



April 23, 1997, after becoming permanent and stationary. The full-time position limited lifting to no more than 20 pounds up to four hours daily. Appellant received wage-loss compensation benefits.

In a December 17, 2003 report, Dr. Leslie H. Kim, a Board-certified orthopedic surgeon, diagnosed lumbar degenerative disc disease and lumbar sprain. In appellant's portion of the form report, she noted that she sustained an injury on December 10, 1991. Dr. Kim noted that appellant related that she was a driver at the employing establishment and had to "go to some of the buildings which contain very heavy sacks." He advised that appellant was able to perform her regular work. Dr. Kim did not note any work restrictions.

On November 18, 2005 appellant filed a notice of recurrence for that date. She requested that her claim be reopened for medical treatment.<sup>1</sup>

In a letter dated April 28, 2006, the Office informed appellant of the evidence needed to support her claim and requested that she submit such evidence within 30 days.

Appellant submitted a May 9, 2006 statement. She stated that her supervisor wanted a note from her doctor. Appellant subsequently found out that her case was closed. She advised that she continued work in her light-duty job.

By decision dated August 18, 2006, the Office denied appellant's claim for a recurrence of a medical condition.

On June 30, 2007 appellant requested reconsideration. She stated that she "wasn't putting in a claim for a recurrence," but was advised by her supervisor that her claim needed to be reopened so she could see a physician and obtain medical restrictions for her employer.

In a duty status report dated April 5, 2007, Dr. Kim advised that appellant was lifting heavy sacks and sustained a lower back injury. He diagnosed degenerative disc disease, a permanent back injury, lumbar sprain and prescribed limited-duty restrictions. On that same date, Dr. Kim completed a questionnaire from the employing establishment and advised that appellant's work injury had not resolved and that her lumbar strain was permanent.

In a September 28, 2007 decision, the Office denied modification of its August 18, 2006 decision. It noted that Dr. Kim provided a December 10, 1991 date of injury and described appellant having to go to buildings with heavy sacks. The Office advised appellant that this description implicated a possible new occupational disease or represented an intervening event.

On March 3, 2008 appellant requested reconsideration. On February 11, 2008 she requested that her claim be reopened so that she could continue in her light-duty status. Appellant provided a copy of Dr. Kim's April 5, 2007 duty status report and response to the employing establishment. The Office received an October 24, 2007 request for light duty and a light-duty work ability evaluation of the same date.

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<sup>1</sup> The Office closed appellant's file on June 16, 1992.

In a January 10, 2008 report, Dr. Kim noted appellant's history of injury and treatment and examined appellant. He noted that appellant was first seen in December 1990, treated conservatively, and "released from active care after several visits." Appellant did not return until December 16, 2003 with complaint of low back pain. Dr. Kim explained that appellant continued to work although her symptoms worsened over time until she sought treatment again in 2003. He stated that there was "no intervening trauma or aggravating activity." Dr. Kim opined that appellant's history of chronic mechanical back pain was most consistent with lumbar discogenic pain. He diagnosed chronic lumbar musculoligamentous injury and "probable underlying degenerative dis[c] disease, aggravated by work trauma." Dr. Kim stated that appellant most likely had a progression of her chronic work-related back condition and there was no evidence of any new injury or back condition.

By decision dated May 14, 2008, the Office denied modification of its prior decisions.

On August 11, 2008 appellant filed a claim for total disability compensation from June 30 to August 15, 2008. She contended that the employer did not provide light duty. On September 10, 2008 appellant requested reconsideration and submitted copies of job offers that she signed on December 18, 1990, April 29, 1992 and April 23, 1997.

In a December 11, 1990 report, Dr. Kim diagnosed lumbar disc injury and noted that he was continuing to treat appellant for a work-connected injury sustained on April 12, 1990. He advised that appellant remained totally and temporarily disabled from her regular duties. Dr. Kim opined that, if there was "no further change in her condition, she can probably be considered permanent and stationary with regards to disability arising out of the work injury on April 12, 1990."

In a letter received by the Office, on September 10, 2008, appellant stated that she had been injured since April 12, 1990. She also noted that there were two errors in documentation regarding her claim. Appellant also stated that she was working her new job at that time and would not have been lifting heavy sacks.

By decision dated November 6, 2008, the Office denied modification of its prior decisions, finding that the medical evidence was insufficient to establish her claim.

### **LEGAL PRECEDENT**

Section 10.5(x) of the Office's regulations defines "recurrence of disability" as 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>

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<sup>2</sup> 20 C.F.R. § 10.5(x) (2002). See *Carlos A. Marrero*, 50 ECAB 117 (1998).

An employee has the burden of establishing that she sustained a recurrence of a medical condition<sup>3</sup> that is causally related to her accepted employment injury. A claimant must furnish medical evidence from a 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 and supports that conclusion with sound medical rationale.<sup>4</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>5</sup>

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 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.<sup>6</sup>

### ANALYSIS

The Office accepted that on April 12, 1990 appellant sustained a lumbar strain. On November 18, 2005 appellant alleged a recurrence of her condition for which she sought medical treatment. She advised that she wanted medical treatment and needed a note from her doctor in order to continue with her light-duty job. The Office requested that appellant provide medical evidence that would establish a causal relationship between her current condition and her work injury.

The Board finds that appellant did not submit sufficient medical evidence to establish disability or a need for medical treatment commencing November 18, 2005, causally related to her April 12, 1990 employment injury. The Board notes that there is no evidence of record to establish a change in the nature and extent of the light-duty job requirements necessitated by the accepted back sprain.

The medical evidence in support of appellant's claim is from Dr. Kim who provided a December 11, 1990 and December 17, 2003 report. As these reports predate the period of the claimed recurrence in 2005, they are not directly relevant to the issue of whether appellant sustained a recurrence of disability or need for medical treatment. In a duty status report dated April 5, 2007, Dr. Kim noted that appellant was lifting heavy sacks and sustained a lower back injury. He prescribed limited-duty restrictions and indicated that appellant's work injury had not resolved. Dr. Kim advised that her diagnosed lumbar strain and degenerative disc disease were

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<sup>3</sup> "Recurrence of medical condition" means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment. 20 C.F.R. § 10.5(y) (2002).

<sup>4</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>5</sup> *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>6</sup> *Conard Hightower*, 54 ECAB 796 (2003).

permanent. The Board notes that degenerative disc disease is not a condition accepted by the Office.<sup>7</sup> Dr. Kim did not address the issue of any disability commencing November 18, 2005 related to the accepted lumbar sprain. He did not explain how any need for medical treatment, after appellant's release from his care, was due to the accepted 1990 lumbar sprain. This is important as her claim of recurrence is some 15 years following the accepted lumbar strain. This evidence is of diminished probative value.

In a January 10, 2008 report, Dr. Kim provided a history of treating appellant in December 1990 for several visits and released her from his care. Thereafter, he did not see her again until December 16, 2003, for complaint of lower back pain. Dr. Kim explained that appellant was able to work but her symptoms had worsened over the years until she sought treatment in 2003. He stated that there was "no intervening trauma or aggravating activity" and explained that her history of chronic mechanical back pain was most consistent with lumbar discogenic pain. Dr. Kim did explain how there was a spontaneous change in appellant's lumbar sprain condition such that she required treatment in 2003. He did not explain how her accepted condition had progressed since 1990 as how such worsening would be due to the accepted soft tissue injury.<sup>8</sup> Furthermore, Dr. Kim did not address continuing disability on or after November 18, 2005 or provide medical reasoning to explain how her present need for treatment was due to the 1990 back sprain.<sup>9</sup> Thus, his reports are of limited probative value.

The record indicates that the employer stopped providing light-duty work for appellant on June 30, 2008. While appellant initially worked light duty due to her work injury, Dr. Kim's January 10, 2008 report establishes that he had previously released her from care after her initial visits in December 1990 and did not see her again until December 16, 2003. The record contains no bridging medical evidence to establish that appellant's continuing need for light duty was necessitated by the April 12, 1990 lumbar sprain and not due to other diagnosed conditions, such as degenerative disc disease.<sup>10</sup> Dr. Kim's reports do not provide adequate medical rationale to explain why a 1990 back sprain, from which he released appellant from care, necessitated continuing work restrictions.<sup>11</sup> Thus, there is insufficient medical evidence supporting that appellant's continuing need for work restrictions as of June 30, 2008 was due to the 1990 back sprain.

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<sup>7</sup> See *T.M.*, 60 ECAB \_\_\_\_ (Docket No. 08-975, issued February 6, 2009) (for conditions not accepted or approved by the Office, the claimant bears the burden of proof to establish that the condition is causally related to the work injury through the submission of rationalized medical evidence).

<sup>8</sup> See *K.W.*, 59 ECAB \_\_\_\_ (Docket No. 07-1669, issued December 13, 2007) (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).

<sup>9</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>10</sup> Regarding the significance of bridging symptoms, see *Robert H. St. Onge*, 43 ECAB 1169, 1175 (1992).

<sup>11</sup> See *C.S.*, 60 ECAB \_\_\_\_ (Docket No. 08-2218, issued August 7, 2009) (when a light-duty position is withdrawn, it is the claimant's burden to establish that any increase in disability for work is due to the accepted injury, rather than another cause).

Appellant has not submitted sufficient medical evidence establishing that she sustained a recurrence of disability or need for medical treatment due to her accepted lumbar strain. She has not met her burden of proof.

**CONCLUSION**

The Board finds that appellant did not establish that she sustained a recurrence of disability commencing November 18, 2005 causally related to an accepted April 12, 1990 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 6, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 4, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board