

remaining in the truck.¹ Appellant stopped work on May 26, 2004 and returned to light-duty work for the employing establishment on June 28, 2004.

On February 13, 2005 Dr. Joe Ellis Wheeler, an attending Board-certified neurosurgeon, performed a hemilaminectomy at L1-2 with discectomy, foraminotomy, osteophyctectomy and decompression of nerve roots, reinforcement of existing fusion and removal of instrumentation at L5-S1, transforaminal lumbar interbody fusion with instrumentation at L1-2 and lateral transverse process arthrodesis at L1-2. These procedures were authorized by the Office. Appellant returned to light-duty work for the employment establishment on August 14, 2005. On March 30, 2007 the Office granted appellant a schedule award for a nine percent permanent impairment of his left leg.

In early to mid 2007, appellant was reporting to his attending physicians that he was experiencing pain in his low back and pain, numbness and tingling in his legs. He stopped work on October 22, 2007 and on December 2, 2007 he filed a claim (Form CA-2a) alleging that he sustained a recurrence of total disability on October 22, 2007 due to his May 25, 2004 employment injury. Appellant noted that beginning in April 2007 he started to experience severe low back pain and episodes of his leg giving away, causing him to fall.

On December 27, 2007 the Office requested that appellant provide additional factual and medical evidence in support of his claim.

In an October 15, 2007 report, Dr. David Graybill, an attending osteopath and Board-certified orthopedic surgeon, noted that appellant reported having an “acute onset of pain.” He detailed physical findings on examination (including low back pain without neurological deficits), gave appellant a trigger-point injection, and noted that he “will return to work.” On November 1, 2007 Dr. Graybill indicated that appellant reported acute low back pain which caused him to fall. He found that appellant had very limited range of back motion with significant deconditioning, but indicated that he had “no new neurological deficits of the lower extremity.” Dr. Graybill stated that he would “initiate off work to go through this rehab[ilitation] program with intent of restoring his daily function.” He did not give any diagnosis of appellant’s low back condition.

On November 26, 2007 Dr. Graybill noted that appellant presented with “reinjury of his back as well as a new injury to his left knee” due to a fall that occurred the previous day. He indicated that appellant was seen in the emergency room following the fall, and the emergency room evaluation revealed that the claimant had “significant degenerative joint disease in his knee as well as loose bodies.” Dr. Graybill stated, “He denies any new pain in his back, but just acute

¹ Appellant had several previous work-related injuries to his back. The Office accepted that on January 5, 1996 he sustained cervical and lumbar strains and a herniated L4-5 disc due to a vehicular accident at work. On September 19, 1996 appellant underwent decompression and fusion surgery at L3-4 and L4-5 which was authorized by the Office. An implanted bone growth stimulator was removed on May 9, 1997. Appellant was involved in another work-related vehicular accident on December 19, 1997 and the Office accepted that he sustained cervical and lumbar strains. On October 4, 2000 he sustained lumbar and cervical sprains and spinal stenosis due to a fall at work. On October 2, 2001 appellant underwent authorized decompression and fusion surgery at L2-3. The files for these injuries have been combined with the file for the present claim. Appellant also sustained a work-related cervical injury in 1994 and underwent authorized cervical surgeries in 1994, 1999 and 2001.

low back pain.” He diagnosed failed back syndrome, chronic pain syndrome, and acute injury to the left knee.

In a January 10, 2008 form report, Dr. Graybill listed May 25, 2004 as the date of injury, diagnosed failed back syndrome due to the injury and indicated that appellant could not work in any capacity. In a January 11, 2008 form report, an attending internist with an illegible signature listed May 25, 2004 as the date of injury, diagnosed status post cervical and lumbar fusion due to the injury and indicated that appellant could not work in any capacity.

In a February 8, 2008 decision, the Office denied appellant’s claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability on or after October 22, 2007 due to his May 25, 2004 employment injury.

Appellant requested a telephone hearing with an Office hearing representative. At the July 14, 2008 hearing, he testified that beginning in April 2007 if he stood up from a sitting position or if he was standing and went to take a step, his left leg would lose feeling and give way and he would unexpectedly fall. Appellant indicated that his physician thought that perhaps scar tissue was blocking or pinching the nerves in his low back and he was taken off work on October 22, 2007 because he was falling every day. He submitted additional medical reports which addressed the treatment of his back condition in early to mid 2008.

In a January 8, 2009 decision, the Office hearing representative affirmed the Office’s January 8, 2009 decision.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.²

ANALYSIS

The Office accepted that on May 25, 2004 appellant sustained aggravation of a displaced lumbar disc without myelopathy when he stepped out of a truck. On February 13, 2005 he underwent authorized back surgery in the form of a hemilaminectomy at L1-2 with discectomy, foraminotomy, osteophyctectomy and decompression of nerve roots, reinforcement of existing fusion and removal of instrumentation at L5-S1, transforaminal lumbar interbody fusion with instrumentation at L1-2 and lateral transverse process arthrodesis at L1-2.³ Appellant returned to

² *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ Appellant sustained work-related injuries to his back in 1996, 1997 and 2000 and had authorized back surgeries in 1996, 1997 and 2001 between the L2-3 and L4-5 levels.

light-duty work for the employing establishment on August 14, 2005. He stopped work on October 22, 2007 and alleged that he sustained a recurrence of total disability on October 22, 2007 due to his May 25, 2004 employment injury.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability on or after October 22, 2007 due to his May 25, 2004 employment injury.

Appellant submitted an October 15, 2007 report from Dr. Graybill, an attending osteopath and Board-certified orthopedic surgeon, which noted that appellant reported having an “acute onset of pain.” On November 1, 2007 Dr. Graybill indicated that his patient reported acute low back pain which caused him to fall. He found that appellant had very limited range of back motion with significant deconditioning, but indicated that he had “no new neurological deficits of the lower extremity.” Dr. Graybill stated that he would “initiate off work to go through this rehab[ilitation] program with intent of restoring his daily function.” On November 26, 2007 he noted that appellant presented with “reinjury of his back as well as a new injury to his left knee” due to a fall that occurred the previous day. Dr. Graybill indicated that appellant was seen in the emergency room following the fall, and the emergency room evaluation revealed that the claimant had “significant degenerative joint disease in his knee as well as loose bodies.” He diagnosed failed back syndrome, chronic pain syndrome and acute injury to the left knee.

These reports, however, are of limited probative value on the relevant issue of the present case in that they do not contain an opinion on causal relationship.⁴ Although Dr. Graybill suggested in his November 1, 2007 report that appellant was totally disabled, he did not provide any indication of the cause of this ostensible disability. In his November 26, 2007 report, he indicated that appellant fell on November 25, 2007 which reinjured his back and caused a new injury to his left knee.⁵ Dr. Graybill did not provide any opinion in these reports that appellant sustained a recurrence of total disability on or after October 22, 2007 due to his May 25, 2004 employment injury. He made no mention of the May 25, 2004 injury and did not describe a spontaneous worsening of a work-related condition.

In a January 10, 2008 form report, Dr. Graybill listed May 25, 2004 as the date of injury, diagnosed failed back syndrome due to the injury and indicated that appellant could not work in any capacity. In a January 11, 2008 form report, an attending internist with an illegible signature listed May 25, 2004 as the date of injury, diagnosed status post cervical and lumbar fusion due to the injury and indicated that appellant could not work in any capacity. However, neither Dr. Graybill nor the internist provided a clear indication that appellant’s disability was related to the May 25, 2004 employment injury. These brief reports do not contain any description of the May 25, 2004 employment injury or any findings on examination. They do not constitute rationalized medical reports showing that appellant sustained a work-related recurrence of total

⁴ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

⁵ Appellant did not provide any further details about this fall.

disability on or after October 22, 2007. Appellant submitted additional medical reports which addressed the treatment of his back condition in early to mid 2008, but they provide no indication that he sustained a recurrence of total disability as alleged.

For these reasons, appellant did not show a change in his injury-related condition on or after October 22, 2007 such that he was rendered totally disabled from work. He also did not allege or establish a change in the nature and extent of his light-duty job requirements. Therefore the Office properly denied appellant's recurrence of disability claim.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability on or after October 22, 2007 due to his May 25, 2004 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' January 8, 2009 decision is affirmed.

Issued: November 6, 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