

accepted appellant's claim for cervical and thoracic sprain/strain with radiculopathy and paid appropriate compensation.

The employing establishment advised that appellant was released to a light-duty assignment effective August 19, 2002. He returned to limited duty, five hours per day, effective September 18, 2002. In an October 1, 2002 work capacity evaluation, Dr. Dominic DeMatteo, an osteopath, advised that appellant could work limited duty for eight hours per day with restrictions on reaching above shoulder level and on pushing, pulling or lifting more than 10 pounds.

On September 9, 2004 Dr. Mark Radbill, an osteopath, advised that appellant could case mail for three hours daily, could perform deliveries for two hours daily and could perform other duties for three hours daily. He stated that appellant's recovery date was presently unknown. In a December 9, 2004 duty status report, Dr. Radbill noted that appellant was restricted from lifting more than 35 pounds and could perform full-time duties as noted in his September 9, 2004 note. On September 8, 2005 he reiterated the above-noted lifting and work restrictions. In reports dated February 16, April 6 and July 20, 2006, Dr. Radbill indicated that appellant's lifting restriction was 35 pounds and he could perform casing for three hours, deliveries for two hours and miscellaneous tasks for three hours per day.

On November 13, 2006 appellant accepted a limited-duty job offer from the employing establishment. The offer listed the following daily duties: four hours of lifting and carrying mail without steps, eight hours of standing and walking, three hours of simple grasping and reaching above shoulder level, and two to three hours of driving a vehicle. The physical requirements of the position included lifting and carrying up to 35 pounds for four hours without steps, standing and walking for four hours, simple grasping and reaching above shoulder level for three hours and driving a vehicle and carrying mail with steps for two to three hours.

In a November 28, 2006 duty status report, Dr. Radbill diagnosed herniated cervical discs with left arm radiculopathy. He advised that appellant's lifting restriction was 35 pounds and that he could perform casing tasks for three hours, deliveries for two hours and miscellaneous tasks for three hours daily.

On March 20, 2007 appellant filed a claim for recurrence of disability. He stated that he experienced a recurrence of disability on March 15, 2007, which he attributed to "being pressed to exceed restrictions." Appellant explained that his symptoms were "identical to the original injury" and consisted of neck pain radiating into the middle of his upper back. In an accompanying March 19, 2007 form report, Dr. Radbill advised that appellant could not work for 14 days and that, thereafter, he could work with his "normal restrictions." In a March 19, 2007 narrative report, he opined that appellant's diagnosed herniated discs were directly related to his work activities as a letter carrier. Dr. Radbill advised that "the more letter carrying, the more you aggravate these bulging hernias, the more you incapacitate [appellant]." He advised that it was important that appellant work "near the parameters of his stated limited-duty restrictions." In a duty status report, also prepared on March 19, 2007, Dr. Radbill advised that appellant still had a 35-pound lifting restriction and the same duty restrictions.

By correspondence dated April 19, 2007, the Office requested additional information concerning appellant's recurrence of disability claim. It asked for a specific description of appellant's job duties since returning to work as well as a description of changes, if any, in appellant's light-duty assignment. The Office also requested medical evidence concerning appellant's current physical condition and his doctor's opinion on "the relationship between your ability to work and the accepted work-related condition."

In a May 9, 2007 statement, appellant explained that his herniated discs had never fully healed. He stated that the employing establishment's management staff was "under tremendous pressure to get the work done by yesterday" and consequently had "taken liberties" with his work restrictions. Appellant asserted that up to April 13, 2007 he was assigned "additional excessive multiple physical work-related activities that aggravated [his] preexisting herniated discs." He also submitted copies of duty status reports from Dr. Radbill.

By decision dated May 31, 2007, the Office denied appellant's claim for recurrence of disability.

In a May 14, 2007 report, Dr. Radbill noted appellant's complaints of increased pain after having been assigned to work additional hours on March 14, 2007. On physical examination, he found restricted range of motion of the cervical spine and spasms in the left cervical and dorsal areas. Dr. Radbill diagnosed chronic cervical and dorsal sprain/strain with acute exacerbation and herniation of a cervical disc. He stated that appellant sustained an "acute exacerbation" of his neck condition "on or about March 15, 2007," when his workload increased. Dr. Radbill concluded that appellant's conditions were "chronic and not curable," but could remain stable as long as he continued to work limited duty. He also noted that appellant had left dorsal spasms with increased workload and that his "symptoms, disc herniation and left arm radiculopathy, are directly related to his injury on June 20, 2002."

On June 16, 2007 Lee Culver, appellant's union steward, stated that the employing establishment's management staff had "pressured" appellant to "'help out' in an 'emergency situation' on an occasional basis." He stated that "this 'we're shorthanded ... emergency situation' was evolving into what was becoming a daily occurrence, this additional delivery workload was in violation of [appellant's] written medical restrictions." Mr. Culver noted that he spoke with the management staff and they returned appellant to his usual restricted duty.

Appellant requested reconsideration on June 18, 2007.

By decision dated July 23, 2007, the Office denied modification of its previous decision denying appellant's recurrence of disability claim.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability. As part of this

burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.¹

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. 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 physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.²

ANALYSIS

The medical evidence does not establish a change in the nature and extent of appellant's injury-related condition.³ After his original injury in 2002, appellant returned to limited-duty work and, on November 13, 2006, he accepted a full-time limited-duty assignment which required him to perform four hours of lifting and carrying mail without steps, eight hours of standing and walking, three hours of simple grasping and reaching above shoulder level and two to three hours of driving a vehicle. The physical requirements of the position included a 35-pound lifting restriction. The physical requirements of this position were consistent with work restrictions set forth by Dr. Radbill.

On March 19, 2007 Dr. Radbill opined that appellant's diagnosed herniated discs were related to his letter carrying activities. He stated that "the more letter carrying, the more you aggravate these bulging hernias, the more you incapacitate [appellant]." Dr. Radbill also advised that appellant could not work for two weeks. In a May 14, 2007 report, he noted restricted range of motion and spasms in the left cervical and dorsal areas and diagnosing chronic cervical and dorsal sprain/strain with acute exacerbation and cervical disc herniation. Dr. Radbill related appellant's condition to the appellant's allegedly increased workload "on or about March 15, 2007." However, he did not explain the physical details of appellant's claimed exacerbation or provide detailed reasoning in support of his conclusion that appellant's condition worsened. Dr. Radbill did not give physical examination details illustrating how appellant's condition, which was "chronic and not curable" was aggravated beyond its baseline pathology or provide rationale explaining the basis of his conclusion that the exacerbation was related to the original work injury or appellant's work activities. The Board finds that Dr. Radbill's reports do not establish that appellant sustained a recurrence of disability, as the doctor did not support that appellant experienced a spontaneous change in his work-related condition without a new

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

² 20 C.F.R. § 10.5(x).

³ On appeal, appellant submitted additional medical and factual evidence. The Board, however, notes that it cannot consider this evidence for the first time on appeal because the Office did not consider this evidence in reaching its final decision. The Board's review is limited to the evidence in the case record at the time the Office made its final decision. 20 C.F.R. § 501.2(c).

exposure or intervening injury. Rather, he reasoned that appellant's exacerbation was caused by new and ongoing exposure to work activities, specifically letter carrying, which aggravated his preexisting back condition.

Furthermore, Dr. Radbill also attributes appellant's condition to disc herniation which he asserted was employment related. However, the Office has not accepted a cervical disc herniation as employment related and Dr. Radbill did not provide medical reasoning explaining how the June 20, 2002 work injury, accepted for a cervical and thoracic sprain/strain with radiculopathy, would have caused disc herniation.⁴

The Board also finds that appellant did not meet his burden of proof in establishing a change in the nature and extent of his light-duty job requirements. As noted, appellant accepted a light-duty assignment on November 13, 2006. He asserted that until about April 13, 2007 the employing establishment relied upon him to work overtime hours. In his May 9, 2007 statement, appellant explained that the employing establishment management was "under tremendous pressure to get the work done by yesterday" and had "taken liberties" with his work restrictions. He stated that the employing establishment assigned him "additional excessive multiple physical work-related activities that aggravated [his] preexisting herniated discs." However, appellant provided no specific details concerning the alleged changes in his light-duty assignment. He did not state precisely when or how often he was asked to work overtime, did not give examples or provide evidence in support of his claim that his work hours were increased beyond those set forth in his restrictions nor did he specify the "excessive multiple physical work-related activities" that he allegedly performed. Appellant's assertion that he worked overtime and performed duties exceeding his restrictions, without further details, is insufficient to establish a change in the nature and extent of his light duty.

Appellant also provided supporting statements indicating that he was asked to work overtime. In his May 14, 2007 report, Dr. Radbill indicated that appellant's condition was stable when he worked his normal limited-duty assignment but was exacerbated when he was required to work overtime. In a June 16, 2007 statement, Mr. Culver, appellant's union steward, explained that management "pressured" appellant to "help out" by working additional hours and that such requests were "evolving into a daily occurrence." However, neither Dr. Radbill nor Mr. Culver provided specific details regarding exactly when appellant performed duties that exceeded his restrictions and what those duties were. Without more explanation and detail, Dr. Radbill's and Mr. Culver's statements do not show a change in the nature and extent of appellant's light-duty job assignment sufficient to establish a recurrence of disability. Consequently, the Board finds that the evidence is insufficient to establish that appellant's limited-duty assignment exceeded appellant's work restrictions.

⁴ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury).

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability in the performance of duty, causally related to his June 20, 2002 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 23 and May 31, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 15, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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