



On August 22, 2005 the Office accepted appellant's claim for lumbar sprain/strain. Appellant returned to light-duty work.

On September 17, 2008 appellant filed a claim for wage-loss compensation (Form CA-7) for the period September 11 through 23, 2008. In medical reports dated September 16, 2008, Dr. Eric G. Dawson, an attending orthopedic surgeon, noted appellant's continuing back symptoms. He listed his findings on physical examination and diagnosed lumbar discopathy, modest neurosensory ventral root impingement and increased spasm with loss of general range of motion of the lumbar spine. Dr. Dawson advised that appellant's lumbar discopathy was due to the accepted employment-related condition.

By letter dated October 1, 2008, the Office requested that appellant submit factual and medical evidence, including a rationalized medical opinion from an attending physician explaining how his current condition was causally related to the accepted condition.

In an October 3, 2008 letter, appellant advised that his light-duty work did not change or become more demanding. In an October 3, 2008 report, Dr. Dawson advised that appellant's current lumbar spine condition was largely the result of overuse that was precipitated by the accepted condition. He clearly had the medical stigmata or signs of such injury which according to a community standard of care may result in exacerbations even without significant change. Also on October 3, 2008 Dr. Dawson noted appellant's complaints of pain, spasm, stiffness, numbness and tingling in the lower back area with loss of range of motion. Appellant's modified work duties had not changed. On physical examination, Dr. Dawson found no major nerve impingement other than neurosensory dorsal at L5 which was ordinary and understood to be the case with such injuries. Appellant had lumbosacral myofascitis with increased muscle tone and spasm. There was moderate tenderness at L4-5 and L5-S1 when sheer forces were applied. In an October 15, 2008 report, Dr. Dawson noted that appellant had significant aggravation and exacerbation of the lumbar spine. Significant spasm was present. Appellant had apparently exceeded his work restrictions. On physical examination, Dr. Dawson found no major motor deficit, but reported soft touch neurosensory deficit at L5. He placed appellant on rest through October 17, 2008. In an October 17, 2008 report, Dr. Dawson noted appellant's continuing pain, spasm and stiffness of the lower back. He advised that appellant had downward going plantar responses with trace motor deficit. Dr. Dawson recommended three additional days of rest. In an October 21, 2008 report, he indicated with an affirmative mark that appellant had lumbar discopathy and sacroiliac sprain that were caused or aggravated by the accepted condition. Dr. Dawson was totally disabled from October 15 through 22, 2008. On October 29, 2009 he stated that appellant's accepted condition was incorrect. Dr. Dawson advised that appellant had lumbar discopathy, some signs of local nerve impingement, but no severe motor or nerve impingement based on his physical examination findings and the results of a July 2007 magnetic resonance imaging (MRI) scan. Appellant could perform his work duties with physical restrictions previously established by Dr. Dawson.

In disability certificates dated April 10, 2006 to March 16, 2007, Dr. Cyrus V. Parsey, a family practitioner and Board-certified pathologist, advised that appellant had low back pain. Appellant was totally disabled for work on intermittent dates during the stated period.

In an April 10, 2006 report, Dr. Sydney J. Pion, a Board-certified radiologist, reviewed the results of an MRI scan of appellant's lumbar spine and stated that there was no significant radiologic abnormality.

By decisions dated November 17 and 19, 2008, the Office denied appellant's recurrence of disability claim. It found the evidence to be insufficient to establish that his total disability commencing September 11, 2008 was due to his accepted condition.

On January 9, 2009 appellant requested reconsideration of the Office's November 17, 2008 decision. He submitted a claim (Form CA-2a) alleging that he sustained a recurrence of disability on May 8, 2007. Appellant stopped work on September 11, 2008. He stated that, following the accepted injury, he could not perform his usual work duties. Appellant was restricted from bending, pushing, stooping and twisting. He experienced pain, stiffness, occasional weakness in his back and legs. Appellant contended that there was a causal relationship between his current condition and his accepted condition as walking, stooping, pushing and reaching aggravated and worsened his accepted condition.

In reports dated January 7, 2008 to March 20, 2009, Dr. Dawson noted appellant's back and right leg symptoms. He listed his findings on physical examination and reviewed the results of a lumbar MRI scan. Dr. Dawson advised that appellant had cervical strain, dorsal myofascitis, contusion to the left hand and wrist with possible carpal tunnel syndrome and lumbar myofascitis and sprain with possible annular discopathy. In the December 23, 2008 report, he opined that appellant continued to suffer from residuals of his accepted condition and that he required continued physical restrictions. In a January 7, 2009 report, Dr. Dawson advised that appellant had a lumbar dorsal nerve root at L5 that was caused or aggravated by the accepted condition. Also, on January 7, 2009 he advised that appellant sustained a back injury and he was totally disabled for work through January 8, 2009. Appellant could return to work on January 9, 2009.

By decision dated April 27, 2009, the Office denied modification of the November 17, 2008 decision. The evidence submitted by appellant was found insufficient to establish that he sustained a recurrence of disability commencing September 11, 2008 due to his accepted condition.

On December 8, 2009 appellant, through counsel, requested reconsideration. In reports dated May 1, 2009 through January 25, 2010, Dr. Dawson reiterated his diagnoses of lumbar discopathy with neural radiculopathy dorsal and impingement at L5. He placed appellant on rest commencing retroactively from April 29 through May 4, 2009. Appellant was released to return to his previous light-duty work on May 6, September 16 and November 19, 2009. On January 25, 2010 Dr. Dawson noted that appellant was working beyond his restrictions. He placed appellant on rest through January 30, 2010. Dr. Dawson advised that appellant could return to work on February 1, 2010.

In an October 1, 2009 report, Dr. Daniel R. Ignacio, a Board-certified physiatrist, advised that an electromyogram of appellant's lumbar spine revealed right L5 radiculopathy. Also on October 1, 2009 he obtained a history of the accepted condition and noted appellant's back and lower extremity symptoms. Dr. Ignacio listed his findings on physical and diagnostic testing.

He advised that appellant had lumbar disc syndrome and radiculopathy and chronic pain syndrome.

In a March 11, 2010 decision, the Office denied modification of the April 27, 2009 decision. The evidence submitted by appellant was insufficient to establish that he sustained a recurrence of disability commencing September 11, 2008 due to his employment-related injury.<sup>1</sup>

### **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.<sup>2</sup>

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-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 cannot perform such limited-duty work. 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 limited-duty job requirements.<sup>3</sup>

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.<sup>4</sup>

### **ANALYSIS**

The Office accepted that appellant sustained lumbar sprain/strain while in the performance of duty. Appellant claimed a recurrence of disability commencing September 11, 2008. He must demonstrate either that his condition has changed such that he

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<sup>1</sup> Following the issuance of the Office's March 11, 2010 decision, the Office received additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a formal written request for reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

<sup>2</sup> 20 C.F.R. § 10.5(x).

<sup>3</sup> *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>4</sup> *James H. Botts*, 50 ECAB 265 (1999).

could not perform the activities required by his modified job or that the requirements of the limited light-duty jobs changed. The Board finds that the record contains no evidence that the limited light-duty job requirements were changed or withdrawn or that appellant's employment-related condition has changed such that it precluded him from performing limited light-duty work.

Dr. Dawson's reports found that appellant had several lumbar conditions that were causally related to the accepted condition. He opined that appellant was totally disabled for work on intermittent dates from October 15, 2008 through January 30, 2010. However, Dr. Dawson did not adequately explain how the diagnosed conditions and appellant's claimed recurrence of disability commencing September 11, 2008 were caused or contributed to by the accepted employment-related lumbar sprain/strain.<sup>5</sup> The Board finds that his reports are insufficient to establish appellant's claim.

Dr. Parsey's disability certificates found that appellant was totally disabled from April 10, 2006 to March 16, 2007. This evidence predates the alleged recurrence of disability commencing September 11, 2008 and is not relevant to the issue of whether his current back condition and disability are due to the accepted condition.

Dr. Pion's diagnostic test report found that appellant had no significant radiologic abnormality. This evidence failed to provide an opinion on causal relationship between the claimed period of disability and the accepted condition. The Board has held that a physician's opinion, which does not address causal relationship is of diminished probative value.<sup>6</sup> The Board finds, therefore, that Dr. Pion's report is insufficient to establish appellant's claim.

Similarly, Dr. Ignacio's diagnostic test report is insufficient to establish appellant's claim. While he addressed appellant's lumbar conditions, he failed to address how these conditions and appellant's claimed recurrence of disability were causally related to the accepted condition.<sup>7</sup> The Board finds that Dr. Ignacio's report is insufficient to establish appellant's claim.

Appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related conditions or a change in the nature and extent of the limited light-duty requirements, which would prohibit him from performing the limited light-duty positions he assumed after he returned to work.

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<sup>5</sup> 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).

<sup>6</sup> See *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>7</sup> *Id.*

**CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a recurrence of disability commencing September 11, 2008 causally related to his accepted employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 11, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 20, 2011  
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