

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

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**R.H., Appellant**

**and**

**U.S. POSTAL SERVICE, ROANOKE CARRIER  
ANNEX, Roanoke, VA, Employer**

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**Docket No. 10-942  
Issued: November 24, 2010**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
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 February 24, 2010 appellant, through counsel, filed a timely appeal of the February 1, 2010 merit decision of the Office of Workers' Compensation Programs denying his recurrence of disability claim. Pursuant to 5 U.S.C. § 8149 and 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 total disability commencing June 24, 2009 causally related to his September 11, 2007 employment injury.

On appeal, appellant's attorney asserts that the Office's February 1, 2010 decision was contrary to fact and law.

**FACTUAL HISTORY**

On October 19, 2007 appellant, then a 51-year-old city letter carrier, filed a traumatic injury claim alleging that on September 11, 2007 he sustained lower back strain as a result of loading bags at work. The Office accepted his claim for back sprain. Appellant returned to work

as a modified city carrier and received compensation for total disability when work within his physical restrictions was not available at the employing establishment.<sup>1</sup>

In a prescription note dated June 24, 2009, Dr. Cyrus E. Bakhit, an attending internist and Board-certified anesthesiologist, advised that appellant was totally disabled for work through July 21, 2009. In a June 24, 2009 medical report, he stated that appellant's pain was refractory to treatment and exacerbated by bending and prolonged standing and sitting. Dr. Bakhit reiterated his opinion that appellant was totally disabled through July 21, 2009.

By letter dated June 30, 2009, the Office advised appellant that it had received notification from Dr. Bakhit regarding his total disability for work. It requested that he complete an accompanying recurrence of disability claim (Form CA-2a) and submit additional factual and medical evidence.

On July 3, 2009 appellant filed a Form CA-2a alleging that he sustained a recurrence of disability commencing June 24, 2009 due to his September 11, 2007 employment injury. He noted that he had not been released to return to full-duty work. In another report dated June 24, 2009, Dr. Bakhit listed his findings on physical examination and diagnosed lumbar degenerative disc disease and lumbar facet joint arthropathy. He reiterated his opinion that appellant was totally disabled for work through July 21, 2009. In a July 21, 2009 report, Dr. Bakhit listed his findings on physical examination and indicated that appellant underwent a provocation lumbar discography at L1-2, L2-3, L3-4 and L4-S1. He diagnosed lumbar spondylosis. Dr. Bakhit stated that appellant would continue to be off work. In a July 29, 2009 prescription note and report, he advised that appellant may be able to return to work after undergoing a functional capacity evaluation (FCE). In the July 29, 2009 report, Dr. Bakhit reiterated his diagnoses of lumbar degenerative disc disease and lumbar facet joint arthropathy.

On July 29, 2009 the employing establishment advised the Office that it accommodated appellant's work restrictions. He was allowed to take as many breaks as necessary. There had been no change in appellant's work schedule or job requirements.

By decision dated August 13, 2009, the Office denied appellant's recurrence of disability claim. The medical evidence of record was found insufficient to establish that his total disability commencing June 24, 2009 was due to his accepted September 11, 2007 employment injury.

On August 21, 2009 appellant, through counsel, requested an oral hearing before an Office hearing representative. In a July 29, 2009 prescription note, Dr. Bakhit ordered an FCE. In an October 1, 2009 prescription note, Dr. Bakhit ordered equipment to provide appellant with protection from L5 to T9 as he was status post a lumbar procedure. In reports dated September 25 and November 20, 2009 and January 6, 2010, Dr. Bakhit listed his findings on physical examination and reiterated his diagnoses of lumbar degenerative disc disease and lumbar facet joint arthropathy. He also diagnosed lumbar disc displacement. In another November 20, 2009 report, Dr. Bakhit opined that appellant's current low back pain was causally related to his September 11, 2007 employment injury.

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<sup>1</sup> The record reveals that commencing September 11, 2007, the date of injury, the employing establishment did not release appellant to full duty.

A September 16, 2009 FCE report found that appellant may be capable of performing light work on a limited basis. His inactive lifestyle and reported low positional tolerances of 10 to 15 minutes in any one position would have a negative effect on any potential placement. It was questionable as to whether appellant could be competitively employed.

A July 21, 2009 computerized tomography scan report of appellant's lumbar spine from Dr. Clifford A. Nottingham, III, a Board-certified family practitioner, revealed findings consistent with spondylosis and Grade 4 posterior annular tears at L1-2, L2-3, L3-4, L4-5 and L5-S1.

By decision dated February 1, 2010, an Office hearing representative affirmed the August 13, 2009 decision, finding that appellant failed to establish that he sustained a recurrence of total disability commencing June 24, 2009 causally related to his September 11, 2007 employment injury.

### **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.<sup>2</sup> 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.<sup>3</sup>

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-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 to show that he cannot perform such limited-duty work. 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 limited-duty job requirements.<sup>4</sup>

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.<sup>5</sup>

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<sup>2</sup> 20 C.F.R. § 10.5(x).

<sup>3</sup> *Id.*

<sup>4</sup> *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>5</sup> *James H. Botts*, 50 ECAB 265 (1999).

## ANALYSIS

The Office accepted that appellant sustained a lumbar sprain on September 11, 2007. Following this injury, appellant returned to limited light-duty work. He claimed a recurrence of total disability commencing June 24, 2009 causally related to his accepted employment injury. Appellant must demonstrate either that his condition has changed such that he could not perform the activities required by his modified job or that the requirements of the limited light-duty jobs changed. The Board finds that the record contains no evidence that the limited light-duty job requirements were changed or withdrawn or that appellant's employment-related condition has changed such that it precluded him from performing limited light-duty work.

Dr. Bakhit's November 20, 2009 report found that appellant's current low back pain was causally related to his September 11, 2007 employment injury. As noted, a recurrence of disability is defined as a spontaneous change in the accepted medical condition. Dr. Bakhit, however, did not address the issue of how the accepted employment injury spontaneously caused or aggravated the diagnosed condition as of June 24, 2009.<sup>6</sup> Further, the Board notes that a diagnosis of pain, without more in the way of medical rationale, does not constitute the basis for the payment of compensation.<sup>7</sup> The Board finds that Dr. Bakhit's report is insufficient to establish appellant's claim.

Dr. Bakhit's June 24 and July 29, 2009 prescription note and reports revealed that appellant had lumbar degenerative disc disease, lumbar facet joint arthropathy and lumbar spondylosis. He opined that appellant was totally disabled for work. Dr. Bakhit did not address whether appellant's disability was causally related to the September 11, 2007 employment injury. The Board finds that his reports are insufficient to establish that appellant's disability for work commencing June 24, 2009 was causally related to the accepted employment injury.

The remainder of the medical evidence, including Dr. Bakhit's July 29 and October 1, 2009 prescriptions and reports dated September 25, 2009 to January 6, 2010, Dr. Nottingham's July 21, 2009 diagnostic test results and the September 16, 2009 FCE report failed to provide an opinion on causal relationship between the claimed period of disability and the September 11, 2007 employment injury. The Board finds, therefore, that this evidence does not establish that the claimed period of disability was causally related to appellant's accepted employment injury.

Appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related conditions or a change in the nature and extent of the limited light-duty requirements which would prohibit him from performing the limited light-duty positions he assumed after he returned to work.

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<sup>6</sup> See *Gloria J. McPherson*, 51 ECAB 441 (2000) (the opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant).

<sup>7</sup> See *C.F.*, 60 ECAB \_\_\_ (Docket No. 08-1102, issued October 10, 2008) (pain is a symptom, not a compensable medical diagnosis); *Robert Broome*, 55 ECAB 339, 342 (2004).

**CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a recurrence of total disability commencing June 24, 2009 causally related to his September 11, 2007 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 1, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 24, 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