United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 10-2004**
	)	**Issued: April 14, 2011**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, White River Junction, VT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 3, 2010 appellant filed a timely appeal from the June 23, 2010 merit decision of the Office of Workers' Compensation Programs denying her recurrence claim. Pursuant to the Federal Employees' Compensation Act[1] 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 established that she sustained a recurrence of disability on or after February 22, 2009.

FACTUAL HISTORY

On February 27, 2006 appellant, then a 45-year-old nurse, filed a traumatic injury claim alleging that she sustained a lower back injury in the performance of duty while assisting a

[1] 5 U.S.C. § 8101 *et seq.*

patient into bed. The Office accepted her claim for lumbar sprain.[2] Appellant returned to full, unrestricted duty on October 2, 2006.

On February 22, 2009 appellant filed a traumatic injury claim alleging that she injured her back at work on that day while helping an emergency patient. (File No. xxxxxx356) The claim was denied by the Office on July 2, 2009, and the denial was affirmed by an Office hearing representative on January 20, 2010.

Appellant submitted February 23, 2009 notes from Susan McCoy, a physician's assistant, who stated that she had been experiencing lower back pain since the prior day. Ms. McCoy indicated that appellant did not recall a specific triggering activity. Appellant also submitted a March 17, 2009 duty status report, signed by Carol Williams-Suich, a nurse practitioner, who provided work restrictions, including working no more than four hours and lifting and carrying no more than five pounds.

In a letter dated August 6, 2009, the Office informed appellant that the evidence and information submitted was insufficient to establish her claim, noting that it appeared she was actually claiming a new injury due to an intervening cause. Appellant was advised to submit a statement explaining whether she was claiming a new injury or an injury resulting from a spontaneous worsening of her condition. The Office advised her to submit a medical report with a diagnosis and opinion explaining how her claimed disabling condition was causally related to the accepted injury.

In notes dated February 24, 2009, Ms. Williams-Suich stated that appellant had a history of herniated disc. She related that appellant woke up that morning with a headache and felt a pulling sensation radiating down the right side of her back. On March 13, 2009 Ms. Williams-Suich noted appellant's recurrent history of intermittent back pain. She examined appellant on February 5, 2009, following a reported work-related incident when appellant caught a patient who fell while walking. Appellant reported that she experienced right-sided back pain since the incident.

By decision dated November 13, 2009, the Office denied appellant's recurrence claim, finding that the evidence was insufficient to establish that the claimed disability was related to the established work event.

On November 24, 2009 appellant requested a telephonic hearing. At an April 13, 2010 hearing, she testified that she sustained a herniated disc as a result of her original accepted injury. Appellant stated that she reinjured her back on February 22, 2009 at work while assisting a patient, but that her back had been "acting up" prior to the new injury. Her attorney stated that "the incident at work was sort of the culmination of the back problem." The hearing representative advised appellant and her representative to submit medical evidence showing how her current condition was causally related to the original injury.

[2] Appellant filed traumatic injury claims alleging lower back injuries on March 8, 2001 (File No. xxxxxx760) and August 30, 2004 (File No. xxxxxx892). These claims were accepted administratively as "quick close cases" and treated as minor injuries with no time lost from work. On March 1, 2006 the Office combined File Nos. xxxxxx760, xxxxxx050 and xxxxxx892, with File No. xxxxxx892 serving as the master file. Appellant's May 9, 2007 traumatic injury claim was accepted for lumbar strain. (File No. xxxxxx616).

By decision dated June 23, 2010, the Office hearing representative affirmed the November 13, 2009 decision. He found that appellant had not alleged or shown that she sustained a spontaneous recurrence of disability, but rather had claimed that her condition had worsened due to an intervening 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 resulting from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the original illness.[3] It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.[4]

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.[5] 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.[6] The physician's conclusion must be supported by sound medical reasoning.[7]

ANALYSIS

The Office accepted that appellant sustained a lumbar sprain on February 28, 2006 in the performance of duty. The record reflects that she returned to full-time unrestricted duty on October 2, 2006. The issue is whether appellant has established that she sustained a recurrence of disability on or after February 22, 2009 causally related to his accepted injury.

The evidence of record fails to establish that appellant sustained a recurrence of disability. As noted, 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 resulting from a previous injury or illness without a new or intervening injury.[8] Appellant submitted no rationalized medical evidence supporting that she experienced a spontaneous change in her medical condition due to the accepted injury. Rather, she reported to the Office and to her

[3] 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

[4] Office procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change, demonstrated by objective findings, in the medical condition that resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997). *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

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

[6] *S.S.*, 59 ECAB 315 (2008).

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

[8] *Mary A. Ceglia*, 55 ECAB 626 (2004).

physicians that her pain was exacerbated by an incident at work on February 22, 2009 while she was assisting a patient. Appellant has alleged that her claimed disability was due to an intervening injury and new exposure to work factors. The Board finds that her claim does not meet the definition of a recurrence of disability.[9]

Appellant contended that she was unable to work due to a herniated disc, which resulted from the original 2006 injury. The medical evidence of record, however, fails to establish that she was actually disabled from work during the claimed period or that her claimed disabling condition was causally related to the employment injury.[10] The record contains notes and reports from Ms. McCoy, a physician's assistant, and Ms. Williams-Suich, a nurse practitioner. As these reports were not signed by individuals that qualify as "physicians" under the Act, the Board finds that they do not constitute probative medical evidence.[11] Moreover, Ms. Williams-Suich's statement that appellant had experienced right-sided back pain since a February 2009 work-related incident involving a falling patient, suggests that her current condition is due to an intervening event, rather than to a spontaneous occurrence related to the accepted 2006 injury.

Appellant did not submit any reports from a physician who, on the basis of a complete and accurate factual and medical history, concluded that she was totally disabled as of February 22, 2009 due to residuals of her accepted injury. She has failed to establish by the weight of the reliable, probative and substantial evidence, a change in the nature and extent of the injury-related condition resulting in her inability to perform the duties of her employment. As appellant has not submitted any medical evidence showing that she sustained a recurrence of disability due to her accepted employment injury, the Board finds that she has not met her burden of proof.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability on or after February 22, 2009.

[9] *See Bryant F. Blackmon*, 56 ECAB 752 (2005).

The Board notes that the Office found that appellant failed to meet her burden of proof to establish that she sustained a traumatic injury on February 22, 2009 in File No. xxxxxx356. The Office's denial of appellant's traumatic injury claim does not, however, in and of itself negate the possibility of an intervening event or support her claim in the instant case that she sustained a spontaneous recurrence of disability on February 22, 2009 causally related to the accepted 2006 injury.

[10] *S.S., supra* note 6.

[11] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report is a "physician" as defined under 5 U.S.C. § 8101(2). Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the June 23, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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