

FACTUAL HISTORY

On March 27, 2006 appellant, then a 45-year-old electrical worker, filed a traumatic injury claim alleging that on that date he injured his lower back and left buttocks while lifting his leg to get into a truck. The Office accepted the claim for lumbar strain/sprain.

On May 9, 2007 appellant filed a recurrence of disability beginning April 24, 2007. He noted that his pain returned on April 24, 2007 and that his leg and back condition had worsened after using a hammer drill that day. The employing establishment noted that appellant had some restrictions following his injury, but returned to full-duty work on May 11, 2006.

On May 7, 2007 Dr. John W. Ellis, a treating Board-certified family practitioner, noted the history of appellant's March 27, 2006 employment injury, his medical history, the medical treatment he received and that he returned to full-duty work. He diagnosed lumbosacral muscle tendon strain, lumbar spine deranged disc and left lower extremity radiculopathy, which he attributed to appellant's employment injury. Dr. Ellis reported that after appellant returned to full-duty work he continued to have "problems with numbness and tingling of the left foot" and that appellant "is having the exact same complaints that he was having as a result of the work-related injury of March 27, 2006." He noted that appellant continued to have problems, particularly with his left leg, since returning to full duty and that the condition progressively worsened until he sought treatment on April 24, 2007. A physical examination of the back revealed decreased range of motion and appellant "moves about in a very still and slow fashion." Dr. Ellis reported left lumbar paraspinal musculature tenderness on palpation and bilateral lumbar paraspinal musculature spasm on palpation. In concluding, he opined that, as a result of appellant's March 27, 2006 employment injury, he "was temporarily totally disabled and unable to work on April 26, 2006." Dr. Ellis indicated that appellant was capable of performing light-duty work with restrictions of no lifting more than 10 pounds and no climbing, pushing, twisting, pulling and bending.

In a May 31, 2007 letter, the Office informed appellant that the evidence was insufficient to support his recurrence claim and advised him as to the type of medical and factual evidence required to support his claim.

Subsequently, the Office received time analysis sheets dated June 4, 11 and 23, 2007; claim for compensation (Form CA-7) dated June 4, 11 and 25, 2007 for the period April 26 to May 31 and June 11, 2007; May 10, 2007 certificate to return to work on May 14, 2007 by Dr. R. Merricar, a treating osteopath; an April 26, 2007 certificate to return to work by Dr. J. Langley; and three disability notes dated May 7 and 31 and June 11, 2007 signed by Dr. Ellis. The April 26, May 7 and 31, 2007 notes released him to work the day of the note with restrictions while the June 11, 2007 note released appellant to work on June 12, 2007 with restrictions. Appellant noted that he used 10 hours of leave without pay on April 26, May 7, 10 and 31 and June 20 to 21, 2007 for doctor's visits and 10 hours of leave without pay on June 11, 2007 for undergoing a magnetic resonance imaging scan.

By decision dated July 16, 2007, the Office denied appellant's claim for a recurrence of disability.

On July 25, 2007 appellant requested reconsideration.

By nonmerit decision dated November 29, 2007, the Office denied appellant's request for reconsideration.¹

LEGAL PRECEDENT -- ISSUE 1

The Office's implementing regulations define a recurrence of disability as 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.² If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken, and an appropriate new claim should be filed.³

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and that such a relationship must be supported with affirmative evidence, explained by medical rationale and be based on a complete and accurate medical and factual background of the claimant.⁴ Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.⁵

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision regarding whether appellant sustained a recurrence of disability.

The Office accepted appellant's March 27, 2006 claim for lumbar strain/sprain. Appellant returned to light-duty work following his injury and ultimately returned to full-duty work on May 11, 2006. On April 24, 2007 he claimed that his condition had worsened. In support of his claim, appellant submitted a May 7, 2007 report from his treating physician, Dr. Ellis. Based upon a review of the medical evidence, employment injury history and physical

¹ The Board notes that, following the November 29, 2007 nonmerit decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. *See* 20 C.F.R. § 501.2(c); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

² 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). *See also Phillip L. Barnes*, 55 ECAB 426 (2004).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB 631 (2003).

⁴ *Conard Hightower*, 54 ECAB 796 (2003).

⁵ *Albert C. Brown*, 52 ECAB 152 (2000).

examination, Dr. Ellis diagnosed lumbosacral muscle tendon strain, lumbar spine deranged disc and left lower extremity radiculopathy, which he attributed to appellant's employment injury. He noted that appellant continued to have problems, particularly with his left leg, since returning to full duty and that the condition progressively worsened until he sought treatment on April 24, 2007. A physical examination of the back revealed decreased range of motion and appellant "moves about in a very still and slow fashion." Dr. Ellis reported left lumbar paraspinal musculature tenderness on palpation and bilateral lumbar paraspinal musculature spasm on palpation. He opined that, as a result of appellant's accepted employment injury, he was unable to work and was thus totally disabled beginning April 26, 2007. In addition, Dr. Ellis reported that, while appellant was not capable of performing his usual duties, he was capable of performing light-duty work with restrictions of no lifting more than 10 pounds and no climbing, pushing, twisting, pulling and bending.

The Board notes that, while Dr. Ellis' report is not completely rationalized as to whether he sustained a recurrence of disability, it is consistent in indicating that appellant had a worsening of his accepted condition.

It is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁶

The Board further notes that Dr. Ellis' reports are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet appellant's burden of proof to establish his claim, they raise an uncontroverted inference between his claimed recurrence and the accepted diagnosed conditions and are sufficient to require the Office to further develop the medical evidence and the case record.⁷

On remand the Office should prepare a statement of accepted facts and refer appellant, along with his medical records, for a second opinion examination in order to obtain a rationalized opinion as to whether appellant sustained a recurrence of disability causally related to the March 27, 2006 employment injury.

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained a recurrence of disability on April 24, 2007, causally related to the March 27, 2006 employment injury.⁸

⁶ *R.E.*, 59 ECAB ___ (Docket No. 07-1604, issued January 17, 2008); *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard*, 53 ECAB 430 (2002); *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

⁷ *See Virginia Richard*, *supra* note 6; *see also Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ In light of the Board's disposition on the first issue, the second issue is moot.

ORDER

IT IS HEREBY ORDERED THAT the decisions dated November 29 and July 16, 2007 are set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: September 12, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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