

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

L.P., Appellant

and

**UNITED STATES POSTAL SERVICE,
Pittsburgh, PA, Employer**

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**Docket No. 07-1914
Issued: January 10, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 11, 2007 appellant timely filed an appeal from the Office of Workers' Compensation Programs' June 1, 2007 merit decision 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 claim.

ISSUE

The issue is whether appellant established that she sustained a recurrence of disability on April 8, 2004 causally related to her accepted employment injury.

FACTUAL HISTORY

On April 20, 2004 appellant, then a 44-year-old clerk, filed an occupational disease claim alleging that she sustained back pain in the performance of duty in February 2003. On February 22, 2006 the Office accepted her February 1, 2003 claim for sprain/strain of the lumbar region.

On April 20, 2004 appellant also filed a recurrence of disability claim alleging that she had been experiencing constant back pain since April 8, 2004 related to her February 2003 injury.

On June 4, 2004 the Office requested additional information from appellant. Appellant responded in a June 14, 2004 letter stating that she never recovered from a work-related incident on February 10, 2003.

On June 20, 2004 the Office denied appellant's occupational disease and recurrence claims on the grounds that there was no medical evidence to demonstrate that the claimed medical condition is related to the established work-related event. Appellant requested a hearing on September 15, 2004 which was held on July 14, 2005.

On October 20, 2005 the Office vacated the prior decision and remanded the case in order for the case to be combined with file number 03-2014653, appellant's February 10, 2003 traumatic injury claim and for her recurrence of disability claim to be reviewed in connection with it.

After the Office accepted appellant's February 2003 injury claim, on February 22, 2006 it denied her claim for recurrence of disability on the basis that the evidence did not establish that her back condition on April 8, 2004 was related to the original February 1, 2003 lumbar sprain injury. On March 6, 2006 appellant requested an oral hearing. The hearing was held on February 22, 2007.

Appellant submitted additional medical documentation subsequent to the hearing. In a March 10, 2004 examination Dr. Robert Sciulli, an orthopedic surgeon, diagnosed mild lumbar degenerative change. In an April 8, 2004 progress note, Dr. Steve Williams reported that appellant developed burning pain in the left lumbar region on March 8, 2004. Dr. Williams also stated that appellant had evidence of a herniated lumbar disc at L5-S1 and that "this may be an aggravation of a preexisting injury which was work related." In a March 10, 2004 note, Dr. Dale Block, Board-certified in family practice, stated that appellant suffered exacerbation of lower back pain on March 8, 2004 while sitting in a car. In a July 7, 2004 note, Dr. Victoria Matasy, Board-certified in internal medicine, restricted appellant from lifting anything heavier than five pounds. In a separate July 7, 2004 note, she stated that appellant had a right back spasm which was likely back strain. In a June 28, 2005 letter, Dr. Mark Butler, a chiropractor, stated that appellant reported lower back problems beginning after an on the job lifting injury two years prior when she was bent over lifting mail. Dr. Butler concluded that there was significant preexisting degeneration in the lumbar spine at the time of appellant's work injury and that the bending, lifting and twisting was likely to have produced an injury superimposed upon tissues already weakened by degeneration. A July 12, 2005 magnetic resonance imaging(MRI) scan revealed desiccation of discs at L4-5, L5-S1 levels associated with mild posterior bulging, mild spinal stenosis at L4-5 and Grade 1 degenerative disc disease at L5-S1.

In a June 1, 2007 decision, the Office denied modification of the prior decision on the grounds that medical evidence was insufficient to establish that appellant sustained a recurrence of disability.

LEGAL PRECEDENT

A claimant seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.² In this case, appellant has the burden of establishing that she sustained a recurrence of a medical condition on April 8, 2004 causally related to her February 1, 2003 employment injury. 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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. Appellant's 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.³ Where no such rationale is present, the medical evidence is of diminished probative value.⁴

ANALYSIS

The Office accepted appellant for a sprain/strain of the lumbar region related to her February 1, 2003 employment-related incident. Appellant alleges that on April 8, 2004 she sustained a recurrence of her accepted condition. The burden is on her to prove through medical evidence that her condition on April 8, 2004 is causally related to her accepted condition of sprain/strain of the lumbar region.

The medical evidence submitted in support of appellant's April 8, 2004 recurrence claim consists of reports from Dr. Sciulli, Dr. Williams, Dr. Block, Dr. Matasy and Dr. Butler. Dr. Sciulli diagnosed lumbar degenerative change but did not opine as to the cause of the diagnosis. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁵ Dr. Williams noted evidence of a herniated lumbar disc and opined that it "may be an aggravation of a prior existing injury which was work related." However, it is not enough to opine that a condition "may be" related to a prior injury as it may also be due to a different cause. Medical opinions that are speculative or equivocal in character are of diminished probative value.⁶ Dr. Block's report stated that appellant had exacerbated lower back pain, but pain is not a diagnosis therefore his report has little probative value.⁷ Dr. Matasy merely stated

¹ 5 U.S.C. §§ 8101-8193

² *Mary Ceglia*, 55 ECAB 626 (2004).

³ *Id.*

⁴ *Mary Ceglia*, *supra* note 3, *Albert C. Brown*, 52 ECAB 152 (2000).

⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *D.D.*, 57 ECAB ____ (Docket No. 06-1315, issued September 14, 2006), *Kathy A. Kelley*, 55 ECAB 206 (2004).

⁷ A physician's mere diagnosis of pain does not constitute a basis for payment of compensation. *Robert Broome*, 55 ECAB 493 (2004), *John L. Clark*, 32 ECAB 1618 (1981).

that appellant had a back spasm. She did not opine as to the cause of appellant's back spasm, nor did she relate it at all to her prior condition. Medical evidence has limited probative value when it does not offer any opinion regarding the cause of appellant's condition.⁸ Dr. Butler noted that appellant had a previous work-related back injury and concluded that her bending and twisting was likely to have aggravated the degeneration in the lumbar spine. Dr. Butler's opinion provides some rationale that appellant's bending and twisting aggravated her preexisting degeneration in the lumbar spine; however, Dr. Butler is a chiropractor. A chiropractor is considered a "physician" under the Act only when diagnosing and treating a subluxation of the spine.⁹ Therefore, Dr. Butler's opinion has no probative value regarding causal relationship as he is not considered to be a physician under the Act. The medical evidence is insufficient to establish that on April 8, 2004 appellant sustained a condition causally related to her accepted sprain/strain of the lumbar region. The Board finds that appellant has not met her burden to establish that she sustained a recurrence of disability.

CONCLUSION

Appellant failed to established that she sustained a recurrence of disability on April 8, 2004.

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ Under 5 U.S.C. § 8101(2), "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist, and subject to regulation by the Secretary.

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 10, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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