

appellant filed multiple CA-7 claims for compensation for the period April 6 to August 4, 2006. On June 22, 2006 she filed a claim for recurrence of disability alleging that on April 6, 2006 she sustained disability due to residuals of her January 16, 2005 employment injury.

On June 1, 2006 the Office requested additional information from appellant regarding her claim. In a June 29, 2006 letter, appellant explained that she worked limited duty from January 6 to April 6, 2006 and modified duty from April 7 to 10, 2006. She stopped work altogether on April 10, 2006. Appellant stated that she had not returned to work since April 10, 2006 at the instruction of her doctor.

On July 14, 2006 the Office requested additional factual and medical information from appellant, including a physician's opinion as to why she was unable to work as of April 10, 2006.

On July 21, 2006 the Office denied appellant's claim for compensation for the period April 6 to 14, 2006. The Office found that the evidence was insufficient to establish that appellant was disabled as a result of her accepted employment injury.

Duty status reports dated from February 11, 2005 to June 26, 2006 were submitted from Dr. Raymond Tracey, a family practitioner. On February 1, 2006 Dr. Tracey noted work restrictions in that appellant could not stand at all, was allowed intermittent walking, eight hours of sitting and no reaching above the shoulder. On March 1, 2006 he allowed appellant to sit for eight hours a day, stand for one hour with intermittent walking, with no bending or reaching above the shoulder. An April 6, 2006 offer of modified assignment listed duties, as tolerated, of hand stamp for 1 hour, hand sort flats while standing for 30 minutes, and hand sort letters while standing for 30 minutes.

In an August 1, 2006 report, Dr. Tracey stated that he took appellant off work on April 11, 2006 because her condition worsened every time she returned to work under light duty. He noted that appellant was released to be able to stand intermittently for one hour a night starting on March 1, 2006 but did not do so until March 21, 2006. Dr. Tracey opined that this increase in activity and in range of motion aggravated her condition. He also opined that appellant's current condition was related to her January 16, 2005 injury. Dr. Tracey diagnosed lumbar strain, disc displacement, lumbago, sciatica and back pain. He stated that if appellant was not kept off work her condition would continue to be aggravated. The Office also received patient visit reports dated from May 13, 2005 through September 22, 2006. The April 11, 2006 visit report noted that appellant reported an increase in back pain and an examination evidenced such an increase. Dr. Tracey noted that her pain might be secondary to an increase in duties at work.

On August 8, 2006 the Office received reports from Dr. J. Eric Zimmerman, a neurosurgeon, dated October 17 and November 7, 2005. Dr. Zimmerman noted that a February 7, 2005 magnetic resonance imaging (MRI) scan showed an L5-S1 disc extrusion and a L4-5 disc bulge. He opined that the January incident was the cause of appellant's current problem. On November 7, 2005 Dr. Zimmerman noted a slight disc bulge at L4-5 and recommended physical therapy.

On August 21, 2006 the Office denied appellant's claim finding that the medical evidence did not support that she was disabled commencing April 15, 2006 as a result of her accepted employment injury.

On August 23, 2006 appellant appealed the July 21, 2006 decision and requested an oral hearing. On September 26, 2006 appellant appealed the August 21, 2006 decision and requested an oral hearing. The hearing was held on March 21, 2007.

By decision dated July 23, 2007, an Office hearing representative affirmed the denial of appellant's claim, finding that the evidence was insufficient to establish that she sustained a recurrence of disability commencing April 6, 2006. The Office hearing representative found that there was no rationalized medical evidence to establish a worsening of appellant's accepted condition, nor any evidence of an inability to perform the modified job offer.

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.¹ 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.² 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.³

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.⁴ 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.⁵ The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁶

¹ 20 C.F.R. § 10.5(x).

² *Id.*

³ *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

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

⁵ *See Helen K. Holt*, *supra* note 4.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

ANALYSIS

Appellant sustained injury on January 16, 2005 accepted for a lumbar strain. She did not stop work but continued with modified duty until April 10, 2006. Appellant has not alleged that her claimed recurrence of disability was the result of a change in the nature and extent of her light-duty assignment. There is no evidence that the employing establishment withdrew the light-duty assignment or otherwise altered appellant's job requirements. Appellant's restrictions were altered over time but at the direction of her physician. As of February 1, 2006, Dr. Tracey instructed that appellant could work limited duty with no standing, no reaching above the head, intermittent walking and eight hours of sitting. On March 1, 2006 appellant's restrictions were amended to allow for one hour of standing. On April 6, 2006 the employing establishment offered a modified assignment for work between the hours of 21:00 to 5:50 a.m. to complete the duties of hand stamp/nixies for one hour, hand sorting standing for one-half hour; and hand sort letters standing for one-half hour. Appellant accepted this position on April 6, 2006. There is no evidence that the employing establishment withdrew modified work duties which were within the light-duty restrictions provided by appellant's physician. If appellant is to prevail on her recurrence claim, she must establish a change in the nature and extent of her employment-related condition.⁷

Appellant has not established a material worsening of her accepted lumbar strain. She claims she sustained an increase in back pain; however, she has not established how her back condition on April 6, 2006 was related to her January 16, 2005 injury. The medical evidence does not demonstrate a change in appellant's condition related to her accepted injury. Dr. Zimmerman's October 17 and November 7, 2005 reports diagnosed a bulging disc at L4-5. This is not a condition accepted by the Office. Dr. Zimmerman did not explain the cause of this condition. Moreover, as these reports predate appellant's claim, they are of limited probative value as to the cause of her disability commencing April 10, 2006.

The April 18, 2006 medical center report noted appellant's complaint of back pain but did not provide any discussion on causal relationship. This record does establish however that she was hospitalized on April 18, 2006 for deep venous thrombosis, a condition unrelated to appellant's accepted back condition.

On August 1, 2006 Dr. Tracey opined that an increase in activity and range of motion aggravated appellant's condition. He noted that appellant had not healed completely and her injury was aggravated by returning to work too soon. However, Dr. Tracey did not provide adequate medical rationale to explain how appellant's accepted condition of lumbar strain had worsened to the point that it caused or contributed to her disability for work as of April 10, 2006.

Dr. Tracey did not explain how the diagnosed conditions of disc displacement, lumbago and sciatica were related to the January 16, 2005 injury. These conditions were not accepted by the Office as caused by the January 16, 2005 injury. Dr. Tracey did not explain how a lumbar strain would cause a disc displacement or contribute to appellant's disability for work. The treatment records merely noted findings on examination of appellant without providing any

⁷ *Theresa L. Andrews, supra* note 3.

opinion as to how his current low back complaints were related to her January 16, 2005 injury. Dr. Tracey did not explain how residuals of her lumbar strain precluded her from performing her light-duty assignment.

The medical evidence does not demonstrate a change in the nature and extent of appellant's injury-related condition such that she was no longer able to perform her light-duty assignment beginning April 6, 2007. The Office, therefore, properly denied her recurrence claim.

CONCLUSION

Appellant has not established that she sustained a recurrence of disability on April 6, 2006, causally related to her January 16, 2005 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 23, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 25, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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