

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

E.S., Appellant

and

**U.S. POSTAL SERVICE, EL SERENO
STATION, Los Angeles, CA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 07-1001
Issued: January 22, 2008**

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 March 2, 2007 appellant filed a timely appeal from the January 5, 2007 merit decision of the Office of Workers' Compensation Programs, which denied her recurrence claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the recurrence issue.

ISSUE

The issue is whether appellant sustained a recurrence of her October 4, 2005 lumbar sprain/strain on or about July 28, 2006.

FACTUAL HISTORY

On October 4, 2005 appellant, then a 50-year-old letter carrier, injured her back in the performance of duty while lifting a tray of mail from the ground.¹ She did not stop work but began modified duty on October 6, 2005. Appellant received medications and physical therapy. A November 3, 2005 magnetic resonance imaging scan showed mild degeneration of each

¹ The doctor's first report of injury noted: "Has history of low back injury in 2003."

lumbar disc, disc bulges from L3-S1 but no identifiable nerve root impingement. The Office accepted appellant's claim for sprain and strain of the lumbar region.

On May 12, 2006 appellant was discharged from care with a diagnosis of lumbar strain and degenerative disc disease. She was released to return to her regular route with a restriction of no lifting more than 15 pounds on a repetitive basis.

Appellant filed a claim for a low back injury occurring on July 28, 2006.² She reported that she "put my market ads bag on my shoulder, and felt lower back pain after a while, started hurting." On September 7, 2006 Dr. Lauri B. Hemsley, a specialist in occupational medicine, diagnosed chronic back pain with left sacroiliac inflammation and recent aggravation. Reviewing appellant's medical records, she noted that appellant was permanent and stationary as of May 12, 2006, that a magnetic resonance imaging scan suggested degenerative disc disease, and that 20 percent of appellant's condition was apportioned to her October 4, 2005 work activity, which had aggravated her underlying degenerative disc disease. Dr. Hemsley offered the following opinion:

"When the patient came to me initially for consultation [her previous medical records] were not provided. What the patient stated was that she had reinjured herself by walking on uneven ground, lifting a printer and carrying it into a college building with a sudden increase in pain. The, however, [sic] today she states it has always been in the same location as it was last year. Therefore, there was only approximately six weeks' time between the time of her release with permanent work restrictions and the time of her gradual increase in pain after she performed some lifting and walking on uneven ground at work. Also at that time she was working overtime. Therefore, it is my opinion now that causation really should reflect the fact that the patient had chronic back pain already and just had an occupational aggravation of it as of July 28, 2006."

On July 28, 2006 the Office denied appellant's claim that she sustained an injury. Appellant thereafter filed a claim alleging that she sustained a recurrence of her October 4, 2005 employment injury. She described how the recurrence happened and why she believed her condition was related to the October 4, 2005 injury: "While carrying mail on 7/28/06. In my doctor's notes she states this injury on 7/28/06 is related to old injury of 10-4-05." Appellant explained that she did not stop work after her October 4, 2005 injury or when she reinjured her back on July 28, 2006. To support her claim, appellant resubmitted the November 3, 2005 magnetic resonance imaging report showing degenerative changes in her lumbar spine. She also submitted a December 13, 2006 treatment note from Dr. Hemsley.

In a decision dated January 5, 2007, the Office denied appellant's recurrence claim. The Office found that the factual and medical evidence did not establish the claimed recurrence from the October 4, 2005 employment injury. The Office noted that Dr. Hemsley did not provide an opinion that the October 4, 2005 employment injury worsened without intervening cause.

² OWCP File No. 132156368.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.⁴

A "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.⁵ A recurrence should be reported on Form CA-2a if it causes the employee to lose time from work and incur a wage loss, or if the employee experiences a renewed need for treatment after previously being released from care. However, a notice of recurrence should not be filed when a new injury, new occupational disease, or new event contributing to an already-existing occupational disease has occurred. In these instances, the employee should file Form CA-1 or CA-2.⁶

ANALYSIS

The Board finds that appellant did not sustain a recurrence of her October 4, 2005 employment injury. She wrote on her claim form that the recurrence happened "while carrying mail on 7/28/06." Appellant reported that she put her market ads bag on her shoulder and experienced lower back pain. She told Dr. Hemsley, the specialist in occupational medicine, that she had reinjured herself by walking on uneven ground, lifting a printer and carrying it into a college building with a sudden increase in pain. By attributing her low back pain to these specific events occurring on or about July 28, 2006, appellant has in fact alleged a new injury not a spontaneous change in her medical condition.⁷ She alleged that her renewed need for medical attention is the result of the activities she engaged in following her release from medical care on May 12, 2005. Office regulations make clear that, when a new injury, new occupational disease or new event contributing to an already-existing occupational disease has occurred, a claimant should file a claim for a new injury, not a notice of recurrence. The record indicates that appellant has filed a claim for a new injury under another claim number. That matter is not before the Board on the present appeal. The factual evidence of record does not support appellant's claim for a recurrence of disability due to her accepted lumbar strain of October 4, 2005. The Board will affirm the Office's January 5, 2007 decision denying appellant's claim of recurrence.

³ 5 U.S.C. §§ 8101-8193.

⁴ See generally *John J. Carlone*, 41 ECAB 354 (1989).

⁵ 20 C.F.R. § 10.5(y) (1999).

⁶ *Id.* at § 10.104(a).

⁷ *Id.*; cf. *id.* at § 10.5(x) ("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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness).

CONCLUSION

The Board finds that appellant did not sustain a recurrence of her October 4, 2005 lumbar sprain/strain on or about July 28, 2006.

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 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