

**United States Department of Labor
Employees' Compensation Appeals Board**

F.M., Appellant

and

**U.S. POSTAL SERVICE, AIRPORT STATION,
Los Angeles, CA, Employer**

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**Docket No. 09-959
Issued: December 22, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 27, 2009 appellant filed a timely appeal of the April 24 and October 15, 2008 and January 30, 2009 merit decisions of the Office of Workers' Compensation Programs denying her recurrence claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant established that she sustained a recurrence of disability commencing October 24, 2007 causally related to her October 22, 2004 employment injury.

FACTUAL HISTORY

On October 25, 2004 appellant, then a 56-year-old sales associate, filed a traumatic injury claim alleging that on October 22, 2004 she injured her low back and left leg while bending down to retrieve stamps from a safe. The Office accepted her claim for a lumbar strain.

On January 7, 2008 appellant filed a claim for a recurrence of disability. She noted that she did not stop working until October 24, 2007. Appellant returned to work on

November 27, 2007.¹ She submitted a September 3, 2007 documentation of medical impairment from Kaiser Permanente; an October 26, 2007 disability slip noting that she would be disabled for four weeks; a November 27, 2007 disability note releasing her to light-duty work that day and progress notes dated April 10 to November 27, 2007 from Dr. Jae H. Chon, a treating Board-certified orthopedic surgeon, who noted that appellant had difficulty walking and was in pain. Appellant related that she returned to work for financial reasons. Dr. Chon advised that appellant could return to sedentary work with minimal lifting.

On September 4, 2007 Dr. Chon noted that appellant had been off work due to right leg issues. Appellant also had pain radiating from her low back into her left leg. A physical examination revealed that she walked with a cane and had an antalgic gait. On October 26, 2007 Dr. Chon related that appellant had increased low back pain radiating into both legs and difficulty bending or walking. A physical examination revealed positive straight leg raising, pain into her foot, and that she walked with a limp. Dr. Chon diagnosed bilateral lower extremity symptomatic sciatica and recommended no work. In a November 27, 2007 report, he reiterated that appellant had difficulty walking and was in pain. Appellant was released to sedentary work with restrictions on lifting.

By letter dated January 17, 2008, the Office informed appellant that the evidence of record was insufficient to establish her recurrence claim. Appellant was advised to submit additional medical and factual evidence.

In a January 29, 2008 note, Dr. Chon diagnosed lumbar spine with sciatica and advised that appellant was capable of working with restrictions, including no lifting more than three pounds and sedentary work only. He listed the date of injury as October 27, 2004. On January 29, 2008 Dr. Chon noted appellant's complaint of increased low back pain radiating bilaterally into her lower extremities since she returned to work. He diagnosed an L2-S1 herniated disc and bulging disc, facet joint subluxation, L2-L3 lateral recess stenosis and L5-S1 lateral recess stenosis based on a review of x-ray interpretations and magnetic resonance imaging (MRI) scans. Dr. Chon reported that appellant's low back and bilateral leg pain was worsening.

On March 24, 2008 the Office received an undated report from Dr. Chon in which he noted appellant had retired. Appellant continued to have pain radiating into her leg.

By decision dated April 24, 2008, the Office denied appellant's claim, finding that the evidence of record was insufficient to establish that her back condition was due to her October 22, 2004 work injury.

In an April 22, 2008 report, Dr. Chon stated that appellant continued to have pain radiating into her left leg, difficulty walking and had retired.

On August 21, 2008 appellant requested reconsideration. She submitted a March 11, 2008 report and a June 5, 2007 disability note advising that she was capable of restricted work.

¹ Appellant retired on disability from the employing establishment effective February 12, 2008.

By decision dated October 15, 2008, the Office denied modification of the April 24, 2008 decision.

On October 29, 2008 appellant requested reconsideration. She submitted reports from Dr. Chon dated October 26, 2007 to April 22, 2008 and an April 5, 2005 form report from Bruce A. Wasserman, Ph.D, diagnosing a history of disc bulged and decreased left knee reflex.

By decision dated January 30, 2009, the Office denied modification of the October 15, 2008 decision.

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.²

Office procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change, demonstrated by objective findings, in the medical condition that resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.³

A person who claims a recurrence of disability 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 employment injury.⁴ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her employment injury.⁵ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.⁶ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁷

² 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB ___ (Docket No. 07-2287, issued May 16, 2008).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997).

⁴ *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

⁵ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁶ *S.S.*, 59 ECAB ___ (Docket No. 07-579, issued January 14, 2008); *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

⁷ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁸ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁹ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.¹⁰

ANALYSIS

Appellant claimed a recurrence of disability beginning October 26, 2007. As noted, her burden is to furnish medical evidence from a physician who on the basis of a complete and accurate factual and medical history explains how her disabling condition is causally related to the accepted employment injury and supports that conclusion with sound medical reasoning.¹¹ The Board finds the evidence of record is insufficient to establish that appellant sustained a recurrence of disability due to her accepted lumbar strain.

Appellant submitted reports from Dr. Chon dated April 10, 2007 to April 22, 2008. Dr. Chon did not provide any opinion as to the cause of appellant's disability beyond noting her date of injury as October 22, 2004. He did not provide any findings on physical examination other than noting appellant's problems with walking. The Board has held that medical evidence offering no opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹² Medical evidence failing to provide a rationalized medical opinion concerning the causal relationship between appellant's alleged disability beginning October 26, 2007 and her accepted lumbar strain in 2003 is of diminished probative value.¹³ Dr. Chon provided no opinion as to the cause of appellant's disability or explanation regarding the cause of her disability. His reports are insufficient to establish that she sustained a recurrence of disability causally related to her accepted October 22, 2004 employment injury.

The Board notes that Dr. Wasserman's report pertained to appellant's condition in 2005, which was prior to her claimed recurrence of disability in October 2007. As such, this report is not probative in establishing whether she sustained a spontaneous recurrence of disability in October 2007 causally related to the October 22, 2004 employment injury.

⁸ See *Ricky S. Storms*, *supra* note 6; see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁹ For the importance of bridging information in establishing a claim for a recurrence of disability, see *Richard McBride*, 37 ECAB 748 at 753 (1986).

¹⁰ See *Ricky S. Storms*, *supra* note 6; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹¹ *K.E.*, 60 ECAB ___ (Docket No. 08-1461, issued December 17, 2008).

¹² *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009)

¹³ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

The Office advised appellant that it was her responsibility to submit substantive competent medical evidence in support of her recurrence claim. As there was no probative rationalized evidence of record, it properly denied her recurrence claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability beginning October 24, 2007 causally related to her October 22, 2004 employment injury.

ORDER

IT IS HEREBY ORDERED THAT decisions of the Office of Workers' Compensation Programs dated January 30, 2009, October 15 and April 24, 2008 are affirmed.

Issued: December 22, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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