

herniation, necessitating an L4-5 microdiscectomy on October 24, 1991.¹ The Office accepted intermittent periods of disability from 1984 through 2005. It also denied claimed recurrences of disability for intermittent periods from April 7, 2004 to January 25, 2005.²

Dr. Kent A. Campbell, an attending osteopathic physician Board-certified in family practice, submitted monthly reports from 1989 through February 2006 diagnosing failed back syndrome, lumbar sciatica and chronic lumbar pain. He ordered a January 2, 2003 lumbar magnetic resonance imaging (MRI) scan, which showed a large right-sided L2-3 disc protrusion with central canal and right lateral recess stenosis. The MRI scan also showed previously demonstrated disc herniations at L4-5 and L5-S1.

On April 30, 2006 appellant claimed wage-loss compensation for total disability from February 22 to April 7, 2006.³ In a May 12, 2006 letter, the Office advised appellant of the additional evidence needed to establish his claim for recurrence of disability. Appellant submitted medical evidence.

In a February 22, 2006 chart note, Dr. Campbell stated that appellant presented that day with severe low back pain and lumbar radiculopathy after lifting heavy steel and working in awkward positions. He found positive straight leg raising tests, diminished deep tendon reflexes in legs, restricted lumbar motion and significant spasm at the lumbosacral junction. Dr. Campbell diagnosed low back pain.

Dr. Campbell hospitalized appellant on March 3, 2006 for pain control. In a March 3, 2006 report, Dr. James J. Lu, an attending Board-certified neurosurgeon, opined that appellant's lumbar pain was likely due to degenerative disc disease at L3-4 and L4-5. He recommended further studies to determine if surgery was indicated.

Dr. Campbell submitted April 3 and 23, 2006 form reports diagnosing low back pain. In an April 14, 2006 letter, he opined that appellant aggravated his lumbar condition by working

¹ Under File No. xxxxxx949, the Office accepted an L4-5 disc herniation and sciatica sustained on October 27, 1983, with chemonucleolysis on July 25, 1984. File No. xxxxxx949 was before the Board on appeal as Docket No. 07-1526. The Board issued its decision and order on July 21, 2008, affirming the Office's denial of recurrences of disability for the periods February 15 to 18, March 18 to April 1, April 26 to May 4, 2005 and February 22 to April 7, 2006. File No. xxxxxx949 was later doubled with File No. xxxxxx656, the claim presently on appeal before the Board. The period February 22 to April 7, 2006 is at issue on both appeals. However, the case record provided to the Board on the prior appeal pertained to the 1983 injury and its sequelae, not the 1989 injury. The record now before the Board contains a separate line of decisions beginning with the 1989 injury.

² By decisions dated August 4, 2004 through September 27, 2006, the Office denied recurrences of disability for the following periods: March 17 to 23, and November 23 to December 5, 2003, December 30, 2003 to January 2, 2004, January 27 to February 6, 2004, April 27 to May 7, June 17 to 18, July 20, August 2 to 13, September 13 to 24 and November 2 to 26, 2004, December 10, 2004 to January 25, 2005, February 15 to 18, March 18 to April 1, April 26 to May 4 and August 5 to 19, September 12 to 16, September 28 to 30, November 5 to 17 and December 5 to 9, 2005, January 23 to 25 and February 22 to April 7, 2006. These periods of disability are not at issue on the present appeal.

³ On May 4, 2006 appellant filed a traumatic injury claim under File No. xxxxxx341 for a herniated L2-3 disc sustained on February 22, 2006 when he slipped and fell from a metal mail chute while grinding welds. File No. xxxxxx341 is not before the Board on the present appeal.

heavy steel, totally disabling him for work from February 22 to April 14, 2006. Dr. Campbell obtained a lumbar MRI scan on April 21, 2006 showing a central and right paracentral herniation at L2-3 encroaching the thecal sac and right L3 descending nerve root.

In June 6 and 7, 2006 letters, Dr. Campbell stated that appellant's condition worsened shortly before March 3, 2006 due to "project work" lifting heavy steel. He diagnosed failed low back syndrome, acute lumbosacral sprain, herniated nucleus pulposus and lumbar sciatica due to the 1983 and 1989 injuries, "recurrently aggravated by [appellant's] work duties."

The Office paid appellant compensation for 3.50 hours on February 23, 2006 as he attended a medical appointment. It advised appellant of the evidence needed to establish a recurrence of disability for the remainder of the claimed period.

By decision dated August 14, 2006, the Office denied appellant's claim for a recurrence of disability from February 22 to April 7, 2006. It found that Dr. Campbell's reports were insufficiently rationalized to establish a causal relationship between the May 1, 1989 injury and the claimed recurrence of disability.

In an October 19, 2006 letter, the Office referred appellant to Dr. Jack C. Tippett, a Board-certified orthopedic surgeon, for a second opinion examination, who submitted a November 6, 2006 report. Dr. Tippett commented that the February 2006 injury was "somewhat more severe than some of the other" recurrences. He opined that lumbar surgery was not medically necessary but would be advisable to enable appellant to stop taking narcotic medication. In a December 18, 2006 supplemental report, Dr. Tippett diagnosed postsurgical status, recurrent low back strain and dependence on pain medication.

Appellant requested reconsideration of the August 14, 2006 decision and submitted additional evidence. In chart notes from February 24 to April 18, 2006, Dr. Campbell held him off work due to severe pain at the lumbosacral junction and bilateral lumbar radiculopathy. He noted that appellant could not stand erect.

By decision dated May 4, 2007, the Office denied modification of the August 14, 2006 decision. It found that Dr. Campbell's additional reports were insufficient to establish causal relationship.

By decision dated May 9, 2007, the Office denied appellant's claim for recurrence of disability for the periods June 23 to August 29, 2005 and from October 17 to 24, 2005 and thereafter, including the period February 22 to April 7, 2006. It found that appellant submitted insufficient medical evidence to establish a causal relationship between the claimed recurrences of disability and the May 1, 1989 injury.

In a May 15, 2007 letter, appellant, through his attorney, requested a telephonic hearing regarding the May 9, 2007 decision.⁴ He submitted additional evidence. In chart notes from March 3 to 29, 2006, Dr. Campbell noted worsening lumbar pain with radiculopathy and diminished reflexes. In an April 13, 2006 chart note, he stated that appellant was "miserable"

⁴ Appellant did not exercise any appeal right regarding the May 4, 2007 decision.

with back pain but requested to return to work due to financial difficulties. Dr. Campbell diagnosed low back pain through January 2007.

Dr. Lu performed a right-sided L2-3 microdiscectomy on February 22, 2007. He submitted progress notes through July 2007.

The Office referred appellant for an impartial medical examination by Dr. Kenneth Smith, a Board-certified neurosurgeon, to resolve a conflict between Dr. Lu, for appellant and Dr. Tippett, for the government, regarding the need for lumbar surgery. In a May 25, 2007 report, Dr. Smith reviewed the medical record and statement of accepted facts provided by the Office. He opined that the February 22, 2006 incident caused or exacerbated a ruptured disc at L2-3 on the right which required surgery in February 2007.

The Office held a telephonic hearing on October 10, 2007. Dr. Campbell testified that on February 22, 2006 that appellant aggravated his prior lumbar injuries by lifting heavy steel and working in cramped, awkward spaces. He opined that although it could not be determined when appellant sustained the L2-3 disc herniation, his February 22, 2006 work activities “would certainly aggravate a previous injury.”

By decision dated November 30, 2007, an Office hearing representative reversed the Office’s May 9, 2007 decision in part, finding appellant established the claimed recurrences of disability from June 23, 2005 to January 25, 2006. The hearing representative affirmed the denial of appellant’s claims for recurrence of disability from February 22, 2006 onward. The hearing representative found that the February 22, 2006 incident constituted an intervening injury, breaking the legal chain of causation from the accepted May 1, 1989 lumbar injury.

LEGAL PRECEDENT

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.”⁵ When an appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. 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. Moreover, sound medical reasoning must support the physician’s conclusion.⁶ An award of compensation may not be based on surmise, conjecture or speculation or on appellant’s unsupported belief of causal relation.⁷

⁵ 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 *Philip L. Barnes*, 55 ECAB 426 (2004).

⁶ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁷ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

ANALYSIS

The Office accepted that on May 1, 1989, appellant sustained an acute lumbar sprain, intervertebral disc disorder, lumbar myelopathy and aggravation of an L5-S1 disc herniation. It previously accepted a herniated L4-5 disc sustained in 1983. Appellant claimed a recurrence of total disability from February 22 to April 7, 2006 related to these injuries. He, thus, has the burden of providing sufficient evidence, including rationalized medical evidence, to establish the causal relationship asserted.⁸

The Board finds, however, that an intervening incident negated the causal relationship between the accepted lumbar injuries and appellant's condition as of February 22, 2006. Appellant and his physicians attributed the claimed recurrence of disability to a February 22, 2006 incident where he slipped and fell from a metal mail chute. Dr. Campbell, an attending osteopathic physician Board-certified in family practice, stated in February 22, April 14, June 6 and 7, 2006 reports that appellant experienced increased lumbar pain on February 22, 2006 after working with heavy steel in awkward positions. He reiterated this opinion at an October 10, 2007 hearing, adding that the February 22, 2006 work activities may have caused or aggravated an L2-3 disc herniation. The Board notes that Dr. Tippett, a Board-certified orthopedic surgeon and second opinion physician and Dr. Smith, a Board-certified orthopedic surgeon and impartial medical examiner, both opined that appellant experienced an intervening incident in February 2006.

The exposure to new work factors on February 22, 2006 broke the legal chain of causation stemming from the accepted lumbar injuries. The circumstances did not involve a spontaneous change in the accepted conditions.⁹ For this reason, the Office's denial of the claimed recurrence of disability was proper under the law and facts of the case.¹⁰

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability from February 22 to April 7, 2006 related to accepted lumbar injuries.

⁸ *Supra* note 6.

⁹ *Bryant F. Blackmon*, 56 ECAB 752 (2005).

¹⁰ *Beverly A. Spencer*, 55 ECAB 501 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 30 and May 9, 2007 are affirmed.

Issued: June 19, 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