

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

E.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Oklahoma City, OK, Employer**

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**Docket No. 09-1633
Issued: April 19, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 11, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated September 4, 2008 and May 4, 2009, denying his recurrence claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained a recurrence of total disability commencing March 21, 2008 causally related to his February 23, 1990 employment injuries.

FACTUAL HISTORY

On March 22, 1990 appellant, then a 39-year-old general mechanic, filed an occupational disease claim for pain in his left leg and foot and to his lower buttock. He also indicated that his disc was ruptured. Appellant advised his work duties included lifting, pushing and pulling heavy objects. He stopped work on January 26, 1990 and returned to light duty on February 5, 1990. The Office accepted appellant's claim for displacement of lumbar intervertebral disc without

myelopathy. It subsequently accepted a herniated disc at L5-S1. Appellant returned to work with permanent restrictions of no lifting over 25 pounds.

In a December 4, 1991 report, Dr. Henry J. Freede, a Board-certified orthopedic surgeon, placed appellant on permanent restricted duty and not to lift over 25 pounds. He submitted reports through April 24, 1997, treating appellant for residuals of an old injury to his low back that consisted of an extruded disc that was slowly resolving over time. Dr. Freede advised that appellant's continuing problems were related to his low back injury and that he could work limited duty.

On March 24, 2008 appellant filed a recurrence of disability claim alleging that, on March 21, 2008 between 10:00 a.m. and 2:00 p.m., he experienced pain in his low back and left leg while performing his duties. He did not stop work.

In a May 12, 2008 letter, the Office advised appellant that factual and medical evidence were needed to support his recurrence claim. It requested that he provide a narrative report from a physician describing objective findings and an opinion on causal relation.

Appellant submitted medical reports dated March 26 and April 23, 2008 from Dr. Gregory Zeiders, an osteopath specializing in orthopedic surgery, who stated that appellant was seen for a new condition to his low back. He reported having pain while stretching and putting a tarp over a sorting machine at the employing establishment on March 21, 2008. Appellant noted that he was previously seen by other physicians for back pain, facet hypertrophy and a history of bulging discs. He provided findings on examination and listed an impression of acute or chronic low back sprain/strain. Dr. Zeiders advised that appellant could work with restrictions of no lifting more than 10 pounds and no pushing/pulling more than 25 pounds.

By decision dated September 4, 2008, the Office denied appellant's recurrence of disability claim. It noted that Dr. Zeiders had described a new injury.

On January 29, 2009 appellant requested reconsideration. He submitted medical reports dated September 16, 2008 to March 12, 2009 from Dr. Shelly V. Jacobs, a general practitioner, who noted that appellant worked for the employing establishment at approximately 29 years as a maintenance mechanic. Appellant was moving heavy postal equipment repeatedly over many years when he first noticed significant low back pain in February 1990. He was treated for that injury and required a weight lifting restriction of 25 pounds. In March 2008, appellant was stretching a tarp over a processing machine and moved quickly while lifting his arms over his head. He again wrenched his low back. Dr. Jacobs listed appellant's examination findings and provided an assessment of chronic lumbar back strain with reported two levels of herniated disc. She opined that he injured his lower back while performing repetitive duties at the employing establishment both in 1990 and 2008. Dr. Jacobs stated that the natural history of lumbar back disease followed periods of crescents followed by exacerbations. She also advised that appellant needed to be treated for stress, anxiety and anger that developed from his work-related injury. Dr. Jacobs reviewed a December 12, 1990 magnetic resonance imaging (MRI) scan report provided by appellant, which revealed two herniated discs. She opined that he injured his low back while performing repetitive duties at the employing establishment in 1990 and 2008. In subsequent reports, Dr. Jacobs noted appellant's status and made treatment recommendations.

In an October 24, 2008 report, Dr. Donald Barney, an osteopath in general practice and an associate of Dr. Jacobs, noted that appellant provided a work history of custodial sweeping, mopping floors and cleaning the office building. Appellant also worked as a maintenance mechanic moving metal collection boxes and casing boxes and other objects as required. He reported that his injury was due to lifting heavy items at work, such as the mailboxes.

In a May 4, 2009 decision, the Office denied modification of its September 4, 2008 decision. It found that Dr. Jacob described a new injury and noted that appellant could file a new claim for occupational disease.

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.¹

Office procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change, demonstrated by objective findings, in the medical condition that resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.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 requirements.³

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.⁴ 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

¹ 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB ___ (Docket No. 07-2287, issued May 16, 2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997). *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

³ *Terry R. Hedman*, 38 ECAB 222 (1986). *See* 20 C.F.R. § 10.5(x) for the definition of a recurrence of disability.

⁴ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

condition is causally related to the employment injury.⁵ The physician's conclusion must be supported by sound medical reasoning.⁶

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁷ 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.⁸ 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.⁹

ANALYSIS

The Office accepted that appellant sustained displacement of a lumbar intervertebral disc without myelopathy and a herniated disc at L5-S1. Appellant returned to full-time work with permanent restrictions of no lifting over 25 pounds. He subsequently claimed a recurrence of disability on March 21, 2008, stating that his back pain was exacerbated by his work on March 21, 2008 when he stretched and pulled a tarp over a sorting machine. The Board finds that appellant has not established a change in the nature and extent of his accepted injury-related condition or a change in the nature and extent of the light-duty requirements.

In a March 26, 2008 report, Dr. Zeiders stated that appellant was seen for a new condition to his low back which arose on March 21, 2008 when he stretched and put a tarp over a sorting machine. He listed an impression of acute or chronic low back strain/sprain. On April 23, 2008 Dr. Zeiders advised that appellant was restricted to lifting no more than 25 pounds. He did not describe a change in the nature of appellant's physical condition arising from the February 23, 1990 employment injury, which prevented him from performing his light-duty position. Rather, Dr. Zeiders attributed appellant's back condition to a new injury sustained on March 21, 2008. His reports are insufficient to establish that appellant sustained a recurrence of accepted medical condition due to residuals of the February 23, 1990 work injury.

On September 16, 2008 Dr. Jacobs noted a history of the 1990 injury and that appellant required a weight lifting restriction of 25 pounds. She also noted the March 2008 work injury when he wrenched his back while stretching a tarp over a machine. Dr. Jacobs diagnosed a chronic lumbar back strain with two preexisting levels of herniated disc. She stated that appellant injured his back in 1990 and 2008 while performing repetitive activities. Dr. Jacobs reiterated her opinion on causal relationship in a September 25, 2009 report. Her opinion is of limited

⁵ S.S., 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008).

⁶ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

⁷ See *Ricky S. Storms*, 52 ECAB 349 (2001); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁸ For the importance of bridging information in establishing a claim for a recurrence of disability, see *Richard McBride*, 37 ECAB 748 at 753 (1986).

⁹ See *Ricky S. Storms*, *supra* note 7; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

probative value as she did not explain how appellant's back condition as of March 21, 2008 arose from his February 23, 1990 work injury. Dr. Jacobs identified a March 21, 2008 injury. She failed to describe a spontaneous worsening of appellant's accepted work-related condition. Rather, Dr. Jacobs identified a new injury and also attributed appellant's condition to performing repetitive work activities. She did not provide a reasoned explanation of how appellant's current condition was causally related to the 1990 work injury. As noted if appellant attributes his need for medical treatment in 2008 to his work activities on or about March 21, 2008, he was advised to file a claim for a new injury.¹⁰

Dr. Barney provided an assessment of lumbar strain in his October 24, 2008 report. However, he failed to provide a clear explanation on whether appellant's condition was related to the February 23, 1990 work injury. Dr. Barney's report does not contain any description of the February 23, 1990 employment injury or any discussion regarding how appellant's condition beginning March 21, 2008 was causally related to that injury. Thus, his report does not constitute rationalized medical opinion.

For these reasons, appellant did not establish a change in his accepted back condition on or after March 21, 2008. He also did not allege any change in the nature and extent of his light-duty job requirements. Appellant alleged on appeal that the employing establishment changed the wording of how his light duty was classified, from permanent limited duty to light duty with restrictions not to lift more than 25 pounds. This argument is not material to the medical question of causal relation. There is no evidence that the employing establishment either required appellant to work beyond his 25-pound lifting restriction or that it withdrew his light-duty job.

CONCLUSION

The Board finds that appellant failed to establish a recurrence of his medical condition on or after March 21, 2008 due to his February 23, 1990 employment injury.

¹⁰ The Board's decision on appellant's recurrence of a medical condition does not preclude adjudication of a new injury claim for aggravation of his preexisting back condition.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decisions dated May 4, 2009 and September 4, 2008 are affirmed.

Issued: April 19, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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