

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

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**S.S., Appellant** )

**and** )

**DEPARTMENT OF HOMELAND SECURITY,** )  
**TRANSPORTATION SECURITY** )  
**ADMINISTRATION, Jamaica, NY, Employer** )

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**Docket No. 08-703**  
**Issued: June 24, 2008**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On December 31, 2007 appellant filed a timely appeal from a December 14, 2007 decision of the Office of Workers' Compensation Programs 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 the appeal.<sup>1</sup>

**ISSUE**

The issue is whether appellant sustained a recurrence of disability commencing September 25, 2007 causally related to her May 15, 2006 employment injury.

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<sup>1</sup> The record contains a July 10, 2007 decision of the Office which denied her claim for a recurrence of disability on April 6 and 9, 2007. In her application to the Board, appellant did not seek review of this decision and it is not an issue in the present appeal.

## **FACTUAL HISTORY**

On May 15, 2006 appellant, then a 59-year-old transportation security screener, sustained an injury when she slipped and fell while in the performance of duty. Her claim was accepted by the Office for a lumbosacral strain and contusion.<sup>2</sup> Appellant received continuation of pay from May 15 to June 18, 2006. She was continued on light duty subject to specified physical restrictions performing sedentary work and received intermittent medical treatment at the John F. Kennedy Airport medical offices and her private physicians.

Appellant stopped work, claiming a recurrence of disability as of October 25, 2006. Her claim was accepted by the Office and she received compensation for total disability.<sup>3</sup> She came under the treatment of Dr. Robert Lanter, a Board-certified osteopath, who noted an impression of low back pain with lumbosacral radiculopathy, local reactive myofascial pain and paravertebral tenderness with spasm. Dr. Lanter advised that appellant's complaints were causally related to a May 14, 2005 injury at work while lifting heavy bags onto a table. On April 11, 2007 he again noted a history of the 2005 injury while lifting bags and opined that she remained disabled.<sup>4</sup> Dr. Lanter provided physical therapy, trigger point injections and noted that appellant would be referred for a surgical evaluation.

An MRI scan was obtained on May 9, 2007 which revealed multilevel degenerative disc disease of the lumbar spine with convexity of the lower thoracic and upper lumbar spine and asymmetric disc bulging at L3-4 and L4-5, with neural foraminal narrowing most severe at L4-5.

Appellant was referred by the Office for examination by Dr. Frank M. Hudak, an orthopedic surgeon. In a May 15, 2007 report, Dr. Hudak reviewed a history of appellant's May 2005 lifting injury and the May 2006 slip and fall injury and subsequent medical treatment. Appellant described symptoms of constant low back pain, worse on bending, with numbness radiating down both lower extremities. Examination of the low back revealed tenderness in the midline of the lumbosacral spine, extending into the L3 to S1 region. Dr. Hudak noted her range of back motion, indicating that no spasm was palpated in either the right or left paraspinal muscle groups. A positive left straight leg raising test was obtained in the upright position. Dr. Hudak diagnosed a sprain of the lumbosacral spine causally related to the May 15, 2006 injury, superimposed on a previous sprain and left lumbosacral radiculopathy that was a result of the 2005 work accident. He advised that she had objective findings upon examination and that she was disabled from her work as a baggage screener. Dr. Hudak advised, however, that appellant could return to light-duty work with no repetitive bending at the waist and no lifting in excess of 10 pounds. He recommended that she be referred for pain management or epidural

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<sup>2</sup> The medical record reveals that appellant had a preexisting herniated disc condition at L4-5 for which she had been treated since 1996. Appellant was performing light duty at the time of her injury.

<sup>3</sup> A November 8, 2006 magnetic resonance imaging (MRI) scan was obtained of appellant's lumbosacral spine. It revealed disc bulging at L3-4, L4-5 and L5-S1 with thecal sac effacement noted. The lumbar discs at L1-2 and L2-3 were described as normal in height without disc bulging or herniation noted. A prior MRI scan from June 18, 2005 had been reported as showing scoliosis with a herniated disc at L4-5.

<sup>4</sup> As noted, appellant returned to limited duty on April 4, 2007 and subsequently claimed recurrences of disability on April 6 and 9, 2007. See *supra* note 1.

steroid injections to treat her left radiculopathy. Dr. Hudak submitted work restrictions, releasing appellant to full-time work with limitations on sitting, lifting, twisting and bending.

On June 13, 2007 the employing establishment advised that it had limited duty available that complied with the restrictions set by Dr. Hudak. Appellant accepted the limited duty and returned to work on July 16, 2007 as an exit lane monitor and at the welcome tables.

On September 14, 2007 appellant was seen by Dr. Irfan A. Alladin, an attending general practitioner,<sup>5</sup> who noted her complaints of low back pain and listed findings on physical examination, including spasm of the lumbar paraspinal muscles bilaterally. Straight leg raising was described as positive on the left. Dr. Alladin diagnosed low back syndrome for which he recommended physical therapy, anti-inflammatory medication and a series of epidural injections.

The record reflects that appellant stopped work following her tour of duty on September 26, 2007. On October 12, 2007 she submitted a claim for a recurrence of disability commencing September 25, 2007, noting that she stopped work as of September 26, 2007. Appellant indicated that a chair was changed that did not provide adequate back support. The employing establishment noted that she had completed work on September 26, 2007 without any complaint of pain or notice of problems with her chair. In support of her claim, appellant submitted several prescription notes from Dr. Alladin with his recommendation that she undergo physical therapy and for medication.

On October 5, 2007 appellant was examined by Dr. Renato Battisti, a chiropractor, who found limitations of movement and diagnosed lumbar myofasciitis with lumbosacral strain, noting that appellant had begun chiropractic treatment.

On October 9, 2007 Dr. John Goutos, an internist, noted that appellant had been out of work for approximately a week due to an exacerbation of back pain. He advised that she had received seven epidurals and was scheduled for additional injections. Dr. Goutos listed findings on examination, noting tenderness on palpation and spasm at the L4 to S1 region and positive straight leg raising. He diagnosed a herniated lumbar disc and back pain and advised that she should be placed on light duty as of October 11, 2007.

In an October 12, 2007 report, Dr. Michael Shapiro, an orthopedic surgeon, treated appellant for back and left lower extremity pain. He noted tenderness to palpation and percussion about the lumbar spine with a reduction of straight leg raising, bilaterally. Dr. Shapiro advised that appellant would be continuing with conservative care, undergoing epidural injections and facet block treatments. He stated that she remained disabled for work.

By letter dated October 25, 2007, the Office advised appellant that it had received her recurrence of disability claim. It requested that she submit additional medical evidence establishing that she was unable to perform light-duty work. Appellant was directed to obtain a medical report from an attending physician who provided a history of injury, description of medical findings and an opinion on the period of disability.

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<sup>5</sup> The record contains numerous form reports of varied legibility from appellant's attending physicians.

On December 14, 2007 the Office denied appellant's claim. It found that she did not establish that her injury-related condition had changed or that her light-duty work assignment had changed. The medical evidence submitted in support of her claim was found deficient as her physicians did not explain how her condition had changed such that she was no longer able to perform her light-duty assignment as of September 25, 2007.

### LEGAL PRECEDENT

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence establishes that she can perform limited-duty work, the employee has the burden of proof to establish a recurrence of total disability. The employee must show a change in the nature of the injury-related condition or a change in the nature of the limited-duty job requirements.<sup>6</sup>

A recurrence of disability is defined as the 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>7</sup> The Board has held that whether a particular injury causes an employee to be disabled for work is a medical question that must be resolved by competent and probative medical evidence.<sup>8</sup> The weight of medical opinion is determined on the report of a physician, who provides a complete and accurate factual and medical history, explains how the claimed disability is related to the employee's work and supports that conclusion with sound medical reasoning.<sup>9</sup>

### ANALYSIS

The Office accepted that appellant sustained injury on May 15, 2006 when she slipped and fell at work. Her claim was accepted for a lumbosacral strain and contusion. The record reveals that, at the time of injury, appellant had a preexisting herniated disc at L4-5 for which she had received medical treatment.<sup>10</sup> She returned to light-duty work on several occasions with intermittent disability for which she received treatment. Appellant stopped work on September 26, 2007, alleging a recurrence of disability causally related to her May 15, 2006 injury. The Board finds that the medical evidence is not sufficient to establish her claim.

Appellant submitted several prescription notes and form reports from Dr. Alladin, an attending general practitioner. However, Dr. Alladin's sole narrative report is dated September 14, 2007, prior to her claimed recurrence of disability. He noted appellant's

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<sup>6</sup> See *Cecelia M. Corley*, 56 ECAB 662 (2005); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>7</sup> 20 C.F.R. § 10.5(x).

<sup>8</sup> See *Donald E. Ewals*, 51 ECAB 428 (2000).

<sup>9</sup> See *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>10</sup> The Board notes that appellant also related a history of a May 14, 2005 injury at work after she lifted heavy bags onto a table. The evidence of record in this case does not indicate whether that claim was accepted by the Office.

complaints of low back pain, but did not provide any narrative report after September 26, 2007 explaining how her disability for continuing in her light-duty work was caused or contributed to by her May 15, 2006 injury. There are numerous form records from various attending physicians; however, many are not clearly legible and do not provide a rationalized opinion on the relevant issue of causal relation. The Board has held that prescription notes or form reports that provide a check mark in support of causal relation are of diminished probative value.<sup>11</sup>

Dr. Goutos advised on October 9, 2007 that appellant had been out of work for a week due to an exacerbation of back pain. He noted medical treatment which had been administered and listed findings on examination. Dr. Goutos diagnosed a herniated disc and advised that appellant should be placed on light duty as of October 11, 2007. The Board notes that the brief report of the physician fails to provide any explanation of how appellant's medical condition had changed such that she became disabled for light-duty work after September 26, 2007. Dr. Goutos did not provide a fully history of the injury accepted by the Office or address the nature of appellant's preexisting degenerative back disease and herniated disc conditions. He did not address how the accepted lumbosacral strain and contusion would cause or contribute to her inability to continue light-duty work. In fact, Dr. Goutos advised that appellant should return to light-duty work as of October 11, 2007. His report is not sufficient to establish appellant's claim.

On October 12, 2007 Dr. Shapiro treated appellant for low back and left lower extremity pain. He advised that she was undergoing conservative treatment and that she remained disabled for work. However, Dr. Shapiro did not address the lumbosacral strain and contusion conditions accepted by the Office or how these conditions would cause disability for work after September 26, 2007. He did not provide any opinion relating appellant's disability for work to the May 15, 2006 injury. Therefore, Dr. Shapiro's opinion is of reduced probative value.

Dr. Battisti, a chiropractor, examined appellant on October 5, 2007 and diagnosed lumbar myofasciitis and lumbosacral strain. However, section 8101(2) of the Federal Employees' Compensation Act defines the term "physician" to include chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a spinal subluxation as demonstrated by x-ray to exist.<sup>12</sup> Dr. Battisti did not provide a diagnosis of subluxation as based on x-ray. For this reason, his medical report does not constitute competent medical evidence in support of appellant's claim.

Appellant has not met her burden of proof of establishing a change in the nature of the lumbosacral strain and contusion arising from her accepted claim of injury. There is no narrative report from an attending physician that provides a rationalized explanation of how her accepted conditions changed, such that she was not able to continue in her light-duty work after September 26, 2007. Similarly, appellant failed to establish a change in her light-duty job requirements. At the time she filed her claim, appellant merely noted that a chair had been changed which did not provide adequate back support. The employing establishment controverted this aspect of her claim, noting that she finished her tour on September 26, 2007

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<sup>11</sup> See *Celesia M. Corley*, *supra* note 6; *Donald W. Long*, 41 ECAB 142 (1989).

<sup>12</sup> 5 U.S.C. § 8101(2). See *Paul Foster*, 56 ECAB 208 (2004); *Linda Thompson*, 51 ECAB 694 (2000).

and had not mentioned any problems with her chair. The evidence of record is not sufficient to establish a change in appellant's light-duty job requirements.

**CONCLUSION**

The Board finds that appellant did not establish a recurrence of disability on or after September 26, 2007 causally related to her May 15, 2006 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 14, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 24, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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