertrophic facet arthritic disease as demonstrated on MRI scan were due to this injury. He stated that the discogenic disease was "likely first started after appellant's motor vehicle accident." Dr. Cheng concluded, "[appellant's] low back pain was likely due to this underlying condition in addition to the strain and sprain of the lumbar spine diagnosed in the original injury." While this report provides a history of injury including the March 4, 1996 employment injury and offers an opinion that this injury also resulted in the diagnosed conditions of degenerative discogenic disease and degenerative hypertrophic facet arthritic disease, Dr. Cheng did not provide the necessary medical reasoning explaining why he believe that appellant's March 4, 1996 employment injury caused or contributed to these conditions. He did not provide any medical explanation of how the March 4, 1996 employment injury would cause or contribute to the diagnosed degenerative disc disease and hypertrophic facet arthritis. Dr. Cheng also neglected to describe how he determined that appellant's condition was the result of the March 4, 1996 traumatic injury rather than the normal aging process. For these reasons, his report is not sufficient to meet appellant's burden of proof and the Office properly denied his claim.⁵

CONCLUSION

The Board finds that appellant has failed to submit the necessary rationalized medical opinion evidence to establish that he sustained a recurrence of disability on or after July 6, 2005 due to his March 4, 1996 employment injury.

⁵ The Office recommended that appellant file an occupational disease claim based on the claim that his current employment duties were aggravating his underlying condition of degenerative disease.

ORDER

IT IS HEREBY ORDERED THAT the July 17, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 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