

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

R.W., Appellant

and

**GOVERNMENT PRINTING OFFICE,
Washington, DC, Employer**

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**Docket No. 07-1954
Issued: January 23, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 13, 2007 appellant filed a timely appeal from the merit decisions of the Office of Workers' Compensation Programs dated August 30, 2006 and July 6, 2007 denying his claim for recurrence of a medical condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether the Office properly denied appellant's claim for a recurrence of a medical condition.

FACTUAL HISTORY

On September 2, 1997 appellant, then a 49-year-old chief supervisor, sustained injury when a clock on the wall fell, striking the right side of his head and right elbow. On November 5, 1997 the Office accepted his claim for post-traumatic headache and a neck sprain.

On February 12, 2001 appellant filed a claim alleging a recurrence of disability on December 1, 2000. By decision dated April 19, 2001, the Office accepted his claim.

Appellant began treatment with Dr. Michael E. Batipps, a Board-certified neurologist. In a May 20, 2004 report, Dr. Batipps noted an increase in appellant's symptoms. On September 8, 2004 he noted cervical strain and radicular pain down the right upper extremity in fair control but chronic, with headaches. On February 2, 2005 Dr. Batipps indicated that appellant had chronic cervical radicular pain and chronic occipital post-traumatic headache due to the September 2, 1997 work injury, with a recent spontaneous worsening of symptoms. He noted that appellant needed physical therapy.

On July 10, 2006 appellant filed a claim, noting a recurrence of his need for medical treatment due to the September 2, 1997 injury. He listed his dates of medical treatment following the recurrence as January 6 and June 7, 2006. Appellant stated that the pain in his neck was stronger and that he experienced painful headaches. He noted that he used medication but had received medical treatment.

In a January 6, 2006 medical report, Dr. Batipps addressed appellant's post-December 1, 2005 medical treatment. He reviewed the history of injury, noting that there had been no recent laboratory tests. Dr. Batipps listed his impressions as chronic cervical strain with cervical radiculopathy, due to the September 2, 1997 injury, with chronic occipitocervical pain and posterior headaches. He noted long-term chronic pain and disability. Dr. Batipps suggested analgesics for pain and noted that appellant was totally disabled due to the September 2, 1997 injury. A June 7, 2006 report from him reiterated the January 6, 2006 report, noting that appellant had constant cervical and occipital pain due to the work injury of September 2, 1997. Recently, appellant's pain has not responded well to medication. Dr. Batipps recommended physical therapy. Appellant contended that he was totally disabled due to the injury.

By decision dated August 30, 2006, the Office denied appellant's claim for a recurrence of his medical condition.

On February 7, 2007 appellant requested reconsideration. In a February 7, 2007 report, Dr. Batipps listed his impressions as: (1) status post work-related injury on September 2, 1997; (2) chronic cervical strain with evidence of cervical disc herniation and nerve root impingement resulting in bilateral chronic cervical radiculopathy due to work injury; and (3) chronic occipitocervical pain and daily posterior and generalized headaches due to the listed conditions. Dr. Batipps noted:

“[Appellant] was injured at work on [September 2, 1997] when a large heavy clock mounted to a wall fell and suddenly struck him on the head. Fortunately, the head injury itself proved to be minor and the post concussion syndrome resulting from the head injury gradually resolved. Unfortunately, [appellant] had a serious cervical injury, particularly at C6-7. Most likely within a reasonable degree of probability, there was a disc herniation at C6-7 causing the nerve root impingement documented by [magnetic resonance imaging] scan performed on February 19, 1998. [Appellant] does have some degenerative changes present seen on the scan. Obviously, those are chronic changes unrelated to the injury. [Appellant] was asymptomatic without neck pain prior to the injury. Most likely there is some degree of disc herniation causing acute impingement of cervical nerve roots at the time of the injury. I feel that within a reasonable degree of

medical probability that [appellant's] chronic bilateral cervical radiculopathy, which clearly began coincident with the injury on [September 2, 1997] is directly related to that injury.

“[Appellant] has reached maximum medical improvement. We do not anticipate any further improvement of [appellant's] condition in the future I do not feel that [appellant] is a good candidate for surgical decompression. I am not recommending any type of invasive procedure such as cervical spinal epidural injections. [Appellant] will certainly need to take analgesics as need for pain. At times when there are flare-ups of pain and the pain is more severe, he might benefit from such physical therapy treatments. At the present time, we have no plans to order any physical therapy as [appellant] has reached maximum medical improvement at this point.

“[Appellant] has been unable to return to any meaningful work activity since the injury [and] I do not think that [he] can return to any form of work. He has limited use of the upper extremities because of the chronic pain and well-documented sensory loss involving the hands. Prolonged sitting prevents him from doing any meaningful type of administrative work. Sensory loss in the hands would make it difficult for him to concentrate and to function intellectually. I would, therefore, submit that [appellant] remain on total disability due to injuries that occurred at work on [September 2, 1997]. This total disability, in my opinion, is permanent and is unlikely to improve in the future.”

By decision dated July 6, 2007, the Office denied modification of the August 30, 2006 decision.

LEGAL PRECEDENT

A recurrence of a medical condition is defined as a documented need for further medical treatment after release from treatment for the accepted condition or injury.¹ Continuous treatment for the original condition or injury is not considered a recurrence of a medical treatment nor is an examination without treatment.² As distinguished from a recurrence of disability, a recurrence of a medical condition does not involve an accompanying work stoppage.³ It is the employee's burden to establish that the claimed recurrence is causally related to the original injury.⁴

The Office's procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return PRN (as needed) or computed by the claims examiner from the date of the least examination), a claimant is responsible for submitting

¹ 20 C.F.R. § 10.5(y).

² *Id.*

³ *Id.*; 20 C.F.R. § 10.5(x).

⁴ See 20 C.F.R. § 10.104; *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury.⁵

ANALYSIS

The Office accepted appellant's claim for headache and neck sprain. Appellant filed a claim for medical condition on July 25, 2006, alleging a recurrence of his September 2, 1997 injury on December 1, 2005 and the need for additional treatment.

The record reflects that appellant was treated by Dr. Batipps on May 20 and September 8, 2004, February 2, 2005 and January 6 and June 7, 2006. As computed from the date of Dr. Batipps last examination before appellant's alleged recurrence, February 2, 2005, his visit to Dr. Batipps on January 6, 2006 was over 90 days later. Therefore, appellant was responsible for submitting an attending physician's report which contained a description of the objective findings and supported causal relation between his current condition and the previously accepted work injury.⁶

Appellant submitted medical reports by Dr. Batipps dated after the date of the alleged recurrence. In reports dated January 6 and June 7, 2006, Dr. Batipps reiterated his history of the injury as he had on numerous prior reports. He noted that there had been no recent laboratory tests. Dr. Batipps continued to indicate that appellant had chronic cervical strain with cervical radiculopathy due the September 2, 1997 injury and chronic occipitocervical pain and posterior headaches due to his condition. In his February 7, 2007 report, Dr. Batipps again noted that appellant was status post work-related injury and had chronic cervical strain with evidence of cervical disc herniation and nerve root impingement and chronic occipitocervical pain and daily posterior and generalized headaches. However, Dr. Batipps' report did not contain a description of the objective findings and a reasoned opinion supporting a causal relationship between appellant's current condition and the previously accepted work injury, as required by Office procedures.⁷ Therefore, it is of diminished probative value. Dr. Batipps' report merely reflected that he examined appellant. Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment.⁸ Accordingly, appellant did not provide evidence sufficient to establish a recurrence of his medical condition.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003). The procedure manual provides, with certain exceptions, that within 90 days of release from medical care (as stated by the physician or computed from the date of last examination or the physician's instruction to return PRN, a claims examiner may accept the attending physician's statement supporting causal relationship between appellant's current condition and the accepted condition, even if the statement contains no rationale. *See id.*, Chapter 2.1500.5(a).

⁶ *See J.F.*, 58 ECAB ____ (Docket No. 06-186, issued October 17, 2006).

⁷ *Id.*

⁸ 20 C.F.R. § 10.5(y).

CONCLUSION

The Board finds that the Office properly denied appellant's claim for a recurrence of medical benefits.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 6, 2007 and August 30, 2006 are affirmed.

Issued: January 23, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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