United States Department of Labor
Employees' Compensation Appeals Board

R.L., Appellant	)	
and	)	**Docket No. 09-1473**
	)	**Issued: April 20, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Dublin, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 26, 2009 appellant filed a timely appeal of decisions dated May 5, 2009 and August 18, 2008 from the Office of Workers' Compensation Programs 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 beginning on June 16, 2006 causally related to his accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board. In a September 21, 2007 decision, the Board set aside the Office's December 8, 2006 decision and remanded the case for further development on whether appellant established a recurrence of disability beginning June 16, 2006 causally related to his accepted aggravation of severe facet arthrosis at L5-S1.[1] The Board found

[1] Docket No. 07-1245 (issued September 21, 2007).

that the medical evidence warranted further medical development regarding whether his disability for his modified position was due to his accepted condition. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

In a February 26, 2007 attending physician's report, Dr. James Dunnan, Board-certified in family medicine, diagnosed degenerative disc at L4-5 and L5-S1 and severe facet arthrosis at L5-S1. He checked a box "yes" indicating that appellant's condition was caused or aggravated by an employment activity. Dr. Dunnan noted that appellant was totally disabled between June 16, 2006 and February 26, 2007. He advised that appellant could return to light duty with restrictions on February 26, 2007. In a February 26, 2007 duty status report, Dr. Dunnan reiterated that appellant could return to work that day with restrictions.

On November 28, 2007 the Office referred appellant with a statement of accepted facts to Dr. Karl Metz, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a December 19, 2007 report, Dr. Metz summarized the history of injury and noted appellant's complaint of constant pain in his lower lumbar area worsened by prolonged standing and walking. Upon examination, he found slight list of thoracolumbar spine to the left, maintained lumbar lordosis and no scarring, discoloration swelling or increased warmth to the low back region. Dr. Metz also found moderate increase of paraspinal muscle tone bilaterally. He reviewed reports of magnetic resonance imaging (MRI) scans of appellant's lumbar spine from 2003, August 16, 2004 and July 24, 2006. Dr. Metz stated that the MRI scan reports noted no disc herniation but found chronic facet arthropathy primarily at L5-S1. He opined that these findings were consistent with progressive evolutionary aging of appellant's lumbar spine. Dr. Metz advised that appellant did not have a worsening of the accepted facet arthrosis condition on June 16, 2006 as an August 16, 2004 MRI scan noted no interval change in the overall appearance of the spine when compared to a prior examination. He opined that appellant could continue working in a modified capacity.

Dr. Metz advised that appellant was not totally disabled beginning June 16, 2006 and was able to perform modified duties. He noted that appellant's modified capacity could also be tailored to accommodate any transient increase of low back symptoms if necessary. In responding to an Office question regarding what duties appellant could perform if he was unable to perform his modified job, Dr. Metz noted that, even if appellant could not perform modified duties, he could have worked the modified position with restrictions including intermittent sitting with back support and intermittent standing, walking short distances and squatting for one to two months. Thereafter, he noted that appellant could return to his usual modified duties. Dr. Metz opined that appellant did not have any residuals from his accepted condition as his low back flare-ups were secondary to degenerative lumbar facet disease that appellant had been experiencing since 1996. He also opined that appellant could perform his modified job as of December 28, 2005. In a December 19, 2007 work capacity evaluation, Dr. Metz noted that appellant was not able to perform his usual job but that he could work eight hours per day with restrictions that permanently applied.

In a January 23, 2008 decision, the Office denied appellant's claim for a recurrence of disability beginning June 16, 2006 finding that the medical evidence did not establish that his accepted condition had worsened as of that date. It found that the weight of medical opinion was represented by Dr. Metz.

Appellant submitted a Form CA-7, claiming wage-loss benefits between February 26 and September 17, 2007. In a February 19, 2008 decision, the Office denied the claim finding that this period was a continuation of a prior claim denied in a January 23, 2008 decision.

In a February 21, 2008 report, Dr. Ashu Goyle, an osteopath and Board-certified anesthesiologist, found tenderness around the left L4, L5 and S1 facet distribution. He diagnosed chronic low back pain secondary to appellant's work-related injury.

On February 19, 2008 appellant requested a review of the written record from the January 23, 2008 decision. In a statement of the same date, he contended that his muscle strain from 1996 and his facet arthrosis condition were not related conditions. Appellant further noted that the muscle strain recurrences stopped in 2004 as he was on restricted duties. He submitted additional treatment notes from Dr. Goyle.

In an April 22, 2008 decision, an Office hearing representative remanded the case for further development finding that Dr. Metz did not adequately address whether appellant sustained a recurrence of disability.

On May 2, 2008 the Office requested that Dr. Metz provide a supplemental opinion. It noted the MRI scan evidence of record and requested that he review the July 24, 2006 MRI scan report, based on a July 21, 2006 examination, and address whether it contained objective evidence of a worsening of the accepted condition of aggravation of severe facet arthrosis and whether the L5-S1 disc bulge was employment related. The Office also asked Dr. Metz to clarify his prior opinion in which he noted that appellant could have performed his modified assignment as of June 16, 2006 but which also indicated that the reported symptoms might have required additional work restrictions for one or two months.

In a July 18, 2008 supplemental report, Dr. Metz reviewed the updated record and statement of accepted facts. He reviewed the July 24, 2006 MRI scan report and opined that the July 21, 2006 lumbar MRI scan did not support that degenerative facet changes caused the accepted injury. The mild increase in facet arthropathy was secondary to the evolutionary aging of appellant's degenerative lumbar spine, which was not due to aggravated severe facet arthrosis. He advised that the L5-S1 disc bulge reported on the July 21, 2006 was not related to appellant's work injury. Regarding what duty modifications would have been required if there was a worsening of the accepted condition on June 16, 2006, Dr. Metz stated that, if appellant's low back flare-up had been an accepted condition, he would not have been able to perform his modified work schedule and that he would not have been able to return to the modified work he was performing on June 16, 2006 until two to three months following the low back flare-up. Assuming this scenario, he determined that appellant could have resumed his modified-duty position on or about September 16, 2006 and could continue working thereafter.

In an August 18, 2008 decision, the Office denied appellant's recurrence of disability claim beginning June 16, 2006 finding that the medical evidence did not establish disability for work in the modified position as of June 16, 2006 or a worsening of the accepted condition.

On September 17, 2008 appellant requested a telephone hearing, which was held on January 16, 2009. He submitted reports from Dr. Goyle dated April 3 and November 7, 2008

which noted that he continued to work 40 hours per week. Appellant advised that a February 6, 2008 lumbar MRI scan revealed that he had been stable since a July 21, 2006 MRI scan. He also submitted several reports from Dr. James Weiss, a Board-certified anesthesiologist, who treated him and performed lumbar facet nerve block procedures.

In an August 6, 2008 and January 19, 2009 attending physician's report, Dr. Dunnan diagnosed low back pain, degenerative joint disease and facet joint arthrosis. Regarding appellant's period of total disability and ability to resume work, he noted "n/a." Regarding the period of partial disability, Dr. Dunnan stated "current." He also advised that appellant could return to work with restrictions. In duty status reports dated between August 20 2008 and April 3, 2009, Dr. Dunnan indicated that appellant could resume work with restrictions on November 17, 2007. In a March 4, 2009 work capacity evaluation, he noted that appellant was not able to perform his usual job, but he was able to work eight hours per day with restrictions. Dr. Dunnan noted that he did not expect to increase the number of hours appellant could work and that the restrictions would apply permanently.

In a May 5, 2009 decision, an Office hearing representative affirmed the August 18, 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."[2]

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.[3] To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.[4]

[2] *R.S.*, 58 ECAB 362 (2007); *see* 20 C.F.R. § 10.5(x).

[3] *K.S.*, 60 ECAB ___ (Docket No. 08-2105, issued February 11, 2009).

[4] *K.C.*, 60 ECAB ___ (Docket No. 08-2222, issued July 23, 2009).

ANALYSIS

The issue is whether appellant's accepted condition worsened while performing his modified position at the time of his claimed recurrence of disability. Appellant does not allege a change in his light-duty position. The evidence is not sufficient to establish that disability beginning June 16, 2006 is causally related to his accepted injury.

In a December 19, 2007 report, Dr. Metz, a second opinion physician, reviewed the medical records and provided findings on examination. He stated that appellant's low back flare-ups and lumbar spine condition was due to aging and degenerative lumbar facet disease, not the accepted aggravation of L5-S1 facet arthrosis. Dr. Metz noted that an MRI scan showed no interval change in the overall appearance of appellant's spine, which supported there was no worsening of the accepted condition. He also determined that appellant's accepted condition did not prevent him from performing his modified position duties. In a July 18, 2008 supplemental report, Dr. Metz reiterated that appellant's low back condition was not a worsening of the accepted lumbar condition. He supported his opinion by noting that a July 21, 2006 lumbar MRI scan did not support that appellant's degenerative facet changes were causally related to the accepted injury as his facet arthropathy was due to aging of the degenerative lumbar spine. Dr. Metz opined that appellant was able to perform his modified work duties. However, the Office inquired about what restrictions would be required if appellant could not continue working his modified position. Dr. Metz responded that appellant's low back flare-up could have rendered him totally disabled for his modified position through September 16, 2006. However, the Board notes that the Office did not accept that appellant had a flare-up of his accepted condition beginning June 16, 2006. The context of Dr. Metz's reports clearly show that he found no objective basis for disability for the modified job beginning June 16, 2006.

The Board finds that Dr. Metz's opinion represents the weight of the medical evidence and that the Office properly relied on his reports in denying appellant's recurrence of disability claim. Dr. Metz's opinion is based on proper factual and medical history and his report contained an accurate summary of the relevant medical evidence. Furthermore, he analyzed this evidence in addition to his own findings on examination to reach a reasoned conclusion regarding appellant's condition.[5] Dr. Metz found no basis on which to attribute the worsening of appellant's low back condition on June 16, 2006 to his accepted condition.

The record contains reports from Dr. Dunnan supporting total disability on and after June 16, 2006. These reports however do not provide adequate medical reasoning to support that appellant's back condition was a spontaneous change of the accepted medical condition, aggravation of preexisting severe facet arthrosis at L5-S1.[6] In a February 26, 2007 attending physician's report, Dr. Dunnan checked a box "yes" indicating that appellant's current condition

[5] *See Naomi Lilly*, 10 ECAB 560 (1959) (the opportunity for and thoroughness of examination, the accuracy and completeness of the doctor's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the doctor's opinion are factors which enter into the weight of an evaluation).

[6] *T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

was caused or aggravated by his work injury. However, he did not explain how appellant's accepted injury attributed to his current low back symptoms. Without medical rationale, this opinion has little probative value and is insufficient to establish a causal relationship.[7] Moreover, Dr. Dunnan broadly indicated that appellant sustained several recurrences of back pain and flare-up but did not provide any evidence of bridging symptoms.[8] Additionally, he inconsistently reported the period of appellant's total disability. In a February 26, 2007 report, Dr. Dunnan indicated total disability between June 16, 2006 and February 26, 2007. Thereafter, in reports dated August 6, 2008 and January 19, 2009, he noted no period of total disability.[9]

There is no other medical evidence contemporaneous with appellant's alleged recurrence of disability on June 16, 2006 that supports that appellant was totally disabled from his modified position due to his accepted injury. While the record contains reports from Drs. Goyle and Weiss, these reports do not support appellant's claim as they do not specifically address the issue of whether appellant's accepted condition precluded him from performing his modified work duties during the period at issue.

Consequently, appellant has not met his burden of proof to establish that he sustained a recurrence of disability on June 16, 2006 causally related to his employment injury.

CONCLUSION

The Board finds that appellant has not sustained a recurrence of disability beginning on June 16, 2006 causally related to his accepted employment injury.[10]

[7] *See Lucrecia Nielsen*, 42 ECAB 583 (1991); *Lillian Jones*, 34 ECAB 379 (1982) (an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history given is of little probative value).

[8] *See Mary A. Ceglia*, 55 ECAB 626 (2004) (to establish that the claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between appellant's present condition and the accepted injury must support the physician's conclusion of a causal relationship).

[9] *See K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007) (the opinion of a physician must be of reasonable medical certainty and must be supported by medical rationale explaining causal relationship).

[10] The Board notes that appellant submitted new evidence after the Office issued its decision. However, the Board may only review evidence that was in the record at the time the Office issued its final decision. *See* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated May 5, 2009 and August 18, 2008 are affirmed.

Issued: April 20, 2010
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