

Between August 1997 and June 2002, appellant filed at least nine original injury claims and numerous other claims for recurrence of disability.¹ In addition to the August 22, 1997 injuries, the Office accepted a March 16, 1999 low back sprain (02-0755543), a May 21, 1999 lumbosacral strain and left knee contusion (02-0758061) and a June 26, 2000 neck sprain (02-0774478).²

On October 19, 2004 appellant filed a claim for recurrence of disability beginning October 7, 2004, which she alleged was causally related to her August 22, 1997 employment injury. At the time of the alleged October 7, 2004 recurrence, she had been off work since June 24, 2004 because of a recurrence of disability associated with her March 16, 1999 low back injury. In fact, appellant was already receiving wage-loss compensation for total disability due to her June 24, 2004.³

Appellant was being treated by Dr. Anthony J. Spataro, a Board-certified orthopedic surgeon. In a September 20, 2004 attending physician's report (Form CA-20), Dr. Spataro diagnosed herniated disc lumbar/cervical spine, which he attributed to appellant's March 16, 1999 employment injury. He noted that appellant could not return to work. Dr. Spataro also commented that "[appellant] had [a] recurrence of back pain same condition." When he next saw appellant on October 18, 2004, he provided a similar diagnosis, but this time he attributed her condition to her August 22, 1997 employment injury. Dr. Spataro also noted that appellant was able to perform light-duty work, with a limitation of no lifting more than five pounds repetitively. He also noted that appellant could not bend repeatedly and could not stand more than 30 minutes intermittently.

Dr. Ernesto S. Capulong, a Board-certified physiatrist, examined appellant on October 19, 2004. At the time, appellant complained of radicular pain in the upper extremities. While she was having neurological symptoms, Dr. Capulong noted that there were no objective signs of weakness. He recommended that appellant continue with physical therapy. Dr. Capulong reported a March 16, 1999 date of injury, but he did not otherwise address causal relationship. He also did not mention appellant's August 22, 1997 injury or address whether she was disabled from performing any particular type of work.

Dr. Spataro saw appellant again on December 13, 2004 and diagnosed chronic cervical and lumbar sprain and pain syndrome. He also noted that appellant had not been working. Dr. Spataro stated that appellant still had a partial disability. He recommended continuing with

¹ A claim that was originally filed as a recurrence of the August 22, 1997 injury was adjudicated as a separate occupational injury arising on or about October 2, 1998 (02-2508616). This claim was ultimately denied by the Office.

² The March 16, 1999 low back injury occurred when appellant slipped and fell on an ice-covered parking lot. She fell again on May 21, 1999, but this time it was on a wet cafeteria floor.

³ On August 16, 2004 the Office advised appellant that her claim for recurrence of disability beginning June 24, 2004 had been accepted under claim number 02-0755543. The Office paid appellant wage-loss compensation for total disability from June 23 to August 7, 2004 and placed her on the periodic compensation roll effective August 8, 2004. Appellant continued to receive wage-loss compensation for temporary total disability through September 3, 2005.

conservative measures and restricted activities. However, Dr. Spataro did not identify any specific restrictions nor did he address causal relationship.

On March 17, 2005 Dr. Spataro diagnosed chronic cervical and lumbar disc syndrome. He again noted that appellant had a partial disability, but this time he indicated that the disability was permanent in nature. Dr. Spataro's March 17, 2005 treatment notes did not identify a specific date of injury.

Appellant retired from the employing establishment effective June 16, 2005. She had been receiving wage-loss compensation under claim number 02-0755543, but elected to receive disability retirement benefits from the Office of Personnel Management (OPM) effective August 1, 2005.

Dr. Norman M. Heyman, a Board-certified orthopedic surgeon and Office referral physician, examined appellant on September 26, 2005. This examination was undertaken in conjunction with appellant's March 16, 1999 low back injury under claim number 02-0755543. Dr. Heyman indicated that appellant's cervical and lumbosacral sprain and strain had resolved. He also noted that her complaint of neck pain was only subjective in nature. The only active diagnosis was lumbar syndrome, which Dr. Heyman attributed to appellant's March 16, 1999 injury.⁴ He stated that she was unable to return to her former duties, but she was able to work in a sedentary position. According to Dr. Heyman, appellant could reach and work at shoulder level and above shoulder level while seated. He also stated that she could not stand or walk for long periods of time. Dr. Heyman further noted that appellant could not do any lifting, bending, climbing and crawling. He indicated that her work restrictions were permanent. At the time of the examination, appellant was working full time as an associate manager with a human resources firm. Her position reportedly involved "desk work" with limited standing and walking.

Dr. Spataro's December 19, 2005 treatment notes included a diagnosis of chronic low back pain. He reported that appellant was already doing a light-duty type of job with no lifting and bending. Dr. Spataro advised that appellant could continue performing her light-duty job. He recommended that she continue with her exercises and return for a follow-up examination in six months.

Dr. Capulong examined appellant again on October 12, 2006 and diagnosed chronic neck and back pain secondary to herniated disc. He reported evidence of herniated discs at C4-5, C5-6 and C6-7. Dr. Capulong also stated that appellant had lumbosacral radiculopathy with pain radiating to the lower extremity along the L5-S1 nerve root distribution. He also noted that he had been seeing appellant in relation to a March 16, 1999 injury and that "she had another recurrence of the injury in 2004." Appellant reported that she was currently on full-time disability and Dr. Capulong advised that she was "permanently and fully disabled" to perform any type of employment without exacerbating her neck and lower back pain.

⁴ Dr. Heyman explained that the causal relationship was not direct, but consequential due to appellant's not having received appropriate medical treatment.

The Office denied appellant's alleged October 7, 2004 recurrence of disability in a decision dated October 17, 2005. She then filed an untimely request for review of the written record, which the Branch of Hearings and Review denied on May 2, 2006. Appellant subsequently requested reconsideration on two occasions and in both instances the Office denied modification. The latest merit decision denying modification was issued June 7, 2007. In that decision, the Office found that appellant had not demonstrated a causal relationship between the August 22, 1997 employment injury and her claimed disability beginning October 7, 2004. The Office also noted that, at the time of her alleged recurrence in October 2004, appellant was already receiving wage-loss compensation for her low back condition under claim number 02-0755543. The Office explained that because appellant already received wage-loss compensation she would not be entitled to additional wage-loss compensation for the same period even if the medical evidence demonstrated that her disability was causally related to the August 22, 1997 employment injury.

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 new exposure to the work environment that caused the illness.⁵ This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to 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 physical requirements of such an assignment are altered so that they exceed her established physical limitations.⁶ Moreover, when the claimed recurrence of disability follows a return to light-duty work, the employee may satisfy her burden of proof by showing a change in the nature and extent of the injury-related condition such that she was no longer able to perform the light-duty assignment.⁷

Where an employee claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing that the recurrence of disability is causally related to the original injury.⁸ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.⁹ The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.¹⁰

⁵ 20 C.F.R. § 10.5(x) (2007).

⁶ *Id.*

⁷ *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

⁸ 20 C.F.R. § 10.104(b); *Carmen Gould*, 50 ECAB 504 (1999); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁹ See *Helen K. Holt*, *supra* note 8.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

ANALYSIS

Because appellant has already been compensated for temporary total disability from June 24, 2004 through September 3, 2005 under claim number 02-0755543, she would not be entitled to additional wage-loss compensation for any overlapping periods of disability under the current claim number (02-0732578).¹¹ The Federal Employees' Compensation Act does not allow for appellant to be compensated more than once for the same period of lost wages.¹²

The Board finds that appellant has not established that she had a recurrence of disability on October 7, 2004, causally related to her August 22, 1997 employment injury. The question is not whether appellant was disabled for work on or about October 7, 2004, but whether her disability was causally related to the accepted injury of August 22, 1997. Dr. Spataro's October 18, 2004 report is the only contemporaneous medical evidence that attributed appellant's diagnosed cervical and lumbar conditions to her August 22, 1997 injury. But just one month earlier, he attributed these same conditions to appellant's March 16, 1999 employment injury. In his October 18, 2004 report, Dr. Spataro offered no explanation for his differing opinions. His subsequent treatment notes through December 2005 did not address causal relationship.

Whereas Dr. Spataro vacillated between the 1997 and 1999 injuries as the cause of appellant's current condition, Dr. Heyman attributed her condition to her March 16, 1999 injury. Dr. Capulong similarly referenced appellant's March 16, 1999 injury. But neither Dr. Heyman nor Dr. Capulong even acknowledged appellant's prior low back injury of August 22, 1997. Their reliance on an apparent incomplete history would diminish the probative value of their respective opinions. Nonetheless, the opinions of Dr. Heyman and Dr. Capulong do not support appellant's claim of an October 7, 2004 recurrence of disability causally related to her August 22, 1997 injury.

Given the paucity of medical evidence linking appellant's disabling low back condition to the August 22, 1997 employment injury, one can assign little, if any, probative value to Dr. Spataro's October 18, 2004 opinion on causal relationship. He merely checked a box on a CA-20 form report without providing any explanation for his opinion that appellant's condition was related to the August 22, 1997 employment injury.¹³ This does not represent a rationalized

¹¹ In a decision dated January 30, 2007, the Office terminated wage-loss compensation under claim number 02-0755543. The termination was effective September 5, 2005 and was the result of appellant's refusal to accept an offer of suitable work. This decision, however, was reversed by the Branch of Hearings and Review on August 24, 2007. Appellant's entitlement to wage-loss compensation was reinstated retroactive to September 5, 2005, with the caveat that any OPM disability retirement benefits or other wages appellant received after September 5, 2005 would be properly offset by the Office.

¹² See 5 U.S.C. § 8116(b) (2000).

¹³ Medical conclusions unsupported by rationale are of diminished probative value and thus, insufficient to establish a causal relationship. *Albert C. Brown*, 52 ECAB 152, 155 (2000).

medical opinion on causal relationship.¹⁴ Accordingly, the Office properly denied appellant's claim for recurrence of disability beginning October 7, 2004.

CONCLUSION

Appellant has not established that she sustained a recurrence of disability on October 7, 2004, causally related to her August 22, 1997 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

¹⁴ A physician's opinion on causal relationship must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).