

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

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G.T., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
New Orleans, LA, Employer )

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**Docket No. 08-600  
Issued: July 22, 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  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On December 18, 2007 appellant filed a timely appeal of an October 30, 2007 merit decision of the Office of Workers' Compensation Programs, denying his claim for a recurrence of total disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

**ISSUE**

The issue is whether appellant has established that he sustained a recurrence of total disability commencing on April 19, 2005 causally related to his accepted employment-related injuries.

**FACTUAL HISTORY**

This case has been before the Board. In a November 13, 2003 decision, the Board set aside the Office's June 10, 2003 decision, which granted appellant a schedule award for a three percent impairment of his left lower extremity.<sup>1</sup> The Board found a conflict in the medical

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<sup>1</sup> Docket No. 03-1699 (issued November 13, 2003).

opinion evidence between Dr. Sofjan Lamid, an attending Board-certified physiatrist, and Dr. Stephen Kishner, an Office referral physician, as to the degree of permanent impairment to appellant's left lower extremity. The Board remanded the case for referral of appellant to an impartial medical specialist to resolve the conflict.<sup>2</sup> In a September 21, 2007 order, the Board directed the Office to adequately explain its October 31, 2006 decision, denying appellant's claims for a recurrence of total disability beginning on April 19, 2005 due to his accepted employment-related injuries.<sup>3</sup> The facts and the circumstances of the case as set forth in the Board's prior decision and order are incorporated herein by reference.<sup>4</sup> The facts relevant to the present appeal are set forth.

In support of his recurrence of total disability claims, appellant submitted Dr. Lamid's April 25, 2005 disability certificate. Dr. Lamid stated that appellant was unable to work on several dates during the period April 17 through 25, 2005 due to his left sciatica and sprain. In a May 30, 2005 form report, he reiterated his prior diagnosis of left sciatica. Dr. Lamid released appellant to return to work on that date with restrictions. A May 4, 2005 disability note of Dr. Bruce G. Combs, a Board-certified internist, excused appellant from work during the period April 27 through May 8, 2005 due to low back pain. Dr. Combs stated that he could return to work on May 9, 2005.

By decision dated October 30, 2007, the Office denied appellant's recurrence of total disability claim. It found that the medical evidence of record failed to establish that he sustained a recurrence of total disability commencing on April 19, 2005 causally related to his accepted employment-related injuries.

### **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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>5</sup> This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the

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<sup>2</sup> By decision dated April 29, 2005, the Office granted appellant a schedule award for a 14 percent impairment of his left lower extremity.

<sup>3</sup> Docket No. 07-1168 (issued September 21, 2007).

<sup>4</sup> On February 3, 1999 appellant, then a 43-year-old letter carrier, filed an occupational disease claim for his left sciatica. By letter dated April 7, 1999, the Office accepted the claim for sciatica and lumbar sprain with radiculopathy. Appellant lost time from work intermittently from April 21 through May 6, 1999. He returned to limited-duty work as a modified carrier on May 7, 1999. By decision dated March 17, 2000, the Office found that appellant's modified carrier position fairly and reasonably represented his wage-earning capacity. On May 30, 2005 appellant filed claims for compensation for the period April 19 through May 28, 2005.

<sup>5</sup> 20 C.F.R. § 10.5(x).

physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>6</sup>

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.<sup>7</sup>

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.<sup>8</sup>

### ANALYSIS

The Office accepted that appellant sustained left sciatica and lumbar sprain with radiculopathy causally related to factors of his federal employment. Appellant returned to work in a modified position on May 7, 1999. He claimed a recurrence of total disability commencing on April 19, 2005 causally related to his accepted employment injuries. Appellant must demonstrate either that his conditions have changed such that he could not perform the activities required by his modified job or that the requirements of the limited-duty job changed or were withdrawn. The Board finds that the record contains no evidence that the limited-duty job requirements were changed or withdrawn or that appellant's employment-related conditions have changed such that he was precluded from engaging in light-duty work.

Dr. Lamid's April 25, 2005 disability certificate noted that appellant was unable to work on several dates during the period April 17 through 25, 2005 due to his left sciatica and sprain. However, he did not explain how appellant's disability for work was causally related to his accepted employment injuries. The Board has held that medical reports not supported by medical rationale are of limited probative value.<sup>9</sup> The Board finds that Dr. Lamid's disability certificate is of diminished probative value as he did not adequately address the issues of causal relation or disability for work.

On May 30, 2005 Dr. Lamid stated that appellant had left sciatica. He released him to return to work on that date with restrictions. Dr. Lamid did not provide any opinion addressing the causal relationship between appellant's accepted employment injury and his total disability

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<sup>6</sup> *Id.*

<sup>7</sup> *Barry C. Peterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>8</sup> *James H. Botts*, 50 ECAB 265 (1999).

<sup>9</sup> *Lucrecia M. Nielson*, 42 ECAB 583 (1991).

prior to May 30, 2005.<sup>10</sup> The Board finds that his report is insufficient to establish appellant's claim.

Dr. Combs's May 4, 2005 disability note excused appellant from work during the period April 27 through May 8, 2005 due to his low back pain. He stated that appellant could return to work on May 9, 2005. A physician's mere diagnosis of pain, without more by way of an explanation, does not constitute a basis for payment of compensation.<sup>11</sup> Dr. Combs did not provide any medical rationale addressing how or why appellant's total disability was caused by the accepted employment injuries.<sup>12</sup> The Board finds that his note is insufficient to establish appellant's claim.

The Board finds that appellant has not submitted sufficiently rationalized medical evidence establishing that he was totally disabled beginning on April 19, 2005 due to his employment-related left sciatic and lumbar sprain with radiculopathy. There is no evidence showing that appellant experienced a change in the nature and extent of the limited-duty requirements or was required to perform duties which exceeded his medical restrictions.

Appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit him from performing the limited-duty position he assumed after he returned to work.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a recurrence of total disability beginning on April 19, 2005 causally related to his accepted employment-related injuries.

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<sup>10</sup> See *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

<sup>11</sup> *Robert Broome*, 55 ECAB 0493 (2004).

<sup>12</sup> *Lucrecia M. Nielson*, *supra* note 9.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 30, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2008  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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