United States Department of Labor
Employees' Compensation Appeals Board

E.R., Appellant	)	
and	)	**Docket No. 09-943**
	)	**Issued: November 12, 2009**
U.S. POSTAL SERVICE, POST OFFICE, CADMAN PLAZA EAST, Brooklyn, NY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 25, 2009 appellant filed a timely appeal of the March 3, 2008 merit decision of the Office of Workers' Compensation Programs. 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 has established a recurrence of total disability commencing June 1, 2006 causally related to his accepted employment-related injury.

Appellant argued that he continues to suffer from the employment injury but has been unable to find a physician.

FACTUAL HISTORY

The Office accepted that on March 27, 1978 appellant, then a 31-year-old special delivery messenger, sustained trauma to the neck as a result of a motor vehicle accident.

On July 26, 2007 appellant filed a claim alleging that he sustained a recurrence of disability in June 2006. He claimed that, following his March 27, 1978 employment injury, he returned to his regular work duties, but was terminated four days later. At the time appellant returned to work, he claimed his nerves were still damaged, which grew progressively worse. Appellant claimed he still had pain in his neck, back and left hip.

By letter dated January 4, 2008, the Office advised appellant of the factual and medical evidence necessary to establish recurrence of total disability.

Undated reports of Dr. Alfred D. Kataya, a chiropractor, reviewed the history of appellant's March 27, 1978 employment injury. He diagnosed lumbar and cervical sprain/strain, lumbar and cervical radiculopathy and subluxation of the cervical and lumbar vertebrae, but found that the diagnosed conditions were not caused or aggravated by an employment activity. Dr. Kataya advised that appellant was totally disabled from June 27, 2006 to August 23, 2007, but could return to light-duty work on August 30, 2008. In a July 16, 2007 request form, appellant sought authorization for physical therapy and Dr. Kataya reiterated his prior diagnoses.

In a January 17, 2008 letter, appellant stated that he did not know what happened on June 1, 2006 but that his condition occurred over a period of time. It had not improved since the date appellant returned to work at the employing establishment. He was dismissed for "calling off" injured.

By decision dated March 3, 2008, the Office denied appellant's recurrence of disability claim. It found the medical evidence insufficient to establish that appellant was totally disabled commencing June 1, 2006 due to his accepted March 27, 1978 employment-related injury.

LEGAL PRECEDENT

A recurrence of disability is the 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, which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[1]

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 he claims compensation, is causally related to the accepted employment injury.[2] Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal

[1] 20 C.F.R. § 10.5(x).

[2] *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

relationship between his recurrence of disability and his employment injury.[3] 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.[4] Moreover, the physician's conclusion must be supported by sound medical reasoning.[5]

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[6] 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.[7] 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.[8]

ANALYSIS

The Office accepted that appellant sustained trauma to the neck while in the performance of duty on March 27, 1978. Appellant returned to his regular duties, but was fired by the employing establishment. He claimed a recurrence of disability commencing June 1, 2006. The Board finds that appellant has failed to submit sufficient medical evidence to establish employment-related disability for the period claimed due to his accepted injury.

The reports of Dr. Kataya are of no probative value. Section 8101(2) of the Federal Employees' Compensation Act provides that a chiropractor is considered a physician only to the extent that his reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[9] Although Dr. Kataya diagnosed subluxation of the cervical and lumbar vertebrae, there is no evidence of record that he based his diagnosis on any x-ray. The Board finds that he is not a physician as defined under the Act and his reports have no probative medical value.[10]

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

[4] *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

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

[6] *See Ricky S. Storms, supra* note 4; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

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

[8] *See Ricky S. Storms, supra* note 4; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

[9] 5 U.S.C. § 8101(2); *see also* 20 C.F.R. § 10.311.

[10] *See Michelle Salazar*, 54 ECAB 523 (2003).

As appellant has failed to submit rationalized medical evidence establishing that his alleged recurrence of disability commencing June 1, 2006 resulted from the effects of his employment-related neck trauma, he has not met his burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a recurrence of disability commencing June 1, 2006 causally related to his accepted employment-related injury.

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 12, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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