

remanded the case for further development.¹ The Board directed the Office to refer appellant for a second opinion examination on the issue of whether his left leg condition was causally related to the employment injury.

Appellant filed a recurrence of disability claim on February 14, 2002, identifying the date of the recurrence as November 19, 2001. By decision dated July 19, 2004, an Office hearing representative affirmed a November 25, 2002 Office decision denying the recurrence of disability claim. On appeal to the Board, the case was remanded to the Office by order dated May 2, 2005.² The Board noted that appellant had submitted an October 25, 2002 report from the attending orthopedic surgeon, Dr. Jon Starr, but the hearing representative failed to review the report. The history of the case is set forth in the Board's prior decision and order and is incorporated herein by reference.

By decision dated May 2, 2007, the Office hearing representative affirmed the November 25, 2002 Office decision. The hearing representative found that Dr. Starr did not provide a rationalized medical opinion on the issue presented.

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”³ A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴

ANALYSIS

Appellant filed a claim for a recurrence of disability commencing November 19, 2001. The record indicates he was treated by Dr. Starr on January 28, 2002 for complaints of back pain and bilateral leg pain. Dr. Starr stated “much of this occurred since an accident in 1985, but [appellant] states a recurrence of symptoms particularly since November 2001.” Appellant underwent lumbar decompression surgery with instrumented fusion on February 19, 2002. In an October 25, 2002 report, Dr. Starr stated that he had been treating appellant since January 28, 2002 for management of severe degenerative disc disease with stenosis instability and radiculopathy. He noted that appellant had suffered infections from the February 19, 2002

¹ Docket No. 96-2020 (issued January 8, 1999).

² Docket No. 05-402 (issued May 2, 2005).

³ 20 C.F.R. § 10.5(x).

⁴ *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

surgery, requiring three procedures to treat the infection. Dr. Starr stated “the ongoing medical issue is of course causally related directly to the original injury and problems for which he has been covered under workers’ compensation and are of course related directly also to the index and procedure of February 2002. He has been since approximately that time, and continues through this date, to be totally disabled from work.”

Dr. Starr did not provide a complete factual and medical background or support his opinion with medical rationale. He referred only to an “accident” 1985 without providing any details of the employment incident discussing the medical history. There is a reference to a recurrence of symptoms since November 2001, without further explanation. Dr. Starr appeared to find appellant disabled since the February 19, 2002 surgery, but he stated only that “of course” the surgery and ongoing symptoms were related to the original injury, without providing any rationale to support the opinion.

The Board accordingly finds the evidence of record is insufficient to establish a recurrence of disability on or after November 19, 2001.⁵ The medical evidence does not establish disability from a change in the employment injury.

CONCLUSION

Appellant did not submit sufficient evidence to establish a recurrence of disability on or after November 19, 2001.

⁵ The record does contain evidence submitted after May 2, 2007. Since this evidence was not before the Office at the time of its final decision, the Board has no jurisdiction to review the evidence on this appeal. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 2, 2007 is affirmed.

Issued: September 25, 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