United States Department of Labor
Employees' Compensation Appeals Board

H.C., Appellant	)	
and	)	**Docket No. 08-965**
	)	**Issued: November 25, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Oakland, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 6, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 8, 2007 denying his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established a recurrence of disability on or after February 18, 2003.

FACTUAL HISTORY

Appellant filed a traumatic injury claim (Form CA-1) for an injury on July 10, 1981 to his right side and low back. The Office accepted this claim for permanent aggravation of

lumbosacral strain and aggravation of lumbar disc disease.[1] Appellant submitted a notice of recurrence of disability (Form CA-2a) commencing January 6, 1999. As he alleged that his modified duties had aggravated his back condition, the claim was developed as a new occupational disease claim. This claim was accepted for intervertebral disc disorder and psychogenic pain.

Appellant stopped working on January 6, 1999. On December 3, 2002 the employing establishment offered appellant a limited-duty, full-time position as a modified letter carrier. The position was limited to 20 pounds lifting with no driving or delivery of mail. Appellant returned to work on February 5, 2003. The record indicates he worked through February 18, 2003 and, on February 19, 2003; he began working four hours per day with intermittent periods of work stoppage. Appellant stopped working on June 6, 2003.

On April 29, 2004 appellant filed a notice of recurrence of disability commencing February 18, 2003. He stated that on February 18, 2003 he was lifting a tub of magazines from the floor and he felt a popping or pulling in his back.[2]

Appellant was seen on February 18, 2003 by Dr. David Roberts, a psychologist, who obtained a history that on that date appellant was lifting a container and felt a pop in his back. He reported appellant had clear signs of depression and anxiety. In a report dated March 13, 2003, Dr. William Baumgartl, a pain management specialist, diagnosed chronic low back and leg pain. He stated that appellant had been permanent and stationary since December 2002 but felt he was unable to continue working. By report dated May 1, 2003, Dr. Linda Skory, an internist, noted appellant had shown very little improvement in his symptoms and would be best served by disability retirement. Dr. Baumgartl noted in a June 23, 2003 report that appellant had been off work since June 6, 2003. He indicated appellant was scheduled to return to work on June 28, 2003, but appellant was strongly against returning to his old job.

In a report dated September 3, 2003, Dr. Robert Fink, a neurosurgeon, reported that on February 18, 2003 appellant was lifting some mail and felt immediate low and upper back pain. By report dated September 24, 2003, he stated that appellant had first injured his back at work on July 10, 1981, and then on February 18, 2003 had aggravated his injury and appellant's current disability was related to this aggravation. Dr. Fink opined that appellant would not be able to return to work as a modified letter carrier and recommended disability retirement. He continued to indicate appellant was totally disabled in reports dated December 9, 2003 and February 10, 2004.

By decision dated January 25, 2006, the Office denied the claim for a recurrence of disability. It found the medical evidence was insufficient to establish the claim.

[1] OWCP File No. xxxxxx809. This claim is a subsidiary file of the current file. In a prior appeal, the Board affirmed a December 8, 1998 Office decision denying a claim for a recurrence of disability on July 16, 1998, and a May 25, 1999 Office decision denying merit review.

[2] The record indicates that appellant filed a traumatic injury claim for February 18, 2003 and a new claim was developed under OWCP File No. xxxxxx162. That claim is not before the Board.

In a letter dated February 20, 2006, appellant requested a hearing before an Office hearing representative. In an April 5, 2006 report, Dr. Fink stated that on February 18, 2003 appellant had "reinjured his back while attempting to lift a tub of magazines from the floor." He further stated that appellant did not suffer a new injury on February 18, 2003, but an aggravation of his existing injury. Dr. Fink concluded appellant had been permanently disabled since February 18, 2003. In a November 29, 2006 report, he stated his decision to remove appellant from work in 2003 was based on the reinjury and not a natural progression. A hearing was held on November 16, 2006.

By decision dated February 8, 2007, the Office hearing representative affirmed the January 25, 2006 Office decision. The hearing representative found the medical evidence was insufficient to establish a recurrence of disability.

LEGAL PRECEDENT

The Office's regulation defines the term recurrence of disability as follows:

> "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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."[3]

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. 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.[4] To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.[5]

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[3] 20 C.F.R. § 10.5(x).

[4] *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman* 38 ECAB 222 (1986).

[5] *Maurissa Mack*, 50 ECAB 498 (1999). For a claimed recurrence of disability within 90 days of a return to work, the focus is generally on disability rather than causal relationship, although if the diagnosed condition is not an accepted condition, the evidence must establish causal relationship with employment. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6 (January 1995).

ANALYSIS

Appellant filed a claim for a recurrence of disability on or after February 18, 2003. The record indicated that he had returned to work in a modified position on or about February 5, 2003. From February 19 to June 6, 2003, appellant worked intermittently at approximately four hours per day and then he stopped working. It is his burden of proof to establish a recurrence of disability for the claimed periods.

As noted, a recurrence of disability is a spontaneous change in an employment-related without an intervening injury. The CA-2a form appellant submitted indicated that on February 18, 2003 he was lifting a tub of mail while working and felt a popping or pulling in his back. Dr. Fink consistently reported that appellant had sustained an injury after attempting to lift a tub of mail. While he asserted in his April 5, 2006 report that this was not a new injury, he clearly based this statement on the assumption that an aggravation of a prior injury was not a new injury. Under well established Office procedures, however, when an injury is claimed from a new employment incident, even if it involves the same part of the body previously injured, it constitutes a claim for a new injury and must be developed as such.[6] The record indicates that appellant did properly file a claim for a new injury on February 18, 2003; however, it is not before the Board on this appeal. The only issue is whether appellant sustained a recurrence of disability on or after February 18, 2003.

None of the evidence of record supports a period of disability after February 18, 2003 resulting from a spontaneous change in the accepted conditions without intervening injury. Dr. Baumgartl, in his March 13, 2003 report, did not provide a complete history and referred generally to chronic pain, without providing a reasoned medical opinion as to a period of disability resulting from a change in the nature and extent of an employment-related condition. Dr. Fink, as noted above, described an intervening injury on February 18, 2003. The Board finds appellant did not meet his burden of proof to establish a recurrence of disability in this case.

CONCLUSION

The evidence of record is not sufficient to establish a recurrence of disability on or after February 18, 2003.

[6] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 8, 2007 is affirmed.

Issued: November 25, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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