

On September 8, 2004 appellant, then a 37-year-old city letter carrier, injured his back when he lifted a 60-pound parcel. He missed one day of work and began limited duty on September 22, 2004. In a September 22, 2004 report, Dr. Ellison H. Wittels, an attending Board-certified internist, diagnosed lumbar strain and advised that appellant could return to modified

duty with no lifting, pulling or pushing, a 10-pound restriction and that he could not drive a postal vehicle.

The employing establishment provided a limited-duty job description dated September 24, 2004 which appellant accepted. It provided that appellant's duties were to case mail, work nixie mail, write up accountables, answer the telephone and answer the call window. It stated that the physical requirements were the "same as restrictions." In an October 8, 2004 report, Dr. Martin L. Bloom, a Board-certified orthopedic surgeon, diagnosed lumbar strain and advised that appellant could walk and sit up to four hours each day, could not bend or stoop and had a 20-pound weight restriction. On October 22, 2004 Dr. Wittels returned appellant to regular duty, but on November 2, 2004 noted that he felt he was getting worse and advised that he could work full time with restrictions of four hours of standing, walking and driving, two hours of intermittent sitting and kneeling and lifting of 10 to 15 pounds, and one hour of bending/stooping, twisting, pulling and pushing. Dr. Zebulon Bowman, a Board-certified ophthalmologist, also advised that after a two-day trial of full duty, appellant returned to modified duty. A November 9, 2004 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated disc herniations at L4-5 and L5-S1. In a work restriction evaluation dated December 3, 2004, Dr. Wittels advised that appellant could intermittently sit for six hours a day, walk and lift for one hour a day with no bending, squatting, climbing, kneeling or twisting with a 10-pound weight restriction and no driving.

By report dated December 28, 2004, Dr. David Suchowiecky, a psychiatrist, noted that appellant was seen that day for a pain management evaluation. In a report dated December 28, 2004, Dr. Ronald F. Kahn noted his review of the MRI scan and stated that appellant had stopped work due to pain.¹

On January 18, 2005 the Office accepted that appellant sustained employment-related lumbosacral and lumbar sprain/strains. On January 26, 2005 appellant filed a Form CA-7, claim for compensation, for the period December 28, 2004 through January 25, 2005.

In an undated report received on February 3, 2005, Dr. Suchowiecky stated that appellant could not work and that he could have permanent limitations. On February 7, 2005 the Office expanded the accepted conditions to include a lumbar herniated disc. The Office informed appellant that his CA-7 claim would be adjudicated as a recurrence claim and informed him of the evidence needed in support thereof.² In a February 7, 2005 report, Dr. Suchowiecky advised that appellant should be on total bed rest. On February 18, 2005 he advised that appellant could not work at his demand levels.

In a March 1, 2005 statement, appellant stated that his light duty did not change from September to December, other than a short trial of full duty, but that one day he could not get out of bed. He noted that his physicians had placed him on bed rest and that the prescribed medications made him drowsy. In a March 15, 2005 report, Dr. Michael G. Kaldis, a

¹ Dr. Kahn's credentials are not known.

² Appellant continued to file CA-7 claims.

Board-certified orthopedic surgeon, noted that straight leg raise testing was negative bilaterally, that lower extremity strength was 5/5, and that range of motion was within normal limits. He advised that appellant had no evidence of a neurological defect. In a March 16, 2005 report, Dr. Kaldis noted his review of the MRI scan and diagnosed degenerative arthritis. He stated that there was no rupture or herniation present. By letter dated March 22, 2005, Dr. Suchowiecky informed the employing establishment that appellant was unable to meet his work demand levels. In a March 29, 2005 attending physician's report, he again advised that appellant could not work. In an April 4, 2005 report, Dr. Suchowiecky noted a positive straight leg raise test. He diagnosed a pain disorder associated with psychological factors and a generalized medical condition and low back pain, advised that appellant could not work due to functional limitations and recommended a pain management program.

By decision dated April 22, 2005, the Office denied appellant's claim that he sustained a recurrence of disability on December 28, 2004 on the grounds that the medical evidence was insufficient. By letter dated May 31, 2005, Dr. Suchowiecky advised the employing establishment that appellant was "experiencing a medical condition" that required him to be off work. A work capacity evaluation was performed on June 7, 2005 that demonstrated that appellant could work a sedentary position with a 10-pound lifting restriction and no squatting, reaching or bending. Dr. Suchowiecky reviewed this examination and advised that appellant gave reliable efforts and that he could not return to the physical demands of his former position. On July 7, 2005 he advised that appellant should be off work completely. In an August 16, 2005 report, Dr. Kahn noted findings of tenderness on examination of the lumbosacral region and impaired flexion of the hip. He diagnosed chronic pain disorder with psychological factors and a general medical condition, lumbar and lumbosacral strain/sprain and a displaced lumbar disc. Dr. Kahn opined that appellant had been totally disabled since his initial assessment on December 28, 2004, stating that he took appellant off work because his employer was not adhering to his medical work restrictions.

On September 16, 2005 appellant requested a review of the written record. In an October 31, 2005 report, Dr. Charles K. Speller, an orthopedic surgeon, noted pain on examination of the lumbar spine with numbness and tingling of the lower extremities. He diagnosed herniated discs at L4-5 and L5-S1, low back syndrome, myofascial pain and recommended psychiatric evaluation, a strengthening program and electromyography (EMG) testing. In a December 1, 2005 report, Dr. Speller advised that appellant, who had worked against restrictions, could not work due to pain. A functional capacity evaluation dated December 9, 2005 demonstrated that appellant could work light to sedentary duty with occasional squatting, reaching, bending, sitting, standing and walking and could lift five to seven pounds occasionally. On December 15, 2005 Dr. Suchowiecky reviewed the functional capacity evaluation and advised that appellant could work at a light physical demand level but was not able to work at the physical demand level of his job. He noted that appellant experienced a great deal of pain and recommended a work conditioning program. A January 3, 2006 EMG was interpreted as showing lumbar radiculopathy involving the L5 nerve roots bilaterally.

By decision dated December 23, 2005, the Office denied appellant's request for a review of the written record as untimely.

On April 13, 2006 appellant requested reconsideration and submitted reports from Drs. Suchowiecky, Kahn and Speller who advised that he was totally disabled. In an April 27, 2006 report, Glenn J. Bricken, Psy.D., a clinical psychologist, noted the history of injury and appellant's complaints. He performed psychological testing and diagnosed low back syndrome, chronic pain disorder associated with both psychological factors and a general medical condition, reactive anxiety, reactive depression, chronic pain disorder associated with a lumbar injury and problems related to pain and occupational, recreational and social decline in functioning. Dr. Bricken advised that these conditions were caused by the September 8, 2004 employment injury and that appellant was totally disabled due to the severity of his chronic pain.

On June 7, 2006 the Office denied modification of the April 22, 2005 decision. In a June 1, 2006 report, received by the Office on June 15, 2006, Dr. Speller advised that appellant could not perform any type of gainful employment in his present state. On July 6, 2006 he advised that appellant should be on home rest. Drs. Suchowiecky, Kahn and Speller reiterated their previous findings and conclusions. In reports dated May 22 and July 10, 2006 Dr. Samuel J. Alianell, a Board-certified physiatrist, noted the history of injury. Physical examination demonstrated midline tenderness of the back, and decreased range of motion with negative straight leg raises and intact sensation. Dr. Alianell diagnosed symptomatic herniated discs at L4-5 and L5-S1 with secondary anxiety and depression due to situational reaction to chronic pain. He opined that appellant was unable to work. On October 2, 24 and November 30, 2006 appellant had epidural steroid injections.

On October 28, 2006 appellant requested reconsideration and submitted a June 18, 2005 statement signed by three coworkers describing his job duties from September to December 2004. He stated that in the morning he pulled flats weighing 25 to 40 pounds, divided parcels weighing from 1 to 50 pounds, drove to deliver express mail and bundles of circulars weighing 25 to 30 pounds, and sorted from a large hamper which required him to pull, push, lift and twist his body and bend his back. In the afternoon appellant worked on nixies, answered telephones, took passport applications, wrote up accountable mails, cased letter mail and helped customers at the pick-up window. At the end of his workday he collected mail from the lobby and in front of the station. This required pulling and pushing a 50-pound hamper that weighed 60 to 80 pounds for approximately 300 feet to the back loading dock.

By decision dated January 22, 2007, the Office denied modification of the June 7, 2006 decision.

LEGAL PRECEDENT

A 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.³ This term also means an inability to work 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

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

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.⁴

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.⁵

Under the Federal Employees' Compensation Act,⁶ the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.⁷ Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁸

ANALYSIS

At the time of the claimed recurrence of disability on December 28, 2004, appellant had been working more than 90 days of limited duty since the September 8, 2004 employment injury. The Office therefore properly adjudicated the claim as a recurrence of disability.⁹ Appellant contends that his condition worsened so that he could no longer work and that he was forced to work outside his medical restrictions. While changes in the nature and extent of an employee's light-duty requirements can result in a compensable recurrence of disability, not all such changes have this effect. Only changes that cause the light-duty assignment to exceed the employee's work tolerance limitations result in a compensable recurrence of disability. An employee is not obligated to perform work that does not comply with the physical restrictions established by the medical evidence.¹⁰

⁴ *Id.*

⁵ *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁸ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.7 (January 1995).

¹⁰ *Kim Kiltz*, 51 ECAB 349 (2000).

The evidence in this case, however, does not support appellant's claim that he was required to work outside his medical restrictions. On September 22, 2004 Dr. Wittels released appellant to limited duty with no lifting, pulling, pushing or driving and a 10-pound weight restriction. On September 28, 2004 the employing establishment provided a limited-duty job description that was accepted by appellant. It provided that he was to case mail, work nixie mail, write up accountables, and answer the telephone and call window. The physical requirements were listed as the same as his physical restrictions. The Board finds that the job description provided by the employing establishment comports with the physical restrictions provided at that time by Dr. Wittels. Furthermore, in their October 2004 reports, Drs. Bloom and Bowman also advised that appellant could perform modified duty with essentially these same restrictions. In a March 1, 2005 statement, appellant acknowledged that his light duty did not change from September to December other than a short trial of full duty. While he later submitted a June 18, 2005 statement alleging that he had worked outside his restrictions, the Board finds that the evidence does not support his contention.¹¹

The Board also finds that appellant has not established that the nature and extent of his injury-related condition changed on December 28, 2004 so as to prevent him from continuing to perform his limited-duty assignment. The Board has held that a partially disabled claimant who returns to a light-duty job has the burden of proving that he or she cannot perform the light duty, if a recurrence of total disability is claimed.¹² The issue of whether an employee has disability from performing a modified position is primarily a medical question and must be resolved by probative medical evidence.¹³ A claimant's burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale. Where no such rationale is present, the medical evidence is of diminished probative value.¹⁴

The MRI scan dated November 9, 2004 and the EMG of January 3, 2006 did not contain an opinion regarding the cause of the diagnosed conditions or regarding any disability there from and Dr. Kaldis merely diagnosed degenerative arthritis. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁵ These reports are therefore insufficient to meet appellant's burden of proof.

On December 28, 2004, the day appellant stopped work, Dr. Suchowiecky noted that appellant was seen for a pain management evaluation. Dr. Kahn reported that day that appellant stopped work due to pain. While both physicians submitted reports which found that appellant

¹¹ See *John I. Echols*, 53 ECAB 481 (2002).

¹² See *William M. Bailey*, 51 ECAB 197 (1999).

¹³ *Cecelia M. Corley*, 56 ECAB ____ (Docket No. 05-324, issued August 16, 2005).

¹⁴ *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹⁵ *Willie Miller*, 53 ECAB 697 (2002).

was totally disabled, neither demonstrated any knowledge of the job requirements of appellant's limited-duty position or provided a rationalized explanation as to why he could not perform such work activities. The Board has held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.¹⁶ Dr. Speller advised that appellant was totally disabled due to low back syndrome and myofascial pain. However, he demonstrated no knowledge of appellant's modified work duties.¹⁷ Drs. Bricken and Alianell advised that appellant could not work due to chronic pain. A pain disorder has not been accepted as employment related. The record also contains functional capacity evaluations dated June 7 and December 9, 2005 that demonstrated that appellant could work sedentary duties. None of the physicians explained why, in light of these findings, they continued to advise that appellant was totally disabled.

It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for a recurrence. A mere conclusion without the necessary medical rationale explaining how and why the physician believes that the claimant's accepted exposure would result in a diagnosed condition is not sufficient to meet the claimant's burden of proof. The medical evidence must also include rationale explaining how the physician reached the conclusion he or she is supporting.¹⁸ The record in this case does not contain a medical report providing a reasoned medical opinion that appellant's claimed recurrence of disability was caused by the accepted conditions.¹⁹

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a recurrence of disability on December 28, 2004 causally related to his September 8, 2004 employment injury.²⁰

¹⁶ See *Albert C. Brown*, 52 ECAB 152 (2000).

¹⁷ *Id.*

¹⁸ *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹⁹ *Cecelia M. Corley*, *supra* note 13.

²⁰ The Board notes that Office procedures provide that a claimant may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the provider's location. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16(a) (December 1995); see *Vincent E. Washington*, 40 ECAB 1242 (1989). The Board further notes that appellant submitted evidence with his appeal to the Board. The Board cannot consider this evidence, however, as its review of the record is limited to the evidence which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 22, 2007 and June 7, 2006 be affirmed.

Issued: October 4, 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