

magnetic resonance imaging (MRI) scan on August 26, 2003 that was interpreted by Dr. C. Phillip Blalock, a radiologist, as evincing no disc herniation or spinal stenosis.

In an October 9, 2003 report, Dr. Paul Mazzeo, a Board-certified neurosurgeon, indicated that appellant had low back strain with intermittent left lumbar radicular symptomatology. He noted that the radiation to the proximal anterior leg actually suggests an upper lumbar disturbance. Dr. Mazzeo noted that his MRI scan failed to demonstrate any structural pathology and he suggested electromyogram/nerve conduction (EMG/ NC) study.

In a November 29, 2005 note, Dr. Alex Vandergrift, a Board-certified neurosurgeon, listed his impressions as mild facet arthrosis that may benefit from surgical repair. In his history, he indicated that appellant stated he has had pain for three years or so ever since he hurt his back on the job. Appellant also noted that he may have hurt his back in 1977. Dr Vandergrift indicated that he will consider surgery.

In notes dated from June 16, 2006 through March 30, 2007, Dr. Dan Ripley, a Board-certified family practitioner, assessed appellant with degenerative disc disease, low back pain, neuritis, hypertension and hyperlipidemia.

In a February 20, 2007 note, Dr. William T. Warmath, a Board-certified neurosurgeon, indicated that appellant works 10 hours a day as a tiler. He noted symptoms of back and lower extremity pain, which was supported by his demonstrated acquired spinal stenosis. Dr. Warmath noted that they will schedule a decompression.

Appellant submitted an April 16, 2007 postoperative report wherein Dr. Tanya Jones, a Board-certified neurosurgeon, and Dr. Warmath noted that on that date he underwent a (1) L4-5 partial laminectomy; (2) decompression of nerve roots at L4 and L5; (3) discectomy at L4-5; (4) posterior lumbar interbody fusion at L4-5; and (5) instrumentation L4 to L5. In a May 1, 2007 follow-up note with Dr. Jones, appellant stated that he is walking better.

In a May 2, 2007 note, Dr. Jones indicated that appellant was seen at the Veterans Administration Medical Center on April 16, 2007 and would be out of work for four to six months.

On June 5, 2007 appellant filed a recurrence claim alleging a recurrence of his accepted condition in January 2006.

In a July 12, 2007 note on letterhead from the employing establishment, James J. Kamppi, appellant's supervisor, noted that appellant continued to receive medical treatment after his June 12, 2003 injury. He also noted that appellant continued to work in pain, noted by his uneven walking and limp. Mr. Kamppi stated his belief that appellant still suffered from the original injury. He noted that appellant would occasionally use a cane to aid his mobility, but the only work he refused to do was operate a small jack hammer.

In a decision dated July 25, 2007, the Office denied appellant's claim for recurrence as it found that the evidence was not sufficient to establish that he sustained a recurrent disability.

In a July 18, 2007 note, Dr. Ripley assessed appellant with low back pain, degenerative disc disease, hypertension and hyperlipidemia. In the history section of his report, he indicated that appellant had a long-standing history of chronic low back pain secondary to a herniated disc, which occurred as a result of an injury on the job in 2003.

In a July 30, 2007 report, Dr. Ripley indicated that appellant is a patient of his who initially injured his back while lifting heavy concrete cylinders on the job in 2003. He noted a long and complicated treatment history including evaluations by orthopedic spine surgeons, neurologists and other specialists. As appellant failed to respond to conservative therapy, in April 2007 he underwent lumbar discectomy and fusion to help resolve his back pain with radiculopathy. He noted that he was recovering well from surgery and had improved from a symptomatic standpoint. Dr. Ripley recommended that appellant remain out of work until released by him.

On August 17, 2007 appellant requested an oral hearing before an Office hearing representative.

In support of his claim for recurrence, appellant submitted a July 16, 2003 note from a Dr. Jeffrey Reuham, which indicated that he was returning him to work as of July 18, 2003. Dr. Reuham noted that appellant occasionally still had back pain and lower extremity radicular pain and that he was not back to his preinjury level.

In a letter received on August 24, 2007, Dr. Timothy Monroe, a neurosurgeon, indicated that appellant had an MRI scan in February 2007, which showed degenerative changes centered at L4-5 with severe neural foraminal narrowing and moderate central canal stenosis.

In an August 24, 2007 note, Dr. Ripley indicated that appellant was his patient and had a long-standing history of back problems from a work injury in 2003. Appellant noted that he recently underwent spine surgery and has been cleared to return to work with restrictions per his orthopedic spine surgeon. Dr. Ripley would recommend light duty for two months.

At a hearing held on June 18, 2008, appellant described how the injury occurred in 2003, he indicated that he did not return to full duty, but did return to work and the supervisor, Mr. Kamppi, unofficially worked around his limitations. He noted that he had surgery on April 16, 2007 because his back had progressively worsened.

In a June 30, 2008 note, Dr. Ripley stated, "I can say with a certain degree of medical certainty that the back injury that necessitated this surgery in April 2007 was related to the incident that occurred on the job in 2003."

Appellant also submitted a note by Mrs. Cynthia Oliver, indicating that he worked in a lot of pain until he decided to have surgery in 2007.

By decision dated September 2, 2008, the hearing representative affirmed the Office's decision as she found that appellant had not established a recurrence of disability causally related to his accepted injury.

LEGAL PRECEDENT

The Office's implementing regulations define a recurrence of disability as 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.¹

When a claimant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. 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. Moreover, sound medical reasoning must support the physician's conclusion.² An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.³

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability. The Office accepted appellant's claim that on June 12, 2003, he sustained lumbago as a result of a work-related injury. Appellant returned to work on July 18, 2003. An MRI scan taken on August 26, 2003 was interpreted as evincing no disc herniation or spinal stenosis. There is a record showing that appellant had continued treatment and continued complaints of back pain. An MRI scan taken in February 2007 showed degenerative changes centered at L4-5 with severe neural foraminal narrowing and moderate central canal stenosis. On April 16, 2007 appellant had surgery at which time he underwent a L4-5 partial laminectomy, decompression of nerve roots at L4-5, discectomy at L4-5, posterior lumbar interbody fusion at L4-5 and instrumentation L4 to L5. Dr. Ripley opined that this surgery was necessitated by his on-the-job injury in 2003; however, he did not provide evidence in support of this conclusion. He did not explain how the back surgery in 2007 was causally related to the employment injury in 2003, especially considering the negative MRI scan in August 2003, and appellant's return to work. While Dr. Ripley stated that he believes there is a relationship between the accepted work injury and the April 16, 2007 surgery and resultant disability, he provides no rationale for this opinion. None of the other physicians indicate that appellant had a recurrence of his June 12, 2003 employment injury in January 2006. As a recurrence must be established by medical evidence,⁴ the notes by Mr. Kamppi and Mrs. Oliver did not satisfy appellant's burden of proof as opinions of lay persons are not competent to render medical opinion.⁵

¹ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

² *Ricky S. Storms*, 52 ECAB 349 (2001).

³ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁴ *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁵ See *James A. Long*, 40 ECAB 538 (1989).

CONCLUSION

The Board finds that appellant has not established a recurrence of disability.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 2, 2008 is affirmed.

Issued: October 22, 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