

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

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**M.A., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
FIRE DEPARTMENT, Tuskegee, AL, Employer**

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**Docket No. 10-172  
Issued: September 9, 2010**

*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 October 26, 2009 appellant filed a timely appeal from a July 15, 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The issue is whether the Office properly rescinded an acceptance of a recurrence of disability and denied compensation commencing May 31, 2000.

**FACTUAL HISTORY**

The case was before the Board on a prior appeal. By order dated June 26, 2009, the Board remanded the case on the grounds that a June 20, 2008 Office decision failed to make adequate findings. Since the Board did not discuss the medical evidence in its order, a complete factual history will be provided in the current appeal.

Appellant, then a 46-year-old fireman, filed a traumatic injury claim on April 10, 2000 alleging he sustained a back injury in the performance of duty on April 6, 2000 when he was

moving a patient from a bed to a stretcher.<sup>1</sup> An April 12, 2000 employing establishment health unit note stated that appellant was “much improved and denies any problems. Dismissed and return to duty.”

The record indicates that appellant retired from federal employment on May 31, 2000. On December 11, 2001 appellant filed a notice of recurrence of disability, Form CA-2a. He did not provide a date of the recurrence of disability.

With respect to medical evidence, appellant submitted a May 30, 2001 report from Dr. Richard Hanson, a neurologist, who indicated that appellant had back pain for a year and noted a history of an April 2000 back injury when appellant helped carry a patient. He also reported appellant had a “one-month history of severe lower back pain and moderate neck pain,” indicating appellant had bent to lift a box. Dr. Hanson noted a May 9, 2001 magnetic resonance imaging scan showed mild canal stenosis at L2-5, with no evidence of disc herniation or protrusion. Appellant continued to receive physical therapy treatment.

On March 26, 2002 the Office accepted the claim for a lumbar sprain. On March 3, 2003 appellant submitted a claim for compensation (Form CA-7) dated January 9, 2003, without identifying the period claimed. By letter dated April 7, 2003, appellant requested that his payments be changed from Office of Personnel Management to compensation benefits as of May 1, 2003.

In a report dated February 25, 2002, Dr. Dragos Sabau, a neurologist, indicated appellant had two years of severe back pain, most likely due to facet disease. By report dated November 15, 2002, Dr. Gabriel Nazareno, an internist, provided a history that in April 2000 appellant was supporting a heavy patient when he fell and the patient fell on top of him. She provided results on examination and diagnosed chronic back pain most likely secondary to spinal stenosis.

In a report dated June 6, 2003, Dr. J. Rajamannar, a rehabilitation medicine specialist, referred to a 1999 incident where appellant tried to prevent a patient from falling from a stretcher. Dr. Rajamannar stated that appellant reported he did not have problems before the incident and, “Considering his history it appears that the causative incident for the current pain is/was the stretcher incident in 1999.”

As the Board noted in its prior order, by letter dated August 10, 2006, the Office advised appellant that his “recurrence of [June 11, 2006] had been accepted.” No additional explanation was provided. By letter dated February 5, 2007, the Office advised appellant that he was entitled to compensation commencing May 31, 2000. By decision dated June 20, 2008, the Office stated that appellant’s claim for compensation was denied.

Following the remand of the case by the Board, the Office issued a July 15, 2009 decision that rescinded acceptance of a recurrence of disability. It indicated that no medical evidence had

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<sup>1</sup> The history provided to the employing establishment health unit on April 6, 2000 was that he was helping lift a patient from a bed to an ambulance stretcher when he felt a pop in his lower back.

been cited in accepting a recurrence and there was no medical evidence establishing a recurrence of disability on or after May 31, 2000 causally related to the April 6, 2000 employment injury.

### **LEGAL PRECEDENT**

Section 8128 of the Federal Employees' Compensation Act provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.<sup>2</sup> The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128 of the Act and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.<sup>3</sup> The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.<sup>4</sup>

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provision, where there is good cause for so doing, such as mistake or fraud. It is well established that, once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits. This holds true where the Office later decides that it erroneously accepted a claim. In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of the rationale for rescission.<sup>5</sup>

### **ANALYSIS**

In this case, appellant had sustained a lumbar sprain on April 6, 2000 when he was lifting a patient from a bed to an ambulance stretcher. He was cleared to return to regular duty on April 12, 2000 and he retired on May 31, 2000. Appellant filed a recurrence of disability claim, as well as CA-7 claims for compensation, although he did not specifically indicate the period claimed. The Office did accept that appellant was entitled to compensation for wage loss as of May 31, 2000 and, therefore, it is their burden to rescind acceptance and the Office must provide a clear explanation of the rationale for the rescission.

The Office explained that the medical evidence did not support a recurrence of disability on or after May 31, 2000. To establish a recurrence of disability, there must be probative medical evidence.<sup>6</sup> In this case, the Board concurs with the Office that the medical evidence is not of sufficient probative value on the issue presented.

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<sup>2</sup> 5 U.S.C. § 8128.

<sup>3</sup> *Eli Jacobs*, 32 ECAB 1147 (1981).

<sup>4</sup> *Doris J. Wright*, 49 ECAB 230 (1997); *Shelby J. Rycroft*, 44 ECAB 795 (1993).

<sup>5</sup> *R.M.*, 60 ECAB \_\_\_ (Docket No. 07-1066, issued February 6, 2009); *John W. Graves*, 52 ECAB 160 (2000).

<sup>6</sup> To establish a recurrence of disability, there must be substantial, reliable and probative evidence that the disability for which appellant claims compensation is causally related to the accepted injury. Probative medical evidence is evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning. *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

While there are many medical reports of record, none of these reports provide a complete and accurate history, or a rationalized medical opinion on disability causally related to the April 6, 2000 employment injury. There are no contemporaneous medical reports as of May 31, 2000. A May 30, 2001 report from Dr. Hanson noted an incident one month earlier and he provided no opinion as to a condition causally related to the employment injury. Dr. Nazareno provided an inaccurate history of a patient falling on appellant and offered no medical opinion on causal relationship with employment. Dr. Rajamannar did provide an opinion that the employment injury was the “causative incident” for back pain in June 2003, but this opinion is of diminished probative value. Dr. Rajamannar did not provide a complete and accurate history; he indicated, for example, the incident occurred in 1999, rather than April 2000. The opinion on causal relationship appeared to be based on the lack of symptoms prior to the employment injury, which is not sufficient, without supporting rationale, to establish causal relationship.<sup>7</sup> In addition, Dr. Rajamannar did not provide a clear diagnosis or discuss disability for work.

The Board finds that the Office properly explained that there was no probative medical evidence establishing a recurrence of disability on or after May 31, 2000 causally related to the accepted lumbar sprain on April 6, 2000. The Office therefore met its burden to justify rescission in this case.

### **CONCLUSION**

The Board finds the Office properly rescinded acceptance of a recurrence of disability commencing May 31, 2000.

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<sup>7</sup> See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (because the employee is symptomatic after an injury is not sufficient to establish causal relationship without supporting rationale).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 15, 2009 is affirmed.

Issued: September 9, 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