

orthopedic surgeon, on November 12, 2001. The Office accepted payment of medical expenses associated with the surgical procedure. Appellant returned to work on April 1, 2002 with restrictions. On November 7, 2003 he accepted an offer of modified assignment. The duties of the modified assignment included, casing mail, delivering mounted/business and AMS.

On February 18, 2006 appellant sought emergency care for back strain, back pain and numbness down both legs. Dr. Steve Evans, the treating physician, diagnosed back strain, prescribed two days of bed rest and no lifting for one week. On March 6, 2006 appellant followed up with Dr. Roberts who noted that he had increased disability from his lower back with severe back pain and pain in both legs and recommended that he stay out of work for six weeks.

On April 18, 2006 appellant filed a claim for compensation for leave without pay from April 1 through 14, 2006. He filed additional claims for compensation for the periods April 1 to August 4 and August 19 to September 15, 2006. The Office requested additional information from appellant on May 8, 2006.

The Office received numerous medical reports. In a March 10, 2006 note, Dr. Roberts stated that appellant was unable to return to work until April 17, 2006. On March 27, 2006 a magnetic resonance (MRI) scan of the lumbar spine found mild degrees of stenosis at the L3-4 and L2-3 levels and broad-based disc bulge at the L3-4 level. On April 24, 2006 Dr. Roberts stated that appellant was unable to return to work until May 9, 2006. In a May 8, 2006 note, he stated that appellant has chronic low back pain, two degree degenerative disc disorder and previous back surgery. Dr. Roberts opined that appellant was unable to work at a standing job with lifting. In a May 8, 2006 letter, he opined that appellant had reached maximum medical improvement and that he could not lift significant weight or stand for prolonged periods. On May 17, 2006 Dr. Roberts stated that appellant could not return to his position as a mail carrier as he could not carry a mailbag and had a permanent weight restriction of 20 pounds. He diagnosed appellant with spinal stenosis, spondylolisthesis of L5 on S1, degenerative lumbar disc disease and failed laminectomy syndrome.

On June 23, 2006 the Office updated appellant's accepted conditions to include left hip trochanteric bursitis, exacerbation of lumbar degenerative disc disease, exacerbation of L4-5 spinal stenosis and exacerbation of L4-5 spondylolisthesis. On June 28, 2006 the Office denied appellant's claim for compensation on the grounds that the evidence failed to establish that the time lost from work was directly due to appellant's accepted conditions. On June 30, 2006 appellant requested an oral hearing which took place on November 8, 2006.

Additional medical evidence was received by the Office. In a July 3, 2006 letter, Dr. Roberts provided his professional opinion that the on-going twisting, turning and lifting that appellant was currently expected to do at work exacerbated and aggravated his underlying back condition. On July 10, 2006 Dr. Roberts stated with all due medical probability that appellant was unable to return to even his restricted level of function due to ongoing back and leg pain in the category of failed post-laminectomy syndrome. He also stated that the back and leg pain was not a new condition but a problem related to the original back condition and subsequent back surgery. On August 24, 2006 a functional capacity evaluation was performed by Melissa Haverdill, a physical therapist, who found appellant's physical demand level to be "light." The

evaluation was not signed off on by a doctor. The evaluation noted appellant's limitations of not walking faster than 1.5 miles per hour and for only 6.5 minutes due to increased burning in the lower back and down the left leg. On September 18, 2006 appellant followed up with Dr. Roberts who stated that he was able to function at a light level of duty. On October 30, 2006 Dr. Roberts stated that, due to appellant's ongoing low back condition and his failure to improve following surgery and years of rehabilitation, he could no longer perform the duties required of him as a letter carrier. He diagnosed post-laminectomy syndrome, chronic low back pain and radiculopathy, both legs. Dr. Roberts also noted that appellant had significant deterioration and that all activities aggravate his back pain, leg pain and numbness in his legs.

In a January 9, 2007 decision, the hearings representative affirmed the June 28, 2006 Office decision.

LEGAL PRECEDENT

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish a recurrence of total disability and that he or she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹

A claimant seeking compensation under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.³ In this case, appellant has the burden of establishing that he sustained a recurrence of a medical condition⁴ on February 18, 2006 causally related to his March 7, 2001 occupational disease. This 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.⁵ Where no such rationale is present, the medical evidence is of diminished probative value.⁶

¹ *Hubert Jones, Jr.*, 57 ECAB ____ (Docket No. 05-603, issued March 10, 2006);

² 5 U.S.C. §§ 8101-8193

³ *Edward W. Spohr*, 54 ECAB 806 (2003).

⁴ Recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment. 20 C.F.R. § 10.5(y) (2002).

⁵ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁶ *Albert C. Brown*, 52 ECAB 152 (2000).

In order to establish that his claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between his present condition and the accepted injury must support the physician's conclusion of a causal relationship.⁷

ANALYSIS

The Board finds that this case is not in posture for decision regarding whether appellant sustained a recurrence of disability.

The Office accepted appellant's 2001 claim for left hip trochanter bursitis, exacerbation of degenerative disc disease of the lumbar spine and decompressive lumbar laminectomy L3-4 and L4-5. On June 23, 2006 the Office updated appellant's accepted conditions to include left hip trochanteric bursitis, exacerbation of lumbar degenerative disc disease, exacerbation of L4-5 spinal stenosis and exacerbation of L4-5 spondylolisthesis. Appellant thereafter returned to work in 2003 as a modified letter carrier. In 2006, he claimed that his condition had worsened and that he could no longer perform the modified job duties. In support of his claim, appellant submitted many reports from his treating physician, Dr. Roberts, who on July 10, 2006 stated that with all due medical probability appellant was unable to return to even his restricted level of function due to ongoing back and leg pain in the category of failed post-laminectomy syndrome. Dr. Roberts explained that appellant's back and leg pain was not a new condition but a problem related to the original back condition and subsequent back surgery. He further noted that appellant's condition had been aggravated by his modified work due to the twisting, turning and lifting he was expected to do. Dr. Roberts has opined many times that appellant can no longer work as a letter carrier due to his ongoing low back condition and noted that he was unable to return to even his restricted level of function due to ongoing back and leg pain. Having treated appellant since 2001 and performed his surgery in November 2001, Dr. Roberts is acutely aware of his medical history and work environment.

The Board notes that, while none of the reports submitted by appellant is completely rationalized as to whether he sustained a recurrence of disability or a new injury caused by his modified work, they are consistent in indicating that appellant had a worsening of his accepted condition which was further aggravated by conditions of his employment.

It is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁸

The Board further notes that Dr. Roberts' reports are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet appellant's burden of proof to establish his claim, they raise an uncontroverted inference

⁷ See *Ricky S. Storms*, 52 ECAB 349 (2001).

⁸ *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard*, 53 ECAB 430 (2002); *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

between his claimed recurrence and the accepted diagnosed conditions and are sufficient to require the Office to further develop the medical evidence and the case record.⁹

On remand the Office should prepare a statement of accepted facts and refer appellant, along with his medical records, for a second opinion examination in order to obtain a rationalized opinion as to whether appellant sustained a recurrence of disability

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained a recurrence on February 18, 2006.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2007 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision.

Issued: September 7, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

⁹ See *Virginia Richard*, *supra* note 8; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).