



## **FACTUAL HISTORY**

On July 27, 2006 appellant, then a 39-year-old practical nurse, filed a claim alleging that on July 21, 2006 she injured her right lower back in the performance of duty. She stopped work on July 26, 2006 and returned to limited-duty employment on August 1, 2006. The Office accepted the claim for a lumbar sprain. Following her injury, appellant received L5-S1 epidural injections and chiropractic treatments.

In a progress report dated March 22, 2010, Dr. Charles Taggert, Board-certified in family practice, discussed appellant's history of low back pain beginning July 2006 with increased pain the past few days radiating into the right leg. He diagnosed an exacerbation of low back pain with possible sciatica and recommended a magnetic resonance imaging (MRI) scan study. Dr. Taggert opined that appellant should remain off work from March 22 to April 1, 2010. In a March 29, 2010 progress report, he discussed her history of a back injury on July 21, 2006 after lifting a bag at work. Dr. Taggert noted that an MRI scan study showed "some worsening of her disc protrusions at L3-L4 and L4-L5, resulting in some compromise of the spinal canal." He diagnosed back pain and extended her work absence until April 10, 2010.

On March 30, 2010 appellant filed a recurrence of disability claim on March 21, 2010 causally related to her July 21, 2006 employment injury. She stopped work on March 22, 2010. The employing establishment noted that appellant had worked light duty since her July 21, 2006 injury.

By letter dated April 5, 2010, the Office advised appellant of the information required to establish a recurrence of disability.

On April 9, 2010 Dr. Shashikala Sarma, a Board-certified internist, discussed appellant's history of a July 2006 back injury. He noted that she experienced an onset of acute back pain on March 29, 2010 "when she turned to take something from her mother and suddenly the acute back pain started, which spread to the right leg and right buttock." In an accompanying form, Dr. Sarma diagnosed lumbosacral spondylosis and advised that appellant should return in four weeks.

On April 21, 2010 Dr. Vincent J. Silvaggio, a Board-certified orthopedic surgeon, noted that he last evaluated appellant in November 2008 for multilevel degenerative disc disease. He discussed her current complaints of right leg pain and related that a November 24, 2010 MRI scan study revealed "multilevel degenerative disc disease with some stenosis, central and neural foraminal" with bulging discs at L3-4 and L4-5. Dr. Silvaggio attributed appellant's leg pain to possible nerve root compression and recommended attempting pain management prior to scheduling surgery. He found that she should remain off work pending evaluation by a pain clinic.

On April 27, 2010 appellant submitted a request for authorization for epidural injections for the lumbosacral spine.

By decision dated May 11, 2010, the Office found that appellant had not established that she sustained a recurrence of disability causally related to her July 21, 2006 work injury. It

determined that the medical evidence was insufficient to show that her current condition or disability was causally related to her accepted lumbar sprain.

In a second decision dated May 11, 2010, the Office denied authorization for epidural injections. It noted that appellant had undergone 11 epidural injections since October 2006 and that the medical evidence indicated treatment for degenerative disc disease instead of a lumbar sprain.

On May 20, 2010 appellant requested reconsideration. By decision dated June 1, 2010, the Office denied her request for reconsideration after finding that she had not submitted any evidence or argument showing that her case should be reopened for further merit review.

On appeal, appellant questioned why the Office denied her request for approval for epidural injections when it had previously approved her treatment. She asserted that epidural steroid injections and radiofrequency ablation allowed her to work. Appellant further noted that the Office paid for MRI scan studies for her degenerative disc disease and requested expansion of her claim to include degenerative joint disease.

### **LEGAL PRECEDENT -- ISSUE 1**

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or she 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>1</sup>

Office regulations provide that 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>

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<sup>1</sup> *Richard A. Neidert*, 57 ECAB 474 (2006); *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>2</sup> 20 C.F.R. § 10.5(x).

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

## ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a lumbar sprain due to a July 21, 2006 employment injury. Appellant stopped work on July 26, 2006 and returned to limited-duty employment on August 1, 2006. She filed a recurrence of disability beginning March 21, 2010 due to her July 21, 2006 employment injury.

Appellant has not alleged a change in the nature and extent of her light-duty job requirements. Instead, she attributed her recurrence of disability to a change in the nature and extent of her employment-related conditions. Appellant must thus provide medical evidence establishing that she was disabled due to a worsening of her accepted work-related condition of lumbar sprain.<sup>4</sup>

On March 22, 2010 Dr. Taggart noted that appellant had a history of back pain since 2006 and that she experienced increased back pain with radiation into the right leg over the past few days. He diagnosed an exacerbation of back pain with possible sciatica and asserted that she should remain off work. On March 29, 2010 Dr. Taggart interpreted an MRI scan study as showing worsening of L3-4 and L4-5 disc protrusions with some spinal canal compression. He found that appellant could not work. Dr. Taggart, however, did not address the cause of her increased back pain and worsening disc protrusions; consequently, his report is of little probative value on the issue of causal relationship.<sup>5</sup>

On April 9, 2010 Dr. Sarma discussed appellant's July 2006 back injury. He noted that on March 29, 2010 she experienced a sudden, acute exacerbation of back pain after turning to take an item from her mother. Dr. Sarma diagnosed lumbosacral spondylosis. He did not attribute the exacerbation of back pain to appellant's July 2006 work injury but instead described a possible intervening injury, that of her sustaining increased back pain after turning toward her mother. A recurrence of disability is defined as the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury without an intervening injury or new exposure to the work environment.<sup>6</sup>

On April 21, 2010 Dr. Silvaggio discussed his previous treatment of appellant in November 2008 for degenerative disc disease. He noted that she currently complained of right leg pain. Dr. Silvaggio interpreted a November 2010 MRI scan study as showing degenerative disc disease at multiple levels with some stenosis and L3-4 and L4-5 bulging discs. He diagnosed possible nerve root compression and found that appellant should not work. Dr. Silvaggio did not address the cause of her nerve root compression or the findings on the MRI scan study. As discussed, medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>7</sup> Further, the Office accepted appellant's claim for lumbar sprain. Where appellant claims that a

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<sup>4</sup> See *Jackie D. West*, *supra* note 1.

<sup>5</sup> *A.D.*, 58 ECAB 149 (2006); *Conard Hightower*, 54 ECAB 796 (2003).

<sup>6</sup> 20 C.F.R. § 10.5(x).

<sup>7</sup> *S.E.*, 60 ECAB \_\_\_\_ (Docket No. 08-2214, issued May 6, 2009); *Conard Hightower*, *supra* note 5.

condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.<sup>8</sup> She has not submitted reasoned evidence attributing her disability beginning March 21, 2010 to her accepted employment injury and thus has not established a recurrence of disability.

On appeal, appellant requests that her degenerative joint disease be accepted as employment related. She notes that the Office paid for MRI scan studies. The Board's jurisdiction, however, is limited to reviewing final decisions of the Office.<sup>9</sup> The Office has not issued a final decision on this issue.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8103 of the Federal Employees' Compensation Act<sup>10</sup> provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree of the period of disability or aid in lessening the amount of monthly compensation.<sup>11</sup> In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under section 8103, with the only limitation on the Office's authority being that of reasonableness.<sup>12</sup> Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>13</sup> In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury.<sup>14</sup>

Proof of causal relationship in a case such as this must include supporting rationalized medical evidence. Thus, in order for a surgery to be authorized, appellant must submit evidence to show that the requested procedure is for a condition causally related to the employment injury and that it is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.<sup>15</sup>

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<sup>8</sup> *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>9</sup> 20 C.F.R. § 501.2(c).

<sup>10</sup> 5 U.S.C. §§ 8101-8193.

<sup>11</sup> 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

<sup>12</sup> *Joseph P. Hofmann*, 57 ECAB 456 (2006); *James R. Bell*, 52 ECAB 414 (2001).

<sup>13</sup> *R.C.*, 58 ECAB 238 (2006); *Claudia L. Yantis*, 48 ECAB 495 (1997).

<sup>14</sup> *Cathy B. Mullin*, 51 ECAB 331 (2000).

<sup>15</sup> *Id.*

## **ANALYSIS -- ISSUE 2**

On April 27, 2010 appellant submitted a request for authorization for epidural steroid injection. The Office denied her request after finding that she did not establish that the treatment was necessary for her work injury.

Appellant has not submitted a medical report explaining why such a procedure was necessary to treat her accepted lumbar sprain. She has the burden to show that the lumbar steroid epidural injections are medically necessary to treat a condition causally related to the employment injury.<sup>16</sup> The Office has broad discretion in approving services under the Act. The only limitation on the Office's authority is that of reasonableness.<sup>17</sup> As appellant failed to submit supporting medical evidence, the Board finds that the Office acted within its discretion in denying her request for an epidural steroid injection.

On appeal, appellant questioned why the Office denied authorization for a steroid injection when it had previously authorized such injections. She asserts that she has difficulty working without the injections. Regardless of whether the Office authorized such procedures in the past, however, it retains the discretion to authorize medical services, appliances and supplies pursuant to section 8103.<sup>18</sup> The function of the Board on appeal is to determine whether there has been an abuse of discretion. Generally, abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logical and probable deductions from known facts.<sup>19</sup> Appellant has the burden to submit rationalized medical evidence supporting that the steroid injections are necessary for treatment of her accepted employment injury of lumbar sprain. As she did not meet this burden, the Office properly denied authorization.

## **LEGAL PRECEDENT -- ISSUE 3**

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>20</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>21</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>22</sup> When a claimant fails to meet one of the above

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<sup>16</sup> See *Joseph P. Hofmann*, 57 ECAB 456 (2006).

<sup>17</sup> *D.C.*, 58 ECAB 620 (2007).

<sup>18</sup> See *Joseph P. Hofman*, *supra* note 16.

<sup>19</sup> See *Lottie M. Williams*, 56 ECAB 302 (2005).

<sup>20</sup> 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

<sup>21</sup> 20 C.F.R. § 10.606(b)(2).

<sup>22</sup> *Id.* at § 10.607(a).

standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>23</sup>

### **ANALYSIS -- ISSUE 3**

In decisions dated May 11, 2010, the Office found that appellant did not establish an employment-related recurrence of disability beginning March 21, 2010 and denied her request for authorization for steroid epidural injections. On May 20, 2010 appellant requested reconsideration. She did not submit any additional evidence or raise a legal argument with her reconsideration request.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute new and relevant evidence not previously considered. As she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.<sup>24</sup>

### **CONCLUSION**

The Board finds that appellant has not established a recurrence of disability beginning March 21, 2010 causally related to her July 21, 2006 employment injury. The Board further finds that it properly denied her request for authorization for epidural injections and properly denied her request to reopen her claim for further review of the merits under section 8128.

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<sup>23</sup> *Id.* at § 10.608(b).

<sup>24</sup> Appellant submitted new medical evidence with her appeal. The Board has no jurisdiction to review new evidence on appeal; *see* 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration under 5 U.S.C. § 8128.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 1 and May 11, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 24, 2011  
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