

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

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**R.Z., Appellant**

**and**

**DEPARTMENT OF THE ARMY,  
McALESTER AMMUNITION PLANT,  
McAlester, OK, Employer**

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**Docket No. 10-735  
Issued: October 19, 2010**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 25, 2010 appellant, through attorney, filed a timely appeal from the December 23, 2009 decision of the Office of Workers' Compensation Programs denying his recurrence claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUES**

The issue is whether appellant established that he sustained a recurrence of disability as of April 24, 2007 due to his accepted March 27, 2006 employment injury.

**FACTUAL HISTORY**

This case has previously been before the Board. On March 27, 2006 appellant injured his low back and left buttock while getting into a truck. The Office accepted his claim for lumbar strain/sprain. On May 9, 2007 appellant's filed a recurrence of disability claim commencing on April 24, 2007. The Office denied his claim on July 16, 2007. On November 29, 2007 it denied

appellant's request for reconsideration. In a September 12, 2008 decision, the Board remanded the case to the Office for additional development of the medical evidence based on the report of the attending physician, Dr. John W. Ellis.<sup>1</sup> The facts of the case are set out in the Board's prior decision and incorporated herein by reference.

On February 12, 2009 the Office referred appellant to Dr. Christopher Jordan, a Board-certified orthopedic surgeon, for a second opinion examination. In a March 7, 2009 report, Dr. Jordan reviewed appellant's history of injury and medical treatment. He noted appellant's complaint of weakness in the left leg and a preexisting history of back problems dating to 1986. Dr. Jordan listed findings on physical examination, providing range of motion without evidence of back spasm or pain with compression. On neurological examination, he noted that there was some apparent inconsistency of effort, with normal muscle strength and equal reflexes or other abnormality. Dr. Jordan noted that a lumbar magnetic resonance imaging (MRI) scan of April 3, 2006 showed broad-based disc bulges at L2-3 and L4-5, with no mention of a disc herniation. He noted that previous physicians of record had diagnosed lumbar degenerative joint disease with sciatica. A June 11, 2007 MRI scan revealed disc bulging at all levels of the lumbar spine with facet joint arthritis and generally moderate foraminal stenosis on the left. A September 15, 2008 MRI scan was reported by the radiologist as similar to the MRI scan obtained in 2006 with no disc protrusions or spinal stenosis.

Dr. Jordan noted that the only physical finding on examination was in the left sacroiliac joint region. He stated that appellant's electromyography (EMG) was reported as normal, suggesting subjective numbness reported in the feet would not be related to the accepted injury. Appellant also had normal light touch sensation which did not produce in any level. Dr. Jordan described the mechanism of injury as a muscle strain as appellant was simply getting into a truck. He advised that the strain had long since resolved. Dr. Jordan noted that appellant's subjective symptoms had not ceased but that they were not related to the accepted injury. He advised that appellant had limited motion of the spine but that he was able to perform a sedentary sitting job full time.

In a May 6, 2009 addendum, Dr. Jordan stated there was no evidence that appellant sustained a recurrence of disability as of April 24, 2007 causally related to the March 27, 2006 employment injury. He reiterated that the December 13, 2008 EMG was reported as normal and a December 16, 2008 discogram was nondiagnostic. Dr. Jordan found that appellant's ongoing low back symptoms were not causally related to the accepted low back strain.

In a June 4, 2009 decision, the Office denied appellant's recurrence of disability claim.

By letter dated June 23, 2009, appellant's counsel requested a telephonic hearing before an Office hearing representative, which was held on October 9, 2009.

In an October 9, 2009 report, Dr. Ellis advised that appellant continued to have moderate-to-severe low back pain which radiated bilaterally into the legs. He noted severe low back, bilateral hip and thigh muscle spasms and stated that appellant was totally disabled due to his

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<sup>1</sup> Docket No. 08-1033 (issued September 12, 2008).

medication, pain and symptoms. Dr. Ellis did not address appellant's disability as of April 24, 2007.

In a December 23, 2009 decision, an Office hearing representative affirmed the June 4, 2009 denial of appellant's recurrence claim.

### **LEGAL PRECEDENT**

The Office's implementing regulations define a 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 has 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> If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken and an appropriate new claim should be filed.<sup>3</sup>

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and that such a relationship must be supported with affirmative evidence, explained by medical rationale and be based on a complete and accurate medical and factual background of the claimant.<sup>4</sup> Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.<sup>5</sup>

### **ANALYSIS**

Appellant sustained injury on March 27, 2006 while getting into a truck. His claim was accepted for a lumbar sprain/strain. Appellant was treated and released from care on May 12, 2006. He was treated again in 2007 by Dr. Ellis, an attending family practitioner. Dr. Ellis advised that appellant had returned to full duty but continued to have numbness and tingling in his left foot. As noted, the Board remanded the case to the Office for further development on the issue of whether appellant sustained a recurrence of disability due to his accepted back condition.

Appellant was referred to Dr. Jordan, a Board-certified orthopedic surgeon, for examination. On March 7, 2009 Dr. Jordan set forth findings on examination of appellant,

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<sup>2</sup> 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *A.M.*, 61 ECAB \_\_\_\_ (Docket No. 09-1895, issued April 23, 2010); *Phillip L. Barnes*, 55 ECAB 426 (2004).

<sup>3</sup> *Id.* See also *B.B.*, 61 ECAB \_\_\_\_ (Docket No. 09-1858, issued April 16, 2010); *Donald T. Pippin*, 54 ECAB 631 (2003).

<sup>4</sup> *O.W.*, 61 ECAB \_\_\_\_ (Docket No. 09-2110, issued April 22, 2010); *Conard Hightower*, 54 ECAB 796 (2003).

<sup>5</sup> *T.M.*, 60 ECAB \_\_\_\_ (Docket No. 08-975, issued February 6, 2009); *Albert C. Brown*, 52 ECAB 152 (2000).

noting that the neurological examination was normal and that there were limitations on range of low back motion without muscle spasm or pain with compression. He provided an extensive review of appellant's prior medical treatment, noting diagnostic studies obtained in 2006 showed broad-based disc bulging without evidence of any disc herniation. Dr. Jordan advised that appellant had some foraminal stenosis at L5-S1 with lumbar degenerative disease and sciatica. He noted that, as of May 12, 2006, Dr. R. Tyler Boone had found a normal range of motion and good neurological motor strength of the lower extremities. Dr. Boone recommended that appellant return to regular duty. Dr. Ellis examined appellant on May 7, 2007 for decreased sensation in the right medial thigh and left calf. Additional testing on June 11, 2007 noted the lumbar bulging discs at all levels with facet joint arthritis. A September 15, 2008 MRI scan was reported as showing the bulging lumbar discs without evidence of disc protrusion or spinal stenosis.

Dr. Jordan found that the mechanism of appellant's March 27, 2006 employment injury resulted in a muscle strain, which had since resolved. Based on his review of the findings on physical examination and diagnostic testing, Dr. Jordan stated it was difficult to attribute appellant's ongoing lumbar complaints to the accepted employment injury. In a May 6, 2009 addendum, he stated that there was no evidence that appellant's disability as of April 24, 2007 was causally related to the accepted lumbar sprain/strain. Dr. Jordan reiterated that the most recent diagnostic EMG of December 13, 2008 was reported as normal and that a December 16, 2008 discogram was nondiagnostic. The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of 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 stated conclusions.<sup>6</sup> Dr. Jordan fully discussed the history of injury, appellant's preexisting lumbar condition and explained that there were no objective findings to support that his disability in April 2007 was due to residuals of the accepted lumbar sprain/strain. The Board finds that the report of Dr. Jordan constitutes the weight of medical opinion.

In an October 9, 2009 report, Dr. Ellis reported that appellant continued to have moderate-to-severe low back pain which radiated bilaterally into the legs, with muscle spasms in the low back, bilateral hip and thigh regions. He stated generally that appellant was totally disabled due to his medication, pain and symptoms. The report of Dr. Ellis is not sufficient to establish that appellant's disability as of April 2007 is causally related to the accepted March 27, 2006 injury. He did not address this issue in his report, thereby rendering it of diminished probative value on the issue in this appeal. In the prior decision, the Board noted that Dr. Ellis failed to provide sufficient rationale in support of appellant's claimed April 24, 2007 recurrence of disability. Dr. Ellis' October 9, 2009 report does not further address the issue. The Board has held that medical opinions which fail to offer an opinion regarding the cause of an employee's condition are of limited probative value on the issue of causal relationship.<sup>7</sup>

The Office properly determined that the weight of medical opinion was represented by Dr. Jordan. His reports are detailed as to appellant's history of injury and medical treatment,

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<sup>6</sup> See *K.W.*, 59 ECAB 271 (2007); *Michael S. Mina*, 57 ECAB 379 (2006); *Ann C. Leanza*, 48 ECAB 115 (1996).

<sup>7</sup> *S.E.*, 60 ECAB \_\_\_\_ (Docket No. 08-2214, issued May 6, 2009); *Michael E. Smith*, 50 ECAB 313 (1999).

well rationalized and based upon a complete and accurate review. Dr. Jordan opinion represents the weight of the medical evidence.

**CONCLUSION**

The Board finds that appellant did not establish that his disability commencing April 24, 2007 was causally related to his accepted lumbar sprain/strain of March 27, 2006.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 23, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 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