

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

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**M.W., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Belle Plain, IA, Employer**

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**Docket No. 08-1105  
Issued: December 1, 2008**

*Appearances:*  
*Bruce Gettman, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 4, 2008 appellant filed a timely appeal of a January 28, 2008 merit decision from the Office of Workers' Compensation Programs, which denied modification of a November 28, 2006 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue on appeal is whether appellant met his burden of proof to establish a recurrence of disability beginning July 12, 2006 causally related to his March 19, 2004 employment injury.

**FACTUAL HISTORY**

On March 19, 2004 appellant, then a 38-year-old rural carrier, filed a traumatic injury claim alleging that on March 19, 2004 he hurt his back while lifting a heavy parcel from the back of his postal vehicle in the performance of duty.<sup>1</sup> He did not stop work; however, he initially

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<sup>1</sup> The record reflects that appellant has nonwork-related conditions, which include a vertebral fracture at L3 in 1999, Grave's disease, a blood clot in 1997, obesity and thyroid problems.

returned to modified duty.<sup>2</sup> The Office accepted the claim for herniated disc at L5-S1 and left lower extremity, radiculopathy and appellant received appropriate compensation benefits. Appellant was released to regular duty with no restrictions on August 1, 2005 by Dr. Brian Rafferty, Board-certified in family medicine.

In an August 22, 2006 disability certificate, Dr. Rafferty indicated that appellant was currently under his care for a disc herniation in his back and was unable to work from August 12, 2006 until he could be seen by a neurosurgeon.

On September 13, 2006 appellant filed a notice of recurrence (Form CA-2a) alleging that on July 12, 2006 he had a recurrence of his March 19, 2004 employment injury. He alleged that his condition never healed or been 100 percent and that he had increased problems with the disc in his lower back. Appellant stopped work on August 22, 2006. The employing establishment alleged that he indicated that his back and legs were hurting after completing his route in a borrowed postal vehicle. The postmaster indicated that the “change in vehicle size and the left hand drive controls vs. his right hand drive jeep caused him to stretch, turn and twist excessively while straddling the front seat to deliver his route.”

On September 25, 2006 the Office advised appellant of the type of medical evidence needed to establish his claim for a recurrence of disability. It explained that a recurrence was defined as a “spontaneous return or increase of disability due to a previous injury or occupational disease without intervening cause.” The Office advised appellant that, if he had a new injury or exposure, he should file a new notice of injury.

Appellant submitted reports from Dr. Russell Buchanan, a neurosurgeon, and reports of diagnostic studies. In a September 14, 2006 report, Dr. Buchanan diagnosed advanced degeneration with subligamentous disc herniation, L5-S1, with displacement of the left S1 nerve root. He advised that surgery might be needed but first recommended an electromyography scan and nerve conduction studies. On October 2, 2006 report Dr. Buchanan noted appellant’s history of injury and treatment. He indicated that appellant had a “fall without injury last week.” Dr. Buchanan diagnosed L5-S1 disc degeneration with S1 radiculopathy left and recommended a “simple laminectomy for his left lower extremity pain and work on strengthening of the low back.” He provided a disability certificate in which he diagnosed back pain and advised that appellant could not work. In an August 22, 2006 report, Dr. Jeffrey Magnuson, a Board-certified diagnostic radiologist, advised that a magnetic resonance imaging (MRI) scan showed a small broad-based left paracentral disc herniation at L5-S1 that had increased in size since June 2, 2005 and seemed to cause mild impingement on the left S1 root. In a September 14, 2006 report, Dr. Donald Breit, a Board-certified diagnostic radiologist, stated that an x-ray revealed mild disc space narrowing at L5-S1 with mild progression from an earlier study. In a September 28, 2006 report and a nerve conduction study, Dr. Brian Sires, a Board-certified neurologist, diagnosed minor left S1 lumbar radiculopathy.

In a letter dated October 5, 2006, Richard A. Jellen, the postmaster, indicated that appellant returned to work but “had limited range of motion and moved very slow.” He also noted that appellant complained about “pain in his back and legs and walked by dragging one of

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<sup>2</sup> Appellant was released to clerical work with restrictions of no lifting or twisting.

his legs.” Mr. Jellen indicated that appellant underwent therapy in 2005, which made a “big difference in his performance, mobility and the pain from the original injury.” He advised that appellant rebounded and had no noticeable problems until July 12, 2006, when he reported that his back was hurting him again.

In an October 19, 2006 report, Dr. Buchanan recommended a laminectomy and opined that it was “the most efficient way of achieving a decompression along the involved nerve roots, the left L5 and left S1 nerve root.” He noted that appellant had a work injury from March 19, 2004 and opined that it “has been getting somewhat worse overtime and never achieving a return to his baseline.” In a report received by the Office on October 30, 2006, Dr. Buchanan noted that the diagnostic testing showed an abnormality in the left S1 nerve root distribution. He diagnosed left L5-S1 degenerative disc with foraminal stenosis causing left S1 clinical radiculopathy. Dr. Buchanan opined that the “continuous lifting on a disc that was already injured, has led to a progression of his symptoms.” He opined that appellant was a clear candidate for surgery and that his current complaints stemmed from his April 19, 2004 injury.

In an October 19, 2006 report, Dr. Rafferty noted that appellant had several years of chronic back problems. He noted that appellant “developed significant discomfort in his low back this fall, which was an exacerbation of his chronic underlying medical problem.” Dr. Rafferty opined that “[a]s far as the original injury, [appellant] has never fully recovered.” He noted that appellant was able to return to regular employment, but on an intermittent basis. Dr. Rafferty opined that appellant had an exacerbation of his chronic underlying medical problems and that there were not “any recent significant precipitating factors known to cause this exacerbation.” The Office also received a physical therapy report.

By decision dated November 8, 2006, the Office denied appellant’s claim for a recurrence of disability beginning July 12, 2006. It also denied authorization for removal of spinal lamina. The Office found that the evidence was insufficient to establish that the claimed recurrence of disability was due to the accepted work injury.

In a November 21, 2006 operative report, Dr. Buchanan performed a lumbar laminectomy at L5-S1 and decompression of the left S1 nerve root, with a discectomy on the left L5-S1. The Office received several treatment notes dating from December 20, 2006 to May 22, 2007 from Dr. James Lesniewski, a Board-certified surgeon. These treatment notes were for hernias, pain in the groin, cholecystectomy for acute cholecystitis, a gall bladder infection and abdominal pain. The Office also received additional information which included copies of disability certificates from June to July 2005, evidence previously of record and a November 23, 2004 report from Dr. Keith W. Riggins, a Board-certified orthopedic surgeon, who diagnosed a herniated nucleus pulposus at L5-S1 with radiculopathy. Dr. Riggins opined that appellant’s restrictions were permanent and persistent since March 2004.

The Office received an April 1, 2007 letter from Mary Ohms, a health and resource manager and injury compensation specialist from the employing establishment. Ms. Ohms indicated that appellant fell and hurt both his knees while walking across his driveway after the latest ice storm.

In a July 18, 2007 operative report, Dr. Robert Federhofer, an osteopath, Board-certified in anesthesiology, indicated that appellant underwent a bilateral L5-S1 facet joint injection with C-arm guidance.

On October 25, 2007 Dr. Buchanan completed a form from the Office, in which he indicated that appellant sustained a recurrence of disability and opined that the need for lumbar spine surgery by appellant in 2006 was directly related to his March 19, 2004 injury.<sup>3</sup>

On October 25, 2007 appellant requested reconsideration. In an October 31, 2007 letter, he and his representative submitted additional arguments and medical evidence. They alleged that appellant had presented evidence to show that his recurrence arose from his original injury. In a separate statement, appellant alleged that, on July 10, 2006, his vehicle broke down. He indicated that his jeep was a specially built right hand drive vehicle, which enabled him to perform his duties without inflicting more pain and discomfort to his low back. Appellant indicated that he completed his shift on that date with severe lower back pain which radiated to his legs. He alleged that on July 11, 2006 he was given a loaner vehicle, which was so uncomfortable, that he could not come into work the next day. Appellant also alleged that he had never fully recovered and that his recurrence was a spontaneous return of disability without any specific intervening cause or events. He also alleged that he had no other injuries since the original injury. The Office also received a copy of Dr. Buchanan's October 19, 2006 report.

The Office received an undated work capacity evaluation from Dr. Kevin Eck, a Board-certified orthopedic surgeon, who advised that appellant had radiculopathy of the left lower extremity, a herniated disc at L5-S1 and had reached maximum medical improvement. It also received an earlier work capacity evaluation from November 23, 2004.

In a December 5, 2007 statement, Ms. Ohms indicated that the June 1, 2005 emergency room report revealed that appellant was brought in by ambulance after pulling out nails from a floor in preparation for new carpeting and developed a sudden onset of pain. She also noted that the report revealed that appellant was crawling on his hands and knees for approximately 15 minutes, removing nails from the floor and upon standing developed severe pain. Ms. Ohms noted that appellant had refurbished a home during the course of his March 19, 2004 injury and subsequent recovery. Additionally, she noted that appellant drove a school bus, when he was unable to return to work.

In a January 28, 2006 decision, the Office denied modification of its prior decision. It advised appellant that his statement revealed that he was exposed to new work factors following his return to work and that he should consider filing a new occupational disease claim if he believed that new work factors caused or contributed to his disability.

### **LEGAL PRECEDENT**

Section 10.5(x) of the Office's regulations provides that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a

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<sup>3</sup> The report actually indicates April 19, 2004; however, this appears to be a typographical error.

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.<sup>4</sup>

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.<sup>5</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>6</sup>

### ANALYSIS

The Office accepted that appellant sustained a herniated disc at L5-S1 and left lower extremity radiculopathy in the performance of duty on March 19, 2004. Appellant did not stop work. He filed a notice of recurrence of disability on September 13, 2006 alleging disability beginning July 12, 2006. Appellant, however, did not submit sufficient reasoned medical evidence to establish that his present condition was causally related to his accepted injury. For example, he did not submit a medical report in which his treating physician explained why any disability beginning July 12, 2006 would be related to the accepted injury.

Appellant submitted several reports from Dr. Buchanan. They included an October 2, 2006 report, in which Dr. Buchanan noted that appellant had a "fall without injury last week." Dr. Buchanan diagnosed L5-S1 disc degeneration with S1 radiculopathy left and recommended a "simple laminectomy for his left lower extremity pain and work on strengthening of the low back." He also diagnosed back pain and indicated that appellant could not work. However, Dr. Buchanan did not provide any further opinion regarding why appellant could not work. To establish that a claimed recurrence was caused by the accepted injury, medical evidence of bridging symptoms between the present condition and the accepted injury must support his conclusion of a causal relationship.<sup>7</sup> Although Dr. Buchanan noted that appellant had a recent fall, appellant did not allege that he sustained a fall at work. Further, he did not specifically address the cause of the diagnosed conditions or relate the conditions to appellant's May 19, 2004 employment injury and thus his report is of little probative value.<sup>8</sup>

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<sup>4</sup> 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

<sup>5</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

<sup>6</sup> *Walter D. Morehead*, 31 ECAB 188 (1986).

<sup>7</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>8</sup> *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

In an October 19, 2006 report, Dr. Buchanan recommended a laminectomy. While he noted that appellant had a work injury on March 19, 2004 that had worsened overtime, he did not provide any reasoning for this opinion. For example, appellant alleged that he sustained a recurrence on July 12, 2006, while using a loaner vehicle instead of his specially built right hand vehicle which had broke down and was being repaired but Dr. Buchanan did not note this or explain how this was part of a spontaneous change in the original injury. Additionally, the employing establishment indicated that appellant fell and injured his knees after walking across his driveway after an ice storm. However, Dr. Buchanan did not provide any indication that he was aware of this or provide any other reasoned explanation as to how he arrived at his conclusion that appellant's condition from March 19, 2004 worsened overtime as a result of the original injury. This is especially important in light of the intervening factors such as the fall in his driveway at home, as well as the fact that appellant was released to unrestricted duty on August 1, 2005. The Board has held that medical opinions not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.<sup>9</sup> Likewise, in a report received by the Office on October 30, 2006 and an October 25, 2007 report, Dr. Buchanan noted that the "continuous lifting on a dis[c] that was already injured, has led to a progression of his symptoms." He opined that appellant had sustained a recurrence of disability and opined that the need for lumbar spine surgery by appellant in 2006 was directly related to his March 19, 2004 injury. However, as noted above, Dr. Buchanan did not provide any rationale to explain how he arrived at this conclusion.

Appellant also submitted an October 19, 2006 report, from Dr. Rafferty, who opined that "[a]s far as the original injury, the [appellant] has never fully recovered." Dr. Rafferty opined that appellant had an exacerbation of his chronic underlying medical problems and that there were not "any recent significant precipitating factors known to cause this exacerbation." However, he did not provide any explanation to support his opinion that appellant had an exacerbation of his underlying symptoms attributable to the original accepted injury. Dr. Rafferty also did not appear to have a complete history such as the fall on ice at appellant's home nor did he appear to have any knowledge regarding the breakdown of appellant's vehicle. The Board has held that medical opinions based upon an incomplete history have little probative value.<sup>10</sup>

Other medical reports submitted by appellant, including diagnostic reports, are insufficient to establish he claim for a recurrence of disability as they do not specifically address how any condition on or after July 12, 2006 is causally related to the original employment injury.<sup>11</sup> Likewise, medical reports submitted by him that predated the alleged recurrence are insufficient to establish the claim for a recurrence of disability.

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<sup>9</sup> *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>10</sup> *See Vaheh Mokhtarians*, 51 ECAB 190 (1999).

<sup>11</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

The Office also received several physical therapy reports. However, the reports of therapists have no probative value on medical questions because a therapist is not a physician as defined by 5 U.S.C. § 8101(2) and, therefore, is not competent to render a medical opinion.<sup>12</sup>

Consequently, appellant has not met his burden of proof in establishing his claim for a recurrence of disability beginning July 12, 2006 causally related to the work injury of March 19, 2004.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish a recurrence of disability.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 28, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 1, 2008  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>12</sup> See *Barbara J. Williams*, 40 ECAB 649, 657 (1988) (physical therapist); 5 U.S.C. § 8101(2) (the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law).