

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

S.H., Appellant

and

DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Washington, DC, Employer

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**Docket No. 08-1554
Issued: February 3, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 29, 2008 appellant filed a timely appeal from an April 14, 2008 decision of the Office of Workers' Compensation Programs denying her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that she sustained a recurrence of disability commencing September 1, 2008 causally related to her accepted November 7, 2006 employment injury.

FACTUAL HISTORY

On November 15, 2006 appellant, then a 32-year-old practical nurse, filed a traumatic injury (Form CA-1) claim alleging that on November 7, 2006 a coworker pulled a chair away from her while she was attempting to sit down, resulting in a back and neck injury. In a duty status report dated November 9, 2006, Dr. Vincent Okeke, a Board-certified internist, diagnosed

a buttocks contusion, finding that she experienced neck, back and left knee pain. On February 12, 2007 the Office accepted appellant's claim for a buttocks contusion.¹

On October 15, 2007 appellant filed a claim for recurrence of disability (Form CA-2a) alleging lower back pain and misalignment. She listed September 1, 2007 as the date of recurrence and claimed that she stopped work on October 1, 2007 and had not returned. Appellant argued that her recurrence was due to her original injury and that she was unable to perform her work duties.

Appellant submitted several medical notes and a duty status report dated December 17, 2007 through March 18, 2008 signed by Dr. Mark A. Booher, Board-certified in family and sports medicine. Dr. Booher recounted appellant's version of her work incident, her medical history and the treatment she received. Physical examinations revealed persistent tenderness in appellant's lower thoracic and lumbar paraspinal musculature bilaterally. Dr. Booher diagnosed chronic low back pain and symptoms consistent with disc bulging, facet joint inflammation, ligament strain and muscular imbalance.

In a January 7, 2008 medical report, Dr. Booher relayed that appellant returned to work in August 2007, attempting an eight-hour work shift; however, her normal employment activities, including "bending, squatting, pulling, occasional overhead lifting and occasionally some heaving lifting" caused tremendous pain. He placed appellant on strict work restrictions and completed a duty status report to this effect, attributing her injury to falling after her chair was pulled out. Dr. Booher further noted on March 18, 2008 that appellant was not working due to limitations with most activities.

In progress notes dated February 12, 2008, Dr. Booher stated that appellant's initial injury in November 2006 "contributes directly" to her current pain and that she had no back pain prior to her injury. He reported appellant's attempt to return to work, but that her normal employment activities caused a great deal of pain. Further, Dr. Booher indicated that appellant was not fully recovered from her initial injury and that her symptoms had worsened over the course of the year, preventing her from performing her essential job duties.

Appellant submitted a narrative statement dated January 30, 2008, noting that she returned to work in August 2007 and within one week experienced difficulty performing her duties. She claimed that she was in pain after finishing her shifts and that her injury had affected her right knee and her lower back. Appellant maintained that Dr. Booher initially placed her on work restrictions and then recommended she not work at all, pending physical therapy.

In an April 14, 2008 decision, the Office denied appellant's claim on the grounds that the medical evidence did not establish a recurrence of disability commencing September 1, 2007, resulting from the accepted work injury.

¹ Appellant filed a Form CA-7 for compensation on May 3, 2007 for the period December 23, 2006 through March 17, 2007. In a June 20, 2007 letter, the Office advised appellant that her claims for compensation for the period February 23, 2006 through March 31, 2007 were insufficient due to a lack of supporting medical evidence, allotting her 30 days within which to submit additional evidence. The Board notes that, as the Office has not issued a final decision on this claim, it is not before the Board on the current appeal. See 20 C.F.R. § 501.2(c).

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.”² An employee 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 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 conclusion with sound medical reasoning.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

ANALYSIS

The Office accepted that appellant sustained a buttocks contusion on November 7, 2006, after falling when her chair was pulled out. The issue is whether she established that she sustained a recurrence of disability on September 1, 2008 causally related to the November 7, 2006 employment injury. The Board finds that appellant has not met her burden of proof in establishing her claim.

Appellant submitted medical evidence from Dr. Booher, her treating physician, who diagnosed chronic low back pain and symptoms consistent with disc bulging, facet joint inflammation, ligament strain and muscular imbalance. In a January 7, 2008 duty status report, Dr. Booher contended that appellant’s current condition was caused by falling after her chair was pulled out. On February 12, 2008 he opined that appellant’s initial injury “contributes directly” to current pain and that she did not have pain prior to this incident. These reports do not establish appellant’s burden of proof because they lack rationalized medical opinion explaining how appellant’s current back condition is related to her employment incident. Further, the Board has held that, when a physician concludes a condition is causally related to employment because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.⁵ Thus, Dr. Booher’s contention that appellant did not have pain prior to the work incident cannot establish causation.

Moreover, in January 7 and February 12, 2008 medical reports, Dr. Booher reported that appellant attempted to work an eight-hour day and that her employment activities, including bending, squatting, pulling, occasional overhead lifting and some heavy lifting caused pain. In her January 30, 2008 statement, appellant confirmed that she returned to work in August 2007 and that she experienced pain after performing her normal work duties. A recurrence is defined as a spontaneous change in a medical condition resulting from a previous injury without an

² R. S., 58 ECAB ___ (Docket No. 06-1346, issued February 16, 2007); 20 C.F.R. § 10.5(x).

³ I.J., 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁴ See *Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁵ See *Thomas A. Petrylak*, 39 ECAB 276 (1987).

intervening injury or new exposure to the work environment that caused the illness.⁶ Here, Dr. Booher attributed appellant's pain to new employment factors occurring after she returned to work for an eight-hour day, thereby, implicating a new injury rather than a spontaneous recurrence of disability. The Board finds that appellant's current injury does not meet the definition of a recurrence of disability because the evidence shows that her condition was due to exposure to new work factors and not to the accepted November 7, 2006 employment injury.

The Board finds that appellant did not demonstrate, with rationalized medical evidence, that she experienced a spontaneous change in her medical condition resulting from the November 7, 2006 employment injury; therefore, she has not established a recurrence of disability causally related to her accepted employment injury.

CONCLUSION

The Board finds that appellant did not establish that she sustained a recurrence of disability commencing September 1, 2008 causally related to her accepted November 7, 2006 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' April 14, 2008 decision is affirmed.

Issued: February 3, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁶ *Supra* note 2.