

Appellant underwent lumbar surgery on September 8, 2006 and was released to light duty on March 5, 2007.

On July 24, 2007 appellant filed a notice of recurrence (Form Ca-2a) alleging that he sustained a recurrence of disability commencing May 18, 2007. He stated that he was “rising from a seated position and experienced weakness in both legs, worse in the right.” Appellant noted pain in his lower back and legs and indicated that this was a natural progression of his condition.¹

In a report dated June 22, 2007, Dr. Mark Chang, an orthopedic surgeon, indicated that he had treated appellant since February 23, 2006, when he presented with a two-week history of back pain from lifting boxes at work. He stated that appellant was at work on May 17, 2007, when he got up from a seated position and noted marked weakness in both legs. Dr. Chang reported that subsequent magnetic resonance imaging scan examination showed L5-S1 discogenic injury with annular tear, but no new disc herniation and appellant had been off work since his recent injury. He further stated, “[b]ecause (appellant) had persistent symptoms postoperatively that allowed him to work only with restrictions, I consider his latest aggravation of symptoms a continuation and natural progression of his original injury.”

Dr. Chang also submitted a brief report dated August 20, 2007, reiterating that he considered appellant’s current condition to be “a continuation of his initial injury, not a new injury since his onset of aggravation of symptoms started when he simply stood which I do not feel constitutes a new injury.” He stated that work restrictions still applied as appellant waited for authorization of epidural injections.

By decision dated January 17, 2008, the Office denied the claim for a recurrence of disability. It found that Dr. Chang’s reports were not sufficient to establish the claim.

Appellant requested a hearing, which was held on May 13, 2008. He submitted hospital notes indicating that he received treatment on May 18, 2007 for back pain.

In a decision dated July 1, 2008, the Office hearing representative affirmed the January 17, 2008 decision. The hearing representative found that Dr. Chang did not provide sufficient medical explanation to establish an employment-related disability commencing May 18, 2007 from a spontaneous change in his condition.

LEGAL PRECEDENT

The Office’s regulations defines the term recurrence of disability as follows:

“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. This term also means an inability to work that takes place when a light-duty assignment made

¹ The record indicates that appellant had filed a claim for a new injury (Form CA-1) on May 18, 2007.

specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."²

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.³ To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history and supported by sound medical rationale, that the disabling condition is causally related to employment factors.⁴

ANALYSIS

Appellant filed a Form CA-2a alleging a recurrence of disability commencing May 18, 2007. He stated that he stood up and felt weakness in his legs. According to the hearing representative, appellant had filed a traumatic injury claim for a new injury on May 18, 2007 and in the denial of the claim he was advised to pursue a recurrence of disability based on the medical evidence. The claim for a traumatic injury is not before the Board on this appeal. The issue is whether appellant has established a spontaneous change in the nature and extent of the employment-related condition commencing May 18, 2007 resulting in disability for work.

Dr. Chang provided an opinion that appellant's "aggravation of symptoms" represented a natural progression of his employment-related condition. He does not, however, provide a rationalized medical opinion on the issue. There is no clear explanation as to the cause of pain and weakness on May 18, 2007 that resulted in medical treatment on that date. Dr. Chang further noted a discogenic injury with annular tear, without explaining how this represented a natural progression of the employment injury. If there was no contribution from a specific employment incident on May 18, 2007, there must be a clear explanation as to how the employment injury changed on that date resulting in disability for the light-duty job. It is appellant's burden of proof and the Board finds that he did not meet his burden of proof in this case.

² 20 C.F.R. § 10.5(x).

³ *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ *Maurissa Mack*, 50 ECAB 498 (1999).

CONCLUSION

Appellant did not establish a recurrence of disability commencing May 18, 2007.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 1 and January 17, 2008 are affirmed.

Issued: May 19, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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