

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

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D.H., Appellant)	
)	
and)	
)	Docket No. 10-1044
)	Issued: January 12, 2011
U.S. POSTAL SERVICE, MAIN POST OFFICE, Lynchburg, VA, Employer)	
)	
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Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 5, 2010 appellant, through counsel, filed a timely appeal of the January 26, 2010 merit decision of the Office of Workers' Compensation Programs denying her recurrence of disability claim. 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 appellant established that she sustained a recurrence of disability on May 25, 2009 causally related to her May 25, 2006 employment injury.

On appeal, appellant's attorney asserts that the Office's January 26, 2010 decision is contrary to fact and law.

FACTUAL HISTORY

The Office accepted that on May 25, 2006 appellant, then a 51-year-old mail processing clerk, sustained a back sprain while in the performance of duty. Following her employment injury and total disability through June 11, 2006, she returned to regular work duties as a clerk.¹

On June 1, 2009 appellant filed a claim alleging that she sustained a recurrence of disability on May 25, 2009 due to her May 25, 2006 employment injury. She noted back pain as she lifted heavy trays and pushed or pulled equipment. A June 2, 2009 medical report from Dr. Harb L. Rank, an attending Board-certified family practitioner, indicated with an affirmative mark that appellant had back pain and degenerative disc disease of the lumbar spine due to the May 25, 2006 employment injury. He noted that she could resume light-duty work on June 10, 2009. In a second June 2, 2009 report, Dr. Rank reiterated his opinion.

By letter dated June 11, 2009, the Office advised appellant that the evidence submitted was insufficient to establish her recurrence of total disability claim. It requested additional factual and medical evidence.

In an undated letter, appellant described the May 25, 2009 recurrence of disability. She experienced low back pain while bending over a container to lift a tray of mail. Appellant noted that around May 7, 2009 the pain intensified and her back stiffened as she lifted a tray of mail from an all-purpose container. After several days of coping, she stopped work. Appellant noted that she constantly swept mail that could be heavy from a machine into a tray which required grasping the mail and turning and placing it into a tray. She also pulled racks back and forth into place. Appellant performed her work duties 8 hours a day, 40 hours a week.

A June 17, 2009 magnetic resonance imaging scan of appellant's lumbar spine by Dr. Bennett A. Alford, a Board-certified radiologist, revealed slight worsening of facet hypertrophy on the right at L5-S1 with new abnormal edema-like signal abnormality extending from the right facet joint into the right L5 pedicle and right sacral ala resulting in mild to moderate right foraminal stenosis at this level. There was also mild left foraminal stenosis at L5-S1 due to facet hypertrophy. At L2-L3, there was mild central canal and mild bilateral neural foraminal stenosis secondary to a combination of moderate disc bulge and ligamentum flavum hypertrophy.

In reports dated June 11 and July 8, 2009, Dr. Francis H. Shen, a Board-certified orthopedic surgeon, listed findings on physical examination and reviewed diagnostic test results. He diagnosed lumbar degenerative disease with radicular pain, facet hypertrophy and stenosis on the right. Hospital records dated June 2, 2009 indicated that appellant was treated in the emergency room for a lumbosacral sprain on that date.

In a June 22, 2009 report, Dr. Rank noted appellant's worsening chronic back pain due to lifting and bending at work. Appellant also had chronic leg pain with right lower extremity paresthesias, decreased range of motion in both lower extremities and marked tenderness in her lower back. Dr. Rank stated that she was being treated for lumbar degenerative joint disease. He

¹ In a June 10, 2008 letter, the Office accepted that appellant sustained a recurrence of disability on May 2, 2008.

found that appellant could not work because her position required pushing, twisting, kneeling, bending, pulling and stooping. In form reports dated July 14 and August 14, 2009, Dr. Rank indicated with an affirmative mark that her lumbar radiculopathy was causally related to the May 25, 2006 employment injury. He advised that appellant was totally disabled from May 22 through October 30, 2009.

In a June 11, 2009 report, Dr. Michelle S. Barr, a Board-certified radiologist, found no evidence of spondylolysis or spondylolisthesis. Appellant had mild multilevel degenerative changes that had not significantly changed.

In a September 3, 2009 decision, the Office denied appellant's recurrence of disability claim. The medical evidence was found insufficient to establish that her disability on May 25, 2009 was due to the May 25, 2006 employment injury. The Office stated that appellant's entitlement to medical treatment was not affected by its decision.

On October 2, 2009 appellant requested a review of the written record by an Office hearing representative.

In a September 23, 2009 report, Dr. Lynn R. Kohan, a Board-certified anesthesiologist, listed findings on physical examination and reviewed diagnostic test results. She diagnosed right sacroiliitis, spondylosis and mild lumbar spinal stenosis. In an October 6, 2009 report, Dr. Kohan stated that appellant received a steroid injection to treat her right sacroiliitis condition.

In a September 24, 2009 report, Dr. Rank reiterated his opinion that appellant sustained degenerative disc and joint disease due to her May 25, 2006 employment injury. He stated that she could return to her regular work duties on September 30, 2009.²

In a January 26, 2010 decision, an Office hearing representative affirmed the Office's September 3, 2009 decision denying appellant's claim for a recurrence of disability.³

LEGAL PRECEDENT

A recurrence of disability is the 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, which caused the illness. The 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.⁴

² Appellant accepted the employing establishment's job offer for a modified mail processing position effective September 30, 2009.

³ The hearing representative modified the prior decision to find.

⁴ 20 C.F.R. § 10.5(x).

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which she claims compensation is causally related to the accepted employment injury.⁵ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her employment injury.⁶ 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.⁷ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁸

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁹ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.¹⁰ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.¹¹

ANALYSIS

The Office accepted that appellant sustained a back sprain in the performance of duty on May 25, 2006. Appellant claimed a recurrence of her back condition on May 25, 2009. The Board finds that she failed to submit sufficient medical evidence to establish that her need for medical treatment is due to her accepted condition.

Dr. Rank's form reports of 2009 indicated with an affirmative mark that appellant had lumbar pain and degenerative disc disease due to her May 25, 2006 employment injury. He advised that she was totally disabled for work from May 22 through at least October 30, 2009. Reports which only address causal relationship with a check mark without more by way of medical rationale explaining how the incident caused the injury are insufficient to establish causal relationship and are of diminished probative value.¹² Dr. Rank did not explain how the diagnosed conditions and total disability were caused or contributed to by the May 25, 2006

⁵ *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

⁶ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁷ *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

⁸ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

⁹ *See Ricky S. Storms*, *supra* note 7; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

¹⁰ For the importance of bridging information in establishing a claim for a recurrence of disability, *see Richard McBride*, 37 ECAB 748 at 753 (1986).

¹¹ *See Ricky S. Storms*, *supra* note 7; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹² *See Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

employment injury.¹³ The Board notes that pain is generally considered a symptom, not a firm diagnosis.¹⁴ Dr. Rank's June 2 and September 24, 2009 reports which found that appellant's back pain and degenerative disc and joint disease were caused by her accepted employment injury and that she could return to light-duty work as of June 10 and September 30, 2009, respectively, are similarly insufficient to establish her claim. As stated, pain is a symptom and not a diagnosis.¹⁵ Moreover, Dr. Rank failed to address how the diagnosed lumbar conditions and appellant's disability were caused or contributed to by her accepted condition.¹⁶ His June 22 and July 14, 2009 reports found that she was totally disabled for work. Again, Dr. Rank did not address how appellant's disability was causally related to her May 25, 2006 employment injury.

Dr. Alford's diagnostic test results and the reports of Dr. Shen, Dr. Barr and Dr. Kohan which addressed appellant's lumbar conditions and medical treatment do not provide any medical opinion addressing whether the diagnosed conditions are causally related to the May 25, 2006 employment injury. The Board has held that 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.¹⁷ The Board finds, therefore, that the physicians' reports are insufficient to establish appellant's claim.

The hospital records which stated that appellant was treated on June 2, 2009 for a lumbosacral sprain are similarly insufficient to establish her claim. This evidence does not provide any opinion explaining how her current back condition or need for medical treatment related to the accepted employment injury. Appellant has failed to submit sufficient medical evidence to establish a recurrence of her lumbar condition or need for treatment due to the May 25, 2006 accepted injury.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a recurrence of disability.

¹³ See *Gloria J. McPherson*, 51 ECAB 441 (2000) (the opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant).

¹⁴ See *Robert Broome*, 55 ECAB 339 (2004).

¹⁵ *Id.*

¹⁶ *Gloria J. McPherson*, *supra* note 13.

¹⁷ *A.F.*, 59 ECAB 714 (2008).

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2011
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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