

**United States Department of Labor
Employees' Compensation Appeals Board**

T.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sacramento, CA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 07-1487
Issued: November 9, 2007**

Appearances:
Norman F. Nivens, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 8, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated March 1, 2007 which denied his recurrence claim. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a recurrence of disability on or about May 24, 2005 causally related to his accepted May 27, 2004 lumbar strain/sprain injury.

FACTUAL HISTORY

On May 27, 2004 appellant, a 40-year-old tractor trailer operator, experienced pain in his lower back while bending over to open the door of his truck. He filed a claim for benefits, which the Office accepted the claim for lumbar strain/sprain.

On May 24, 2005 appellant filed a Form CA-2a, claim for a recurrence of disability.¹ By decision dated July 25, 2005, the Office denied the recurrence of disability claim.

By letter dated November 16, 2005, appellant's attorney requested reconsideration. In a report dated November 3, 2005, Dr. Chandan Cheema, a specialist in internal medicine, indicated that he treated appellant for low back pain from March to September 2005. He advised that appellant had experienced continuing, progressive low back pain since his May 2004 work injury. Dr. Cheema noted that a magnetic resonance imaging (MRI) scan of the lumbar spine showed paracentral disc bulging at L5-S1. He stated:

“In summary, [appellant] sustained a work-related injury ... for which he saw us initially on March 8, 2005. From his history, it looks as if he had the injury in May 2004 and since then has received some workman's comp intervention and analgesic treatment after he saw us. We started addressing the problem. We used a conservative method including medical therapy, physical therapy, and ... chiropractic treatment with no relief. [Appellant] was always seen in extreme pain. He was referred to a surgeon and underwent appropriate surgery after review of MRI [scan]. [Appellant] still has some pain in this area.... [He] was advised not to drive heavy vehicles or lift weights as he has to recover from this extensive surgery on this spine.”

In a November 11, 2005 report, Dr. Cheema stated:

“[Appellant] works as a truck driver for [the employing establishment]. He states that he injured himself while lifting a trailer door on May 27, 2004. [Appellant] has experienced back pain which has consistently worsened over time. He had an extensive course of analgesics, physical therapy and chiropractic treatment which did not provide relief.

“Based on the foregoing, and my examination of [appellant], it is my medical opinion that appellant's disc herniation at L5-S1 was most probably caused by the injury to his back on May 27, 2004 which resulted in surgery on August 16, 2005.”

In a report dated September 30, 2005, Dr. B. Barry Chehrazi, Board-certified in psychiatry and neurosurgery, stated that appellant returned to his office for a follow-up examination after undergoing L5-S1 discectomy on August 16, 2005. Appellant noted intermittent flare-ups of back pain and occasional pain into the posterior aspect of the left thigh. Dr. Chehrazi stated that appellant believed his symptoms of back and lower extremity pain began subsequent to his May 2004 work injury. He concluded that, based on appellant's history, it was a reasonable medical probability that his work injury caused his left L5-S1 disc herniation or caused it to become symptomatic.

¹ Appellant did not indicate a specific date on which he sustained the alleged recurrence of disability. Instead, he stated that the recurrence occurred “over a period of time.”

By decision dated February 10, 2006, the Office denied modification of the July 25, 2006 decision.

Appellant requested reconsideration and submitted a May 1, 2006 report from Dr. Robert E. Harrison, a chiropractor, which was co-signed by Dr. Cheema on May 18, 2006. Dr. Harrison stated that he agreed with the diagnosis of appellant's low back condition, but believed it was incomplete. He stated:

“[Appellant] did strain his low back but concurrently damaged the L5-S1 disc. [He] was released to full duty five days post injury with no restrictions of duty and while still on medication. [Appellant] then returned to his job that requires repetitive motion and loading and unloading of the spine. According to the scientific literature it takes 21 days for a simple grade one low back strain to heal. This does not include rehab[ilitation]/conditioning time. Possibly [appellant] was released to work too soon. His back was not ready to handle the repetitive workload. A longer period of temporary total disability or a light-duty work schedule may have afforded the injured disc [time] to properly heal.

“The discs of the vertebral column possess no blood vessels, therefore healing is very slow. In light of this understanding of a normal functioning viscoelastic disc, it is easy to understand how a damaged unherniated disc could be pushed past its safe point of compromised physiological limits and become herniated.

“As stated previously I agree with the Drs. Cheema and Chehrazi that [appellant's] original injury, coupled with too early of a return to work, did precipitate the herniation of his L5 disc.”

By decision dated March 1, 2007, the Office denied modification of the February 10, 2006 decision.

LEGAL PRECEDENT

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and who supports that conclusion with sound medical reasoning.² A recurrence of disability is defined as the inability to work caused by a spontaneous change in a medical condition which results from a previous injury or illness without an intervening injury or new exposure in the work environment that caused the illness.³

² *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

³ *See* 20 C.F.R. § 10.5(x); *Donald T. Pippin*, 54 ECAB 631 (2003).

ANALYSIS

Appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his condition or disability to his accepted lumbar strain/sprain condition. For this reason, he has not discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment condition.

Appellant has failed to submit evidence to show that he sustained a worsening of his accepted low back condition or that he was totally disabled due to the accepted condition. As he did not submit medical evidence sufficient to establish that he sustained a recurrence of his work-related lower back condition, the Office properly denied compensation in its July 25, 2005 decision.

Following the July 25, 2005 Office decision, appellant submitted reports from Dr. Cheema, who related appellant's complaints of continuing, progressive low back pain since his May 2004 work injury. Dr. Cheema stated in a November 3, 2005 report that appellant underwent a lumbar MRI scan which indicated paracentral disc bulging at L5-S1, in addition to corrective surgery. He reiterated these findings in his November 11, 2005 report. In Dr. Harrison's May 1, 2006 report, co-signed by Dr. Cheema on May 18, 2006, Dr. Harrison concurred with the diagnosis of appellant's low back condition; he also noted that appellant had damaged his L5-S1 disc. He believed that appellant was released to work too soon after his injury. Dr. Harrison asserted that appellant's injured disc was not given proper time to heal and that his back was not ready to handle the repetitive workload, which precipitated his L5 disc herniation. Appellant's claim was accepted by the Office for a lumbar strain sustained on May 27, 2004. Diagnostic testing did not reveal a bulging disc until March 2005, some 10 months following the injury. Dr. Cheema did not adequately address how the diagnosed lumbar disc was related to appellant's history of injury.

Appellant also submitted a September 30, 2005 report from Dr. Chehrazi, who stated that appellant believed his back and lower extremity pain began subsequent to his May 2004 work injury. Dr. Chehrazi noted intermittent flare-ups of back pain and occasional pain into the posterior aspect of appellant's left thigh after he underwent an L5-S1 discectomy on August 16, 2005. He concluded based on appellant's history that there was a reasonable medical probability that his work injury caused his left L5-S1 disc herniation or caused it to become symptomatic.

These reports do not adequately address the causal relationship between appellant's employment-related lumbar strain/sprain and his alleged recurrence of disability. Causal relationship must be established by rationalized medical opinion evidence. The reports from Drs. Cheema and Chehrazi, however, do not explain how appellant's lumbar strain/sprain injury in May 2004 would cause or contribute to his lumbar disc condition in 2005. While these reports provided a diagnosis of appellant's current condition and noted that he complained of disabling lower back pain during the period subsequent to May 27, 2004, they did not provide a discussion of how appellant's accepted strain/sprain would cause or contribute to a bulging L5-S1 disc or the need for surgery. The Board finds that appellant failed to submit rationalized medical evidence sufficient to establish that his current condition was causally related to his May 27, 2004 employment injury.

Appellant has not submitted sufficient medical evidence supporting his claim that he sustained a recurrence of his employment-related disability as of May 27, 2004. The Office properly found that appellant was not entitled to compensation based on a recurrence of disability. The Board will affirm the March 1, 2007 Office decision.

CONCLUSION

The Board finds that appellant has not met his burden to establish that he was entitled to compensation for a recurrence of disability causally related to his accepted lumbar strain/sprain condition.

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 9, 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