United States Department of Labor
Employees' Compensation Appeals Board

G.H., Appellant	)	
and	)	**Docket No. 09-2080**
	)	**Issued: July 16, 2010**
DEPARTMENT OF THE NAVY, NAVAL SEA SYSTEMS COMMAND, NORFOLK NAVAL SHIPYARD, Norfolk, VA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 13, 2009 appellant filed a timely appeal from a June 25, 2009 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 established that he sustained a recurrence of total disability on July 10, 2007 causally related to his accepted injury of March 8, 2006.

FACTUAL HISTORY

This is the second time this case has been before the Board.[1]

[1] Docket No. 08-1722 (issued January 9, 2009).

On March 14, 2006 appellant filed a traumatic injury claim (Form CA-1) alleging that he suffered a back injury after slipping and falling in an oily waste tank on March 8, 2006. The Office accepted the claim for lower back strain/sprain and later expanded the claim to include sacroiliac subluxation. On September 6, 2007 appellant filed a claim for recurrence (Form CA-2) as of July 10, 2007. The Office denied his claim for recurrence by decision dated January 29, 2008 and he requested an oral hearing.

The Branch of Hearings and Review, by decision dated April 15, 2008, denied the request as untimely. By decision dated January 9, 2009, the Board affirmed both the denial of recurrence and the denial of oral hearing. The facts and the law as set forth in the Board's prior decision are hereby incorporated by reference.[2]

Following the Board's January 9, 2009 decision, appellant filed with the Office a request for reconsideration of the original January 29, 2008 denial of his claim for recurrence, received on March 26, 2009.

Appellant included with his request a note dated January 26, 2008 in which Dr. Arthur Wardell, a Board-certified orthopedic surgeon, related:

> "[B]y July 2006 [appellant] had ongoing pain and absent any other injury, the symptoms for which I have treated him since March 2007 are to a reasonable degree of medical certainty referable to his injury of … March 8, 2006."

By decision dated June 25, 2009, the Office denied modification of its January 29, 2008 decision because the medical evidence of record did not establish that appellant sustained a recurrence of disability beginning July 10, 2007 causally related to his March 8, 2006 employment injury.

LEGAL PRECEDENT

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she 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 or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a

[2] The record reflects that on February 4, 2009 appellant filed a petition for reconsideration of the Board's January 9, 2009 decision, contending that newly submitted evidence established he sustained a recurrence of disability causally related to his accepted injury of March 8, 2006. By order dated July 31, 2009, the Board denied the petition. *G.H.*, Docket No. 08-1722 (issued July 31, 2009).

change in the nature and extent of the light-duty 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]

ANALYSIS

On appeal, appellant alleges that his claim was erroneously denied because of lack of information and "oversight by the claim[s] examiner." As noted above, his burden is to demonstrate by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform light-duty work.

With his reconsideration request, appellant submitted Dr. Wardell's note. The issue underlying his claim was the causal relationship between his present condition and his accepted employment injury. Causal relationship is a medical issue that can only be proven by probative rationalized medical opinion evidence and, thus, appellant's lay opinion is not relevant.[5] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and compensable employment factors or an accepted employment injury. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee or an accepted employment injury.[6] The weight of a medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of the stated conclusions.[7]

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[3] *Albert C. Brown*, 52 ECAB 152, 154-155 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986); 20 C.F.R. § 10.5(x) provides, "*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. This 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."

[4] *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *Maurissa Mack*, 50 ECAB 498, 503 (1999).

[5] *Gloria J. McPherson*, 51 ECAB 441 (2000). *See also Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

[6] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[7] *See Anna C. Leanza*, 48 ECAB 115 (1996).

Dr. Wardell, following a review of the Board's decision, concluded, without analysis or explanation, that appellant's symptoms were "referable to his injury of … March 8, 2006." Such a generalized statement has diminished probative value on the issue underlying appellant's case.[8] Dr. Wardell did not present findings on examination or a diagnosis based on such findings. Furthermore, absent from his note is any medical rationale explaining how appellant's condition is causally related to his accepted employment injury. Dr. Wardell's note, though "new," lacks the requisite medical rationale to establish appellant's claim. Therefore the Office properly denied modification of its prior decision.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of total disability on July 10, 2007 causally related to his accepted injury of March 8, 2006.

ORDER

IT IS HEREBY ORDERED THAT the June 25, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2010
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

[8] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). *See Kathy A. Kelley*, 55 ECAB 206 (2004) (medical opinions that are speculative or equivocal are of diminished probative value).