

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

S.G., Appellant)
and) Docket No. 07-2243
U.S. POSTAL SERVICE, POST OFFICE,) Issued: February 15, 2008
San Diego, CA, Employer)

)

Appearances:
Appellant, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 4, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 29, 2007, which denied her recurrence of disability claim. 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 is whether appellant sustained a recurrence of disability on or about June 1, 2006 causally related to the accepted employment injury of June 7, 2005.

FACTUAL HISTORY

On June 28, 2005 appellant, then a 49-year-old registry clerk, filed a traumatic injury claim alleging that on June 7, 2005 she sustained a low back injury after pushing a registry cart. The claim was lumbosacral sprain. Appellant did not stop work.

Appellant submitted reports from Dr. Gary A. Linnemann, Board-certified in occupational medicine, dated June 28 and July 1, 2005. He treated appellant for low back pain.

Dr. Linnemann noted that appellant was pushing a mail cart and had low back pain. He diagnosed lumbar strain and sacroiliitis. In a duty status report date June 28, 2005, Dr. Linnemann diagnosed lumbar strain and indicated that appellant could return to work full time without restrictions on June 28, 2005. In a May 5, 2006 report, Dr. Mitchell G. Cohen, a Board-certified orthopedic surgeon, noted that appellant was eight years status post anterior cervical discectomy and fusion at C5-6 and C6-7. He advised that appellant experienced no worsening symptoms. Dr. Cohen diagnosed status post anterior cervical discectomy and fusion at C5-6 and C6-7 and facet arthropathy at C7-T1 and advised that appellant remained permanent and stationary.

In telephone logs dated May 12 and 23, 2006, appellant contacted the Office and requested information on reopening her claim so that she could obtain medical treatment for her injury. She indicated that she had not received treatment since June 28, 2005.

In a letter dated June 7, 2006, the Office advised appellant that if she believed she sustained a recurrence of disability she should file a CA-2a.

On June 7, 2006 appellant filed a notice of recurrence of disability but did not provide a specific date of recurrence. She reported experiencing intermittent back pain but did not seek medical treatment; rather, she treated her condition conservatively with home remedies. Appellant noted that after her original injury she was not limited in performing her job duties.¹

By letter dated June 22, 2006, the Office requested that appellant submit additional information including a comprehensive medical report from her treating physician regarding how the specific work factors or incidents contributed to her claimed back injury.

Appellant submitted a statement noting the history of her June 7, 2005 work injury and her medical treatment. She first sought medical treatment on June 28, 2005 and was prescribed an ointment. Appellant indicated that her back condition did not cease but continued and the pain varied in intensity. She attached an employing establishment absence analysis noting that she used sick leave for the period June 1 to 2, 2006 and from June 5 to 9, 2006. In emergency room records dated June 1, 2006, appellant was treated for low back pain. She was diagnosed with low back pain and instructed to follow-up with Dr. Cohen. A June 9, 2006 report from Dr. Frederick Mading, Board-certified in emergency medicine, diagnosed back pain and indicated that appellant was temporarily totally disabled. In a notice of disability status, dated June 9, 2006, Dr. Cohen advised that appellant would be off work until June 11, 2006 and could return on June 12, 2006 without restrictions.

In an August 9, 2006 decision, the Office denied appellant's claim for recurrence of disability on the grounds that the evidence submitted was insufficient to establish that appellant sustained a recurrence of disability causally related to her June 7, 2005 work injury.

¹ On the CA-2a, appellant's supervisor noted that at the time of the recurrence of disability appellant was working in a "modified environment" with restrictions. However, the record does not indicate that the modified duty and restrictions were due to an accepted work-related condition.

On September 6, 2006 appellant requested an oral hearing. On November 24, 2006 she withdrew her request for an oral hearing and requested reconsideration. In statements dated June 27, 2005 to April 2, 2007, appellant reiterated the history of her back injury and subsequent medical treatment. On June 9, 2006 Dr. Cohen noted that she presented with low back pain with weakness and numbness down her leg. Appellant reported that one year ago she was pushing something heavy and experienced low back pain. Dr. Cohen advised that appellant's history was significant for an anterior cervical fusion in 1998. He noted findings upon physical examination of normal gait, lumbar paraspinous muscle spasm, normal range of motion of the lumbar spine and normal neurological, sensory and motor examination. Dr. Cohen diagnosed mild lumbosacral strain and recommended physical therapy. He opined that appellant's condition should improve with conservative care. In reports dated July 7 to August 25, 2006, Dr. Cohen treated appellant in follow-up for her lumbosacral strain. Appellant completed physical therapy and was discharged from his care. In a notice of disability status dated October 20, 2006, Dr. Cohen returned her to work full time with restrictions.

In a June 29, 2007 decision, the Office denied modification of the August 9, 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 resulted from a previous injury or illness without an intervening injury or a new exposure to the work environment.²

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury.³ 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 disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on an appellant's unsupported belief of causal relation.⁵

ANALYSIS

The Office accepted that appellant sustained a lumbosacral strain on June 7, 2005. On June 7, 2006 she filed a claim for a recurrence of disability and the record indicates that she missed work for several days beginning on or about June 1, 2006. However, the medical record

² 20 C.F.R. § 10.5(x).

³ *Alfredo Rodriguez*, 47 ECAB 437 (1996); see *Dominic M. DeScala*, 37 ECAB 369 (1986).

⁴ See *Nicolea Bruso*, 33 ECAB 1138 (1982).

⁵ *Ausberto Guzman*, 25 ECAB 362 (1974).

lacks a well-reasoned narrative from appellant's physicians relating appellant's claimed recurrent disability to her accepted employment injury.

Appellant submitted reports from Dr. Linnemann dated June 28 and July 1, 2005. Dr. Linnemann treated appellant for low back pain which occurred after appellant was pushing a mail cart. However, these reports are of no value in establishing the claimed recurrence since they predate the time of the claimed recurrent disability.

Appellant also submitted a report from Dr. Cohen dated May 5, 2006, who noted appellant's history and offered diagnoses. However, the Board notes that this report does not support that she sustained a recurrence of disability. Rather, Dr. Cohen attributed appellant's condition to a anterior cervical discectomy performed in 1998 and further opined that she experienced no worsening symptoms.

In a June 9, 2006 report, Dr. Cohen noted that appellant presented with low back pain and leg numbness. Appellant reported that one year ago she pushed something heavy and experienced low back pain. Dr. Cohen diagnosed mild lumbosacral strain and recommended physical therapy. In other reports dated July 7 to August 25, 2006, he treated appellant in follow-up and diagnosed lumbosacral strain. Dr. Cohen noted that she was discharged from his care and could return to work without restrictions on June 12, 2006. However, the Board notes that none of these reports specifically address whether appellant sustained a recurrence of disability causally related to the accepted employment injury of June 7, 2005. Dr. Cohen did not provide medical reasoning explaining how her condition or disability, was due to the June 7, 2005 employment injury. The Board has found that vague and unrationaled medical opinions on causal relationship have little probative value.⁶ Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant also submitted emergency room records dated June 1, 2006, which noted that she presented with low back pain and was diagnosed with low back pain. On June 9, 2006 Dr. Mading diagnosed back pain and indicated that appellant was temporarily totally disabled. However, these medical reports did not specifically support that she sustained a recurrence of disability causally related to the accepted employment injury of June 7, 2005. The reports do not explain how appellant's disability on or after June 1, 2006 was due to the June 7, 2005 employment injury. Therefore, these reports are insufficient to meet her burden of proof.

Appellant did not otherwise submit medical evidence supporting that she sustained a recurrence of disability causally related to her June 7, 2005 employment injury. Therefore, appellant did not meet her burden of proof in establishing that she sustained a recurrence of disability.

⁶ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability causally related to her accepted employment-related injury on June 7, 2005.

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 15, 2008
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