

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

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**P.A., Appellant**

**and**

**DEPARTMENT OF THE ARMY, FORT  
MONROE, Fort Monroe, VA, Employer**

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**Docket No. 09-903  
Issued: November 3, 2009**

*Appearances:*

*Jonathan H. Walker, Esq., for the appellant*

*No appearance, for the Director*

Oral Argument September 16, 2009

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge

MICHAEL E. GROOM, Alternate Judge

JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 23, 2009 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated April 21 and December 31, 2008 denying his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant sustained a recurrence of disability on October 4, 2005 causally related to his accepted lumbar sprain and strain.

**FACTUAL HISTORY**

On August 16, 2001 appellant, then a 34-year-old firefighter, filed a traumatic injury claim for a back injury on July 10, 2001 when another employee ran into him during mandatory physical training. The Office accepted his claim for a lumbar sprain and strain.

On July 18, 2001 Dr. Boyd W. Haynes, III, an attending Board-certified orthopedic surgeon, stated that appellant began experiencing low back pain after another employee ran into him during a basketball game on July 10, 2001. Findings on physical examination included

normal knee and ankle jerks and normal sensation to light touch in all dermatomal patterns. Motor strength was not tested due to pain. Straight leg raising was negative. There was some pain in the hamstring muscles. Dr. Haynes' assessment was mechanical low back pain. On August 9, 2001 he noted that a magnetic resonance imaging (MRI) scan did not show any herniated discs. Dr. Haynes released appellant to light-duty work with restrictions. On September 18, 2001 he released him to regular work.

On October 30, 2003 appellant was placed on light duty by a Dr. Leddy because of hyperthyroidism. He returned to full duty on March 12, 2005 following surgery to rule out cancer.

In an October 4, 2005 report, Dr. B. Joe Ordonez, a Board-certified neurosurgeon, reviewed the medical history and provided findings on physical examination. He indicated that appellant had experienced chronic lower back pain radiating to his groin and right thigh since his July 10, 2001 accepted lumbar sprain and strain with intermittent acute exacerbations. Appellant's pain was worsened by prolonged sitting, bending or twisting. He could not walk farther than two blocks without worsening back pain. Findings on physical examination included decreased hip flexors and decreased quadriceps muscle extension secondary to low back pain. Dr. Ordonez indicated that his review of a 2001 MRI scan was limited as it was on a compact disc (CD) and the images were quite small. However, there appeared to be multiple areas of degenerative disc changes from L2 to L4-5. Dr. Ordonez recommended a new MRI scan of appellant's lumbar spine and flexion-extension studies.

A February 1, 2006 MRI scan report revealed several levels of mild to moderate disc and facet pathology, most prominent at L3-4 where the findings appeared chronic. On February 2, 2006 Dr. Ordonez noted that appellant had been doing fairly well but noticed a worsening of his lower back with any increases in activity. He indicated that an MRI scan revealed a herniated disc at L3-4.

On February 15, 2006 Dr. Bonnie J. Nock, a physiatrist, reviewed the medical history and provided findings on physical examination. She diagnosed chronic low back pain since appellant's July 10, 2001 work-related lumbar strain and sprain, annular tears at L3-4 and L4-5, right leg pain consistent with right L3 foraminal stenosis, groin pain consistent with sacroiliitis and sacral dysfunction, asymptomatic foraminal stenosis on the left at L4 and Graves' disease. Dr. Nock recommended conservative treatment consisting of an epidural injection, medication and physical therapy.

On March 8, 2006 appellant filed a claim for a recurrence of disability commencing October 4, 2005 causally related to his accepted lumbar sprain and strain. The Office asked appellant to provide additional information, including medical records relating to treatment for his accepted lumbar sprain and strain since September 18, 2001, the date that he was released to regular duty, and a medical report with a current diagnosis and a rationalized explanation as to how appellant's back condition on October 4, 2005 was causally related to his July 10, 2001 employment injury.

On July 5, 2006 Dr. Ordonez noted that appellant reported no improvement in his back and lower right extremity pain. He referred him for advanced pain management treatment.

By decision dated June 7, 2007, the Office denied appellant's claim for a recurrence of disability, finding that the medical evidence failed to establish that his disability on October 4, 2005 was causally related to the July 10, 2001 accepted lumbar sprain and strain.

On January 22, 2008 appellant requested reconsideration and provided additional evidence. A July 23, 2007 MRI scan report indicated degenerative changes producing mild spinal stenosis at L3-4 and L4-5 with some noncritical foraminal narrowing and discogenic marrow edema at some levels indicating active degenerative disc disease. In reports dated July 5, August 8 and October 25, 2007, Dr. Ordonez indicated that appellant had progressively worsening lower back pain with radiation primarily into his right lower extremity. An MRI scan revealed a disc protrusion at L3-4 and L4-5. Flexion-extension studies revealed retrolisthesis at L3 and L4 and fish mouthing (anterior widening of the disc space) at L4-5. Dr. Ordonez recommended a surgical lumbar fusion following a worsening of appellant's symptoms despite adequate conservative measures. In a January 16, 2008 letter, he opined, based on appellant's history, that there was a causal relationship between his 2001 employment injury and his subsequent back problems. Dr. Ordonez stated that appellant had a continuity of difficulties with his back leading to the current proposed surgical intervention.

By decision dated January 25, 2008, the Office denied authorization for a lumbar spine fusion at L3-S1 on the grounds that the medical evidence did not establish causal relationship between the proposed surgery and his July 10, 2001 accepted lumbar sprain and strain.

By decision dated April 21, 2008, the Office denied modification of the June 7, 2007 decision.

On October 8, 2008 appellant requested reconsideration. In an April 21, 2008 operative report, Dr. Ordonez described appellant's back surgery on that date to relieve his lumbar radiculopathy and mechanical back pain, including L3 through S1 laminectomy and bilateral facetectomies and foraminotomies. In a September 3, 2008 affidavit, he noted that he had treated appellant since 2005 for his back condition. Dr. Ordonez had reviewed medical records and imaging studies and observed the pathological presentation of appellant's lumbar spine while performing back surgery on April 21, 2008. He found his physical presentation and subjective history to be consistent with findings on physical examination. Dr. Ordonez noted that appellant's symptoms dissipated through conservative treatment after his July 10, 2001 back injury but did not completely resolve, according to the history he provided, including his report of symptoms over the course of time and by his pathological presentation on imaging studies and at surgery. He stated that appellant's back symptoms since 2001 waxed and waned with no complete resolution and no intervening injury. The 2006 MRI scan revealed multilevel disc pathology that had advanced since 2001 and which Dr. Ordonez attributed in principal part to the 2001 back strain. Dr. Ordonez opined that, based on the history of trauma, the objective medical evidence and physical and surgical findings, the only reasonable medical conclusion was that the 2001 back injury was the precipitating trauma that caused appellant's underlying condition to become symptomatic and accelerated the progression of his disc pathology. He opined that appellant's disability and need for surgery in 2008 was the natural and unavoidable result of the July 10, 2001 accepted back strain.

By decision dated December 31, 2008, the Office denied modification of the April 21, 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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”<sup>1</sup> 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 he or 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 reasoning.<sup>2</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>3</sup>

## ANALYSIS

Appellant has the burden to provide medical evidence establishing that he sustained a recurrence of disability on October 4, 2005 causally related to his July 10, 2001 accepted lumbar sprain and strain.

Dr. Haynes treated appellant following his July 10, 2001 employment-related lumbar sprain and strain. On August 9, 2001 he noted that an MRI scan did not reveal any herniated discs. On September 18, 2001 Dr. Haynes released appellant to return to regular work. There are no medical reports of record between September 18, 2001 and October 4, 2005. There is no record of bridging symptoms from the 2001 injury to the claimed 2005 recurrence of disability. The record shows that appellant was on light duty beginning October 30, 2003 due to a thyroid condition but he returned to full duty on March 12, 2005 following surgery. Medical evidence of bridging symptoms between the recurrence and the accepted injury support the physician’s conclusion regarding causal relationship.<sup>4</sup>

On October 4, 2005 Dr. Ordonez indicated that appellant had experienced chronic lower back pain radiating to his groin and right thigh since his July 10, 2001 accepted lumbar sprain and strain with intermittent acute exacerbations. Appellant’s pain was worsened by prolonged sitting, bending or twisting. Findings on physical examination included decreased hip flexors and decreased quadriceps muscle extension secondary to low back pain. Dr. Ordonez indicated that his review of a 2001 MRI scan was limited secondary to it being on a CD and the images being quite small. However, there appeared to be multiple areas of degenerative disc changes from L2 to L4-5. On February 2, 2006 Dr. Ordonez noted that an MRI scan revealed a herniated disc at L3-4. On July 5, 2006 he noted that appellant reported no improvement in his back and lower right extremity pain. In reports dated July through October 2007, Dr. Ordonez indicated that appellant had progressively worsening lower back pain with radiation primarily into his right

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<sup>1</sup> R.S., 58 ECAB \_\_\_ (Docket No. 06-1346, issued February 16, 2007); 20 C.F.R. § 10.5(x).

<sup>2</sup> I.J., 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>3</sup> See *Ronald C. Hand*, 49 ECAB 113 (1957); see also *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

<sup>4</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

lower extremity. He recommended surgery. In a September 3, 2008 affidavit, Dr. Ordonez noted that he had reviewed medical records and imaging studies. He observed the pathological presentation of appellant's lumbar spine while performing back surgery on April 21, 2008. Dr. Ordonez found appellant's physical presentation and subjective history to be consistent with findings on physical examination. His symptoms dissipated through conservative treatment after the July 10, 2001 lumbar sprain and strain but did not completely resolve, according to the history appellant provided, including his report of symptoms over the course of time and by his pathological presentation on imaging studies and at surgery. There was no intervening injury. Dr. Ordonez opined that, based on appellant's history of trauma, the objective medical evidence and physical and surgical findings, the only reasonable medical conclusion was that the 2001 employment-related back strain injury was the precipitating trauma that caused appellant's underlying condition to become symptomatic and accelerated the progression of his disc pathology. He opined that appellant's disability and need for surgery in 2008 was the natural and unavoidable result of the July 10, 2001 accepted back strain.

The Board finds that the reports of Dr. Ordonez are not sufficient to establish that appellant sustained a recurrence of disability on October 4, 2005 causally related to his accepted July 10, 2001 lumbar sprain and strain. Dr. Ordonez did not note in his reports that appellant was on light duty for a year and a half between October 2003 and March 2005 due to a thyroid condition. He did not address whether returning to full duty after a year and a half of light duty had any effect on appellant's back condition. Dr. Ordonez's opinion regarding causal relationship is not based on a complete and accurate factual and medical background. He did not initially examine appellant until more than four years after the accepted July 10, 2001 employment-related lumbar sprain and strain. Dr. Ordonez did not provide a detailed and well-rationalized report explaining how the 2001 lumbar sprain and strain soft tissue injury resulted in the degeneration of the lumbar spine noted in 2005. He noted that the 2001 MRI scan that he reviewed was of poor quality. Therefore, it was difficult for Dr. Ordonez to compare the progression of appellant's lumbar spine pathology between 2001 and 2005. On August 9, 2001 Dr. Haynes noted that an MRI scan did not reveal any herniated discs. Because Dr. Ordonez indicated that the 2001 MRI scan that he reviewed on disc was of poor quality, his opinion that appellant had underlying spine pathology in 2001 which was accelerated by the lumbar sprain and strain, is of diminished probative value. Due to these deficiencies, the reports of Dr. Ordonez are not sufficient to establish that appellant sustained a recurrence of disability on October 4, 2005 causally related to his July 10, 2001 employment-related lumbar sprain and strain.

On February 15, 2006 Dr. Nock diagnosed chronic low back pain since appellant's July 10, 2001 work-related lumbar strain and sprain, annular tears at L3-4 and L4-5, right leg pain consistent with right L3 foraminal stenosis, groin pain consistent with sacroiliitis and sacral dysfunction and asymptomatic foraminal stenosis on the left at L4. However, she did not express a rationalized opinion as to the cause of these lumbar spine conditions. The only accepted condition in 2001 was a lumbar sprain and strain. Dr. Nock did not explain how the lumbar spine pathology in 2006 was causally related to the July 10, 2001 employment injury. Therefore, her report is not sufficient to establish that appellant sustained a work-related recurrence of disability on October 4, 2005.

On appeal, appellant, through his attorney, argues that the July 10, 2001 employment-related lumbar sprain and strain resulted in prolonged chronic pain requiring surgery. Although

there are no medical reports of record regarding his back condition between his return to regular work on September 18, 2002 and his claimed recurrence of disability on October 4, 2005, he argues that his accepted lumbar sprain and strain never resolved. These arguments have been considered and found to be without merit. Appellant further argues that the Office should have obtained medical records from the employing establishment. The Office noted the claimant's burden to provide evidence establishing his claim. Appellant's arguments on appeal are without merit.

**CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he had a recurrence of disability on October 4, 2005 causally related to his July 10, 2001 accepted lumbar sprain and strain.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 31 and April 21, 2008 are affirmed.

Issued: November 3, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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