

November 14, 2007 recurrence of disability. Appellant returned to full-duty work on December 27, 2007.

On July 10, 2008 appellant filed a claim for a recurrence of disability beginning that day. She noted that she continued to have pain in her hip and lower back.

In a letter dated July 16, 2008, the Office advised appellant as to the medical and factual information required to support her recurrence claim.

Appellant submitted medical reports dated July 11 to 31, 2008 from Dr. David J. Mancini, a treating physician, who saw appellant for complaints of low back and hip pain. A physical examination revealed moderately antalgic ambulation and diffuse paraspinal tenderness on palpation. Range of motion showed appellant's forward back flexion was "profoundly limited secondary to her suggested report of severe pain in her back with this attempted movement. Dr. Mancini recommended an MRI scan be performed to rule out a disc herniation. A July 21, 2008 MRI scan was negative for disc herniation.

On July 31, 2008 Dr. Mancini reviewed the MRI scan which showed no changes from a prior MRI scan performed at the time of appellant's employment injury. He concluded that appellant's condition was not employment related as "these current persistent back pains have developed gradually in the recent time period unrelated to any more recent injury."

By decision dated September 10, 2008, the Office denied appellant's claim for a recurrence of disability beginning July 10, 2008.

On September 23, 2008 appellant requested reconsideration. In a September 4, 2008 report, Dr. John J. McPhilemy, a treating osteopath, who diagnosed left sacroiliac somatic dysfunction based upon his review of the medical evidence, physical examination and history of the employment injury. Physical examination revealed lumbar spine paravertebral muscle tenderness, restricted lumbar spine flexion and extension, left sacroiliac joint tenderness, and to a lesser extent, left sciatic notch tenderness." Dr. McPhilemy indicated that appellant was currently not working and recommended "a little more aggressive therapy" with possible manipulative therapy by a chiropractor or osteopathic physician.

In a September 11, 2008 note, Dr. Maria Milcu, a Board-certified pathologist, noted that appellant had been under her care from July 28, 2008 until the present time for lower back pain.

By decision dated December 19, 2008, the Office denied modification of the September 10, 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.¹

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.²

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.³ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.⁴ 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.⁵ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁶

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁷ 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.⁸ 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.⁹

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

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

³ *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

⁴ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁵ *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).

⁶ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

⁷ *See Ricky S. Storms*, *supra* note 5; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁸ For the importance of bridging information in establishing a claim for a recurrence of disability, *see Richard McBride*, 37 ECAB 748 at 753 (1986).

⁹ *See Ricky S. Storms*, *supra* note 5; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

ANALYSIS

The Office accepted that appellant sustained a right ankle sprain and left hip contusion in the performance of duty on August 17, 2007 and a November 14, 2007 recurrence of disability. Appellant returned to full duty on December 27, 2007. She filed a recurrence of disability claim on July 10, 2008 alleging disability that day. However, appellant did not submit sufficient medical evidence to establish that her disability on or after that date was causally related to her accepted injury.

On July 31, 2008 Dr. Mancini reviewed a recent MRI scan and noted that there was no change from prior studies. He concluded that appellant's condition was not employment related as "these current persistent back pains have developed gradually in the recent time period unrelated to any more recent injury." As Dr. Mancini found that appellant's disability was not employment related, his report is insufficient to establish her claim.

On September 11, 2008 Dr. Milcu reported only that appellant had been under her care since July 28, 2008 due to low back pain. She did not address whether appellant was disabled commencing July 10, 2008 or how any such disability was due to the August 17, 2007 injury. A physician's mere diagnosis of pain without supporting medical rationale does not constitute a basis for payment of compensation.¹⁰ Dr. Milea does not establish that appellant had any disability beginning July 10, 2008 causally related to her accepted August 17, 2007 employment injury.

On September 4, 2008 Dr. McPhilemy provided findings on physical examination and reviewed the history of the employment injury and medical reports. He diagnosed left sacroiliac somatic dysfunction. Dr. McPhilemy did not, however, address causal relationship on the issue of appellant's disability as of July 10, 2008.

On appeal appellant contends that her disability is related to the August 17, 2007 employment injury as she had no other injuries and was in pain at the time she returned to work. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his or her claimed injury and his or her employment.¹¹ The record in this case does not contain sufficient medical evidence establishing that she was disabled as of that date due to her accepted injury. There is no medical report containing a rationalized medical opinion that appellant's claimed recurrence of disability was caused by the accepted injury.¹² She did not submit sufficient medical evidence to meet her burden of proof to establish a recurrence of disability. The Office properly denied her claim.¹³

¹⁰ *Robert Broome*, 55 ECAB 339 (2004) (the Board has held that a diagnosis of "pain" does not constitute the basis for the payment of compensation).

¹¹ *S.S.*, 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008); *J.M.*, 58 ECAB ____ (Docket No. 06-2094, issued January 30, 2007); *Donald W. Long*, 41 ECAB 142 (1989).

¹² *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹³ *Tammy L. Medley*, 55 ECAB 182 (2003).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability beginning July 10, 2008 causally related to the August 17, 2007 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 19 and September 10, 2008 are affirmed.

Issued: November 19, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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