

FACTUAL HISTORY

On October 18, 2004 appellant, then a 48-year-old lead pharmacy technician, filed a traumatic injury claim alleging that she sustained a back injury on that date when she bent over to open a box of computer labels. She stopped work on the date of injury. Appellant submitted medical records dated October 18 to November 15, 2004 from the employing establishment health unit and Erik B. Pearson, a physical therapist, which addressed her back pain complaints, medical treatment, ability to return to light-duty work and restrictions. An employing establishment health unit note dated October 21, 2004 advised that appellant was released to return to limited-duty work with restrictions on heavy lifting, pushing, pulling, reaching, stretching, bending and twisting. Appellant returned to full-duty work on November 15, 2004.

On July 10, 2007 appellant filed a claim alleging that she sustained a recurrence of total disability on July 8, 2007. When she bent over to tie her shoe she experienced pain in the same location as her prior back injury. Appellant stopped work on July 9, 2007 and returned to work on July 10, 2007. Employing establishment health unit records revealed that she was treated from June 4 to July 13, 2007 for several conditions including, low back pain.

By letter dated July 19, 2007, the Office accepted appellant's claim for lumbar sprain/strain.

In a July 17, 2007 letter, the employing establishment contended that appellant's alleged recurrence of disability was not work related. It stated that she was in a nonduty status on July 8, 2007. The employing establishment related that the alleged recurrence of disability occurred while appellant was bending over to tie her shoe.

By letter dated July 31, 2007, the Office addressed the factual and medical evidence appellant needed to submit to establish her recurrence of disability claim.

Treatment notes dated July 25, 2002 to September 6, 2007 from the employing establishment health unit addressed appellant's back pain complaints, ability to return to light-duty work and restrictions. The July 17, 2007 treatment note provided a history of injury that "one week ago bend over to tie shoe and heard a crunch." Appellant complained about "pressure in left lower back into left buttocks and calf."

In an August 10, 2007 narrative statement, appellant related that on Sunday, July 8, 2007 "I went to tie my shoe and something snapped." When she returned to work on Monday, July 9, 2007, she reported this incident to the employing establishment health unit where she received medical treatment for back pain.

A July 30, 2007 magnetic resonance imaging scan performed by Dr. Steven E. Rinehouse, a Board-certified radiologist, demonstrated mild disc degeneration at L4-5 and L5-S1 and small posterior central disc protrusions at both levels. No canal stenosis or nerve root impingement was present.

In an August 20, 2007 report, Dr. David M. Katz, a physiatrist, reviewed a history of appellant's October 18, 2004 employment injury and medical treatment. After listing his

findings on physical examination, he diagnosed lumbosacral sprain/strain and mild degenerative disc disease.

In a September 5, 2007 report, Mr. Pearson addressed the treatment of appellant's back pain condition.

By decision dated September 17, 2007, the Office denied appellant's recurrence claim. It found the medical evidence insufficient to establish that she sustained a recurrence of a medical condition or total disability commencing July 8, 2007 due to her October 18, 2004 employment injury. The Office found that she attributed her current medical condition and period of disability to bending over to open a box of computer labels which constituted an intervening incident.

In a September 14, 2007 report, Mr. Pearson addressed the treatment of appellant's back pain. Employing establishment health unit notes dated July 7 to September 24, 2007 addressed appellant's back pain complaints and ability to return to light-duty work. The September 17, 2007 treatment note released her to return to light-duty work with restrictions on heavy lifting.

On September 11, 2008 appellant requested reconsideration of the Office's September 17, 2007 decision.¹

By decision dated December 18, 2008, the Office denied modification of the September 17, 2007 decision, finding the medical evidence insufficient to establish that appellant sustained a recurrence of a medical condition or disability during the claimed period causally related to her October 18, 2004 employment injury. It further found that the July 8, 2007 bending incident constituted an intervening incident and, therefore, a recurrence of disability was not established. The Office advised appellant to file a new traumatic injury claim.

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.²

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 she claims

¹ Appellant's request for reconsideration was incorrectly dated "September 11, 2007" and was mailed to the Office on September 16, 2008.

² 20 C.F.R. § 10.5(x).

compensation is causally related to the accepted employment injury.³ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her 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 condition is causally related to the employment injury.⁵ Moreover, 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 a lumbar sprain/strain as a result of the October 18, 2004 employment injury. Appellant returned to her regular duties as of November 15, 2004. She claimed a recurrence of disability commencing July 8, 2007 due to her accepted claim and stopped work on July 9, 2007. The Board finds that appellant failed to submit sufficient medical evidence to establish that her disability commencing July 8, 2007 is attributable to her accepted condition.

Appellant alleged that she reinjured her back while off work on Sunday, July 8, 2007. Something snapped and she experienced back pain in the same region as her October 2004 back injury when she bent over to tie her shoe. On Monday, July 9, 2007, appellant reported the injury to the employing establishment health unit which evaluated her back pain. Here, she alleged that her current condition is related to a new work incident rather than a spontaneous change in her work-related condition,¹⁰ which is supported by the July 17, 2007 employing establishment health unit treatment note stating that one week ago she bent over to tie her shoe

³ *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

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

⁵ *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

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

⁷ *See Ricky S. Storms*, *supra* note 5; *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 5; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹⁰ *See Cecelia M. Corely*, 56 ECAB 662 (2005).

and heard a “crunch.” The treatment note also stated that appellant complained about pressure in her left lower back into the left buttocks and calf. As the July 9, 2007 treatment note attributed her current condition to a new injury or intervening cause rather than a spontaneous change of the prior work injury, the Board finds that her claim does not meet the definition of a recurrence of disability.¹¹

The Board further finds that the medical evidence is insufficient to establish appellant’s claim for a recurrence of disability. Appellant submitted employing establishment health unit treatment notes dated July 25, 2002 to September 24, 2007 which addressed her back symptoms and ability to return to light-duty work. These records do not provide a diagnosis of a specific medical condition or address how the diagnosed condition and resultant disability were causally related to the October 18, 2004 employment injury. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.¹²

Although Dr. Rinehouse’s July 30, 2007 MRI scan report found mild disc degeneration at L4-5 and L5-S1 and small posterior central disc protrusions at both levels and Dr. Katz’s August 20, 2007 report diagnosed lumbosacral sprain/strain and mild degenerative disc disease, neither physician provided an opinion on whether appellant’s current back conditions and work stoppage on July 9, 2007 were causally related to the October 18, 2004 employment injury. The physicians did not specifically address the relationship between the accepted lumbar sprain/strain and appellant’s current injury after bending on July 8, 2007.¹³ The Board finds that the reports of Dr. Rinehouse and Dr. Katz are of limited probative value.

The September 5 and 14, 2007 reports of Mr. Pearson, a physical therapist, are of no probative value in establishing appellant’s claim. A physical therapist is not a “physician” as defined under the Federal Employees’ Compensation Act.¹⁴

Appellant has failed to submit rationalized medical evidence establishing a recurrence of disability commencing July 8, 2007 due to the October 18, 2004 accepted injury.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a recurrence of disability commencing July 8, 2007 causally related to her October 18, 2004 injury.

¹¹ See *Bryant F. Blackmon*, 56 ECAB 752 (2005).

¹² *A.F.*, 59 ECAB ____ (Docket No. 08-977, issued September 12, 2008).

¹³ *Id.*

¹⁴ See 5 U.S.C. § 8101(2). *David P. Sawchuk*, 57 ECAB 316 (2006).

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 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