



## **FACTUAL HISTORY**

Appellant, a 52-year-old mail handler, injured her back at work on September 5, 2001. The Office accepted her claim for lumbar strain and disc herniation at L4-5.<sup>2</sup> Appellant resumed work following her injury, but in a light-duty capacity.<sup>3</sup> On August 11, 2006 the Office granted her a schedule award for permanent impairment of both lower extremities due to her September 5, 2001 back injury. Appellant sustained another employment-related injury on September 17, 2006 when she slipped on a wet floor. The Office accepted this injury for a left knee sprain file number 13-2159313. Appellant resumed her light-duty assignment following the September 17, 2006 injury.<sup>4</sup>

On May 25, 2007 appellant filed a claim for recurrence of disability beginning May 16, 2007. She stated that she had never fully recovered from her September 5, 2001 back injury. Dr. Curtis W. Spencer III, a Board-certified orthopedic surgeon, examined appellant on May 9, 2007. He reported that she was experiencing numbness and tingling in her right foot. Dr. Spencer noted that recent x-rays revealed degenerative disc disease at L4-5 and L5-S1; however, this condition had not accelerated since the x-rays obtained two years prior.

During a follow-up visit on May 16, 2007, Dr. Spencer noted that appellant was having increased right leg pain. On physical examination there was positive straight leg raising signs and numbness over the lateral aspect of the calf. Dr. Spencer believed that appellant had a flare-up of her sciatica, which manifested itself with pain in the low back and right leg. He adjusted appellant's medication, ordered a repeat lumbar magnetic resonance imaging (MRI) scan and placed appellant off work for two weeks. Dr. Spencer subsequently extended appellant's period of temporary total disability to June 11, 2007.

On June 5, 2007 the Office wrote to appellant advising her of the medical and factual information necessary to support her claimed recurrence of disability. The Office afforded her 30 days to submit the required information.

The Office subsequently received June 7, 2007 treatment records from Dr. Spencer, who advised that appellant was to remain off work until June 28, 2007. He reported continuing problems with appellant's knee, low back and sciatica. Dr. Spencer diagnosed lumbago, sciatica and lumbar degenerative disc disease. He explained that appellant was not quite ready to return to work and she still needed to obtain another lumbar MRI scan. Dr. Spencer anticipated returning appellant to work on June 28, 2007. However, when he saw her that day, he reported

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<sup>2</sup> Appellant also has lumbar degenerative disc disease with spinal stenosis. The Office, however, has not accepted this condition as employment related.

<sup>3</sup> As of December 2005, appellant's treating physician imposed restrictions that included no pushing, no pulling and no lifting over 15 pounds. Additionally, appellant could tolerate sitting for 40 minutes at a time and standing for 20-minute intervals. On her May 25, 2007 claim form appellant identified her limitations as no bending and squatting, no lifting over 15 pounds, no pushing, no pulling and no standing longer than 15 minutes.

<sup>4</sup> The employing establishment described appellant's rehabilitation assignment as processing waste mail. For eight hours each day, she sat at a table and sorted through mail marked as waste. Appellant was responsible for insuring that no First Class mail was mixed in with the waste mail.

that she remained disabled. Dr. Spencer advised that he would reevaluate appellant after she obtained another MRI scan.

A June 29, 2007 lumbar MRI scan revealed asymmetric discogenic disease at L4-5, with a disc protrusion and stenosis. There was also evidence of mild central canal compromise at L3-4 due to a broad disc bulge.

By decision dated August 21, 2007, the Office denied appellant's claim for recurrence of disability.<sup>5</sup>

### **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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup> The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>11</sup>

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<sup>5</sup> Appellant submitted an August 9, 2007 treatment note which was not reviewed by the Office in the August 21, 2007 decision. The Board may not review the report for the first time an appeal. *See* 20 C.F.R. § 501.2(c).

<sup>6</sup> 20 C.F.R. § 10.5(x).

<sup>7</sup> *Id.*

<sup>8</sup> *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

<sup>9</sup> 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).

<sup>10</sup> *See Helen K. Holt*, *supra* note 9.

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

### ANALYSIS

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 either withdrew the light-duty assignment or otherwise altered her job requirements prior to her May 16, 2007 work stoppage. Therefore, appellant must establish a change in the nature and extent of her employment-related condition.<sup>12</sup>

Beginning May 9, 2007, Dr. Spencer reported increased symptoms affecting appellant's right lower extremity. When he saw her a week later, he believed that appellant's low back and right leg pain were indicative of a flare-up of her sciatica. Dr. Spencer placed appellant off work for two weeks beginning May 16, 2007 and recommended obtaining a repeat lumbar MRI scan. The June 29, 2007 MRI scan was reported as showing a disc protrusion and stenosis. None of Dr. Spencer's treatment records addressed how appellant's current low back and right leg complaints were related to the September 5, 2001 employment injury. Also absent from his treatment records is any discussion of how or why appellant's current condition precluded her from performing her light-duty assignment processing waste mail. Furthermore, it is not clear whether Dr. Spencer was familiar with the type of work appellant had been performing when he took her off work beginning May 16, 2007. Without this pertinent information, Dr. Spencer's treatment records are of limited probative value. They are insufficient that appellant experienced an employment-related recurrence of disability.

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 May 16, 2007. The Office, therefore, properly denied her recurrence claim.

### CONCLUSION

Appellant has not established that she sustained a recurrence of disability on May 16, 2007, causally related to her September 5, 2001 employment injury.

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<sup>12</sup> *Theresa L. Andrews, supra* note 8.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 21, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 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