

Following emergency room treatment on the date of injury, appellant was treated by Dr. Stephen R. Fromm, an attending Board-certified neurosurgeon, who submitted reports from April 19 to November 29, 2006, noting a history of a November 11, 2005 back injury due to lifting mail overhead, as well as the April 12, 2006 incident. His condition had greatly improved as of August 23, 2006 although he had developed positional vertigo in early August 2006. Dr. Fromm diagnosed lumbosacral sprain, lower thoracic sprain and left-sided disc herniations at L2-3 and L4-5.²

Appellant was also treated by Dr. Daniel Korman, an attending internist, who submitted reports from April to December 27, 2006 diagnosing herniated L2-3 and L4-5 discs. Dr. Korman released appellant to full duty with no restrictions as of August 28, 2006. He noted in November 2 and December 5, 2006 reports that appellant was doing well on full duty.

On March 9, 2007 appellant claimed a recurrence of disability commencing January 15, 2007, while on full duty. He asserted that he kept “twisting and falling” due to vertigo. Appellant stopped work on January 15, 2007. In a March 19, 2007 letter, the Office advised appellant of the additional evidence needed to establish his claim, including rationalized medical evidence explaining how and why the accepted April 12, 2006 injury would cause the claimed disability for work on and after January 15, 2007.

Appellant submitted additional evidence.³ In chart notes from January through March 2007, Dr. Korman stated that appellant had vertigo and fell 5 to 10 times, producing increased lumbar pain and sharp hip pain. On January 23, 2007 he noted an increase in back pain 10 days before. In an April 12, 2007 chart note, Dr. Korman stated that, on and after January 15, 2007, “work injury recurrence with exacerbation ... repeated heavy lifting” with an increase in symptoms. The injuries to “L5/RLE [right lower extremity] were caused and exacerbated” by appellant’s job duties and “causal relationship is clear.” Appellant had returned to full duty as of August 28, 2006 and had done “quite well clinically.”

In a February 21, 2007 report, Dr. Fromm noted that appellant “did fall and the pain became so severe that he stopped work on January 15, 2007 and has not returned to work.” Appellant also had attacks of vertigo. On examination, Dr. Fromm noted severe lumbar spasm. He diagnosed a herniated disc at L2-3 and bulging disc at L4-5. On March 1, 2007 Dr. Fromm stated that appellant had a severe increase in back pain on January 15, 2007 and was since disabled for work.

In a March 12, 2007 note, Dr. Ahmed Elfiky, an attending neurologist, diagnosed vertigo, generalized weakness and a possible vitamin B12 deficiency.

By decision dated April 20, 2007, the Office denied the claim on the grounds that causal relationship was not established. It found that appellant submitted insufficient rationalized

² An April 28, 2006 lumbar magnetic resonance imaging (MRI) scan showed disc dessication at L2-3 and L4-5. An April 28, 2006 lumbar x-ray showed mild degenerative changes from L2-5. Appellant underwent physical therapy from April 14, 2006 to March 2007.

³ Appellant also submitted a November 22, 2006 lumbar muscle strength test showing weakness in the quadriceps, hamstrings, calves and extensor hallucis bilaterally. He provided March 2007 physical therapy notes.

medical evidence explaining how and why the accepted April 12, 2006 lumbar sprain would cause the claimed recurrence of disability on and after January 15, 2007.

In a May 19, 2007 letter, appellant requested reconsideration. He asserted that he had vertigo related to “high blood pressure medication as well as muscle relaxers combined with over the counter painkillers.” When appellant stopped taking the nonprescription pain medication, his dizziness stopped. He submitted additional evidence.

In an April 18, 2007 report, Dr. Fromm stated that, on “January 15, [2007], because of dizziness and multiple falls, [appellant’s] low back began to hurt again.” On examination, he noted severe momentary vertigo with changes of head position.

In April 24 and June 5, 2007 reports, Dr. Korman diagnosed an exacerbation of back and hip pain, a “consequential injury due to altered gait.”

In a June 13, 2007 report, Dr. Fromm noted an increase in appellant’s lumbar pain during the previous two weeks. On examination, he found restricted lumbar motion, inability to walk on heels or toes, severe muscle weakness in both legs against resistance, absent reflexes and decreased or absent sensation throughout the body. Dr. Fromm diagnosed herniated discs at L2-3 and L 4-5 and lumbar radiculopathy.⁴

By decision dated August 21, 2007, the Office denied modification on the grounds that the evidence submitted was insufficient. It found that Dr. Fromm related appellant’s back pain after January 15, 2007 to “dizziness and multiple falls,” not the accepted April 12, 2006 lumbar sprain.

LEGAL PRECEDENT

The Office’s implementing regulations define a 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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”⁵ When an appellant claims a recurrence of disability due to an accepted employment-related injury, he 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. This burden includes the necessity of furnishing evidence from a qualified 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. Moreover, sound medical reasoning must support the physician’s conclusion.⁶ An award of

⁴ Appellant also submitted test results. A May 1, 2006 lumbar MRI scan showed disc herniations at L2-3, L3-4 and L4. A June 21, 2007 lumbar MRI scan showed a new L5-S1 herniation. July 23, 2007 electromyography and nerve conduction velocity studies showed bilateral L5-S1 radiculopathy. Appellant also provided physical therapy notes from March to July 2007.

⁵ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

⁶ *Ricky S. Storms*, 52 ECAB 349 (2001).

compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.⁷

ANALYSIS

The Office accepted that appellant sustained a lumbar sprain resulting from an April 12, 2006 incident. Appellant returned to full duty on August 28, 2006. In his March 9, 2007 claim for recurrence of disability, he alleged that the April 12, 2006 incident caused a total disability for work commencing January 15, 2007. Appellant has the burden of providing sufficient evidence, including rationalized medical evidence, to establish the causal relationship asserted.⁸

The Board finds that intervening incidents negate a causal relationship between the April 12, 2006 injury and appellant's condition as of January 15, 2007. On March 9, 2007 appellant claimed a recurrence of disability, asserting that vertigo caused him to twist and fall, exacerbating his back pain. He believed that interactions from several prescribed and over-the-counter medications caused his dizziness. But appellant did not submit medical evidence supporting this contention. The Office did not accept vertigo as an occupationally-related condition. Thus, the falling incidents after appellant returned to full duty in August 2006 broke the legal chain of causation stemming from the April 12, 2006 lumbar sprain. Therefore, appellant has not met his burden of proof.

Appellant's physicians also attributed his back condition beginning in January 2007 to causes other than the April 12, 2006 lumbar sprain. Dr. Korman, an attending internist, stated in chart notes from January to March 2007 that 5 to 10 falls due to vertigo produced lumbar and hip pain.⁹ He also attributed appellant's back condition to repeated heavy lifting at work after he returned to full duty on August 28, 2006. Dr. Fromm, an attending Board-certified neurosurgeon, noted in February 21 and April 18, 2007 reports that appellant fell, causing severe back pain before he stopped work on January 15, 2007. He stated that, on January 15, 2007, appellant's "low back began to hurt again" because of vertigo and multiple falls. Dr. Elfiky, an attending neurologist, diagnosed vertigo and generalized weakness possibly due to a vitamin deficiency. None of appellant's physicians explained how and why the April 12, 2006 injury would cause the claimed recurrence of disability commencing January 15, 2007.¹⁰ Thus, the Board finds that appellant did not submit sufficient rationalized medical evidence to meet his burden of proof.¹¹

⁷ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁸ *Ricky S. Storms*, *supra* note 6.

⁹ At oral argument, appellant contended that he did not fall to the ground but instead merely stumbled. The Board notes that this account is inconsistent with the history of injury related by Dr. Korman and appellant's statements on his claim form.

¹⁰ The Board notes that the medical evidence does not establish that appellant's treatment on and after January 15, 2007 was related to the accepted April 12, 2006 lumbar sprain.

¹¹ *Beverly A. Spencer*, 55 ECAB 501 (2004).

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability commencing January 15, 2007 causally related to an accepted April 12, 2006 lumbar sprain. Appellant submitted insufficient rationalized medical evidence to establish the causal relationship asserted.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 20 and April 20, 2007 are affirmed.

Issued: August 1, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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