



1992, the Office terminated appellant's wage-loss and medical benefits effective April 5, 1992 on the grounds that the medical evidence established that he was no longer experiencing residuals of the employment-related injury.

On August 18, 2003 appellant filed a claim for a May 2002 recurrence of disability (Form CA-2a). He claimed that his back, leg and arm pain had been consistent and that he was unable to lift objects.

In a June 6, 2003 disability certificate, Dr. Kempanna Sudhakar, a Board-certified internist, stated that appellant was disabled from April 2003 to the present due to right back pain.

By letter dated September 8, 2003, the Office notified appellant of the deficiencies in his recurrence claim and requested he provide additional information.

Appellant further submitted medical reports from Dr. Montague Blundon, a Board-certified orthopedic surgeon, dated May 5, 2002 through September 18, 2003. Dr. Blundon stated that appellant presented for treatment of acute trauma of the lumbar spine from a May 22, 1986 work injury. He reported appellant's complaints of pain with bending, lifting, range of motion and any type of stress. Physical examinations revealed decreased range of motion throughout the lumbar spine and muscle spasms. Previous x-rays did not show any congenital anomalies or severe degenerative arthritis. Dr. Blundon diagnosed acute lumbar strain. He further stated that appellant stopped working due to severe back pain and muscle spasms and was not able to return.

In a November 11, 2008 letter, appellant asked about the status of his case and requested the Office to issue a decision, in writing, on his claim.

By decision dated January 16, 2009, the Office denied appellant's recurrence claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability causally related to his employment injury.

### **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."<sup>1</sup> 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 he claims compensation is causally related to the accepted injury. This burden of proof requires that an employee 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

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<sup>1</sup> R.S., 58 ECAB \_\_\_ (Docket No. 06-1346, issued February 16, 2007); 20 C.F.R. § 10.5(x).

conclusion with sound medical reasoning.<sup>2</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>3</sup>

### ANALYSIS

The Office accepted that appellant sustained a lower back strain as a result of the May 22, 1986 employment injury. On April 7, 1992 it terminated appellant's wage-loss and medical benefits on the grounds that the medical evidence established that he was no longer experiencing any residuals of his employment-related injury. The issue is whether appellant established that he sustained a recurrence of disability in May 2002 causally related to his employment injury. The Board finds that he has not met his burden of proof.

In support of his recurrence claim, appellant submitted a June 6, 2003 disability certificate from Dr. Sudhakar stating that he was disabled due to right back pain. This evidence is not sufficient to establish appellant's claim as it does not address the cause of the right back pain or how this pain was related to appellant's employment injury.<sup>4</sup>

Further, appellant submitted medical notes dated May 5, 2002 through September 18, 2003 from Dr. Blundon who stated that he was treating appellant for an acute trauma of the lumbar spine caused by the May 22, 1986 employment injury. Dr. Blundon performed a physical examination, revealing decreased range of motion and muscle spasms, and diagnosed acute lumbar strain. He advised that appellant stopped working due to severe back pain and muscle spasms and was unable to return. These reports are similarly insufficient to establish appellant's recurrence claim. Dr. Blundon did not provide a rationalized medical opinion describing how appellant experienced a spontaneous condition on May 1, 2002 causally related to his May 22, 1986 employment injury. Further, he did not explain how appellant's employment injury, which occurred 16 years prior and which was found to have resolved approximately 10 years ago, was related to the current acute lumbar strain. Thus, the Board finds Dr. Blundon's reports are of diminished probative value.<sup>5</sup>

On appeal, appellant contends that the Office advised him to return to work and that his disability benefits would be reinstated if his injury presented further problems. As stated above, prior to a reinstatement of disability benefits, appellant is required to submit rationalized medical evidence establishing that he experienced a spontaneous and disabling medical condition causally related to his employment injury. The Board finds that the current medical evidence is insufficient to establish appellant's claim for a recurrence of disability.<sup>6</sup>

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<sup>2</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>3</sup> *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

<sup>4</sup> *See Willie M. Miller*, 53 ECAB 697 (2002).

<sup>5</sup> *See S.S.*, 59 ECAB \_\_\_ (Docket No. 07-579, issued January 14, 2008).

<sup>6</sup> Subsequent to the issuance of the Office decision, appellant submitted additional evidence. As this evidence was not previously submitted to the Office for consideration prior to its January 16, 2009 decision, it represents new evidence, which cannot be considered by the Board in the current appeal. *See* 20 C.F.R. 501.2(c). *See also Mary A. Ceglia*, 55 ECAB 626 (2004).

**CONCLUSION**

The Board finds that appellant did not establish that he sustained a recurrence of disability on May 1, 2002 causally related to his employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2009  
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