

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

J.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lorain, OH, Employer**

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**Docket No. 10-2043
Issued: June 6, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 4, 2010 appellant filed a timely appeal from a May 25, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ 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 has established a recurrence of disability commencing February 25, 2010.

FACTUAL HISTORY

The case was before the Board on a prior appeal. In a decision dated July 21, 2006, the Board affirmed a December 1, 2005 Office decision finding that appellant had not established

¹ 5 U.S.C. § 8101 *et seq.*

entitlement to a schedule award.² The Board noted there had been three claims for injury: a traumatic injury claim on March 11, 1991 for a low back injury, a July 24, 1991 motor vehicle accident accepted for cervical strain and C5-6 herniated disc, and an occupational claim from July 2000 accepted for aggravation of lumbosacral spondylosis. The additional history provided by the Board in the prior decision is incorporated herein by reference.

The record indicates that appellant returned to work in a modified letter carrier position with a driving, rather than walking, route. Appellant continued to receive treatment from attending physician Dr. Bharat Shah, a pain management specialist, for low back pain. In a report dated October 10, 2009, Dr. Gale Hazen, an orthopedic surgeon, stated that appellant had inflammatory pain from his degenerative disc disease, with no significant neural compression or evidence of instability. He indicated that appellant was not a candidate for any surgical procedure and he needed to make lifestyle changes. In a report dated December 2, 2009, Dr. Shah reported that appellant's back pain had increased. He indicated that appellant assessed his pain at an 8 on a scale of 1 to 10, and diagnosed lumbosacral spondylosis without myelopathy and lumbago. In a report dated January 28, 2010, Dr. Shah reported that appellant's pain was significantly worse, or 8 on the 1 to 10 scale.

By report dated February 25, 2010, Dr. Shah again stated that appellant's pain was "significantly worse," or an 8 on the pain scale. He provided results on examination, stating that appellant reported "that he has been more active at work, lifting more than 50 pounds and states that this aggravates his pain. [Appellant] states that his lower back pain has been a lot more intense. He says that sitting for more than 1 hour intensifies his lower back pain as well as the jolting his back receives when driving the postal truck which causes axial pressure pain." In a duty status report (Form CA-17) dated February 25, 2010, Dr. Shah described his findings as instability of the lumbar spine, and indicated that appellant was taken off work.

On March 16, 2010 appellant filed a Form CA-7 (claim for compensation) commencing February 25, 2010. By letter dated March 17, 2010, the Office advised appellant to submit a Form CA-2a and indicated that, if he was claiming a worsening of his employment-related condition, he must submit a narrative medical report in support of his claim. On March 26, 2010 appellant submitted a Form CA-2a (notice of recurrence of disability) commencing February 25, 2010. In a statement received on April 21, 2010, he stated that his condition had worsened over the years and he could barely drive or walk due to his back injury. Appellant submitted a report dated March 25, 2010 from Dr. Shah, noting decreased lumbar pain. Dr. Shah indicated that facet injections would be scheduled.

By decision dated May 25, 2010, the Office denied a claim for a recurrence of disability commencing February 25, 2010. It found that the medical evidence of record was insufficient to establish the claim.

² Docket No. 06-509 (issued July 21, 2006).

LEGAL PRECEDENT

The Office's regulations define the term recurrence of disability as follows:

“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. 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.”³

When 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 of record establishes that he or she 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 show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁴ To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.⁵

ANALYSIS

The record indicated that appellant had been working in a modified position and he stopped work on February 25, 2010. As noted above, appellant may establish a recurrence of disability if he can show a change in the nature and extent of the light-duty job, such as a withdrawal of the position or a change in duties that are beyond established work restrictions. He did not allege a change in the nature and extent of the light-duty job or submit supporting evidence.

Appellant may also establish a recurrence of disability by submitting reliable, probative and substantial evidence of a recurrence of total disability. A recurrence of disability is, as noted above, a spontaneous change in the employment-related condition. In this case, appellant was seen by Dr. Shah on February 25, 2010 and he placed appellant “off work” in the duty status report of that date. His reports do not establish a recurrence of disability. While Dr. Shah stated

³ 20 C.F.R. § 10.5(x).

⁴ *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ *Maurissa Mack*, 50 ECAB 498 (1999).

in the February 25, 2010 report that appellant's pain was worse, this appeared to be a repetition of prior statements as the pain level reported was the same as it had been since December 2, 2009. He did not discuss causal relationship with the employment injury, and the history provided was a general statement that the history did not deviate from previous assessments. Moreover, Dr. Shah did not discuss disability for work in his narrative report. His reports do not constitute reliable, probative and substantial evidence of a recurrence of total disability commencing February 25, 2010. Appellant also received treatment from Gale Hazen, M.D. In his October 10, 2009 report, Dr. Hazen makes no mention to the etiology of appellant's physical complaints. He opined that, although he had degenerative disc disease, his back is structurally intact and further, that he was not a candidate for any type of surgery. The Board finds appellant did not meet his burden of proof in this case with respect to a recurrence of disability.

The Board notes that the May 25, 2010 Office decision on appeal denied a claim for a recurrence of disability. Appellant had originally filed a Form CA-7, claim for compensation. Dr. Shah referred to appellant's being "more active at work," lifting 50 pounds, as well as sitting and being subjected to "jolting" from driving the employing establishment vehicle. To the extent that appellant is claiming that these work factors contributed to his disability commencing February 25, 2010, this would be a claim for a new injury, not a recurrence of disability.⁶ On return of the case record, the Office should properly consider the issue regarding a new injury.

CONCLUSION

The Board finds that appellant did not establish a recurrence of disability commencing February 25, 2010.

⁶ A claim based on new employment incidents or exposures, even if the same part of the body previously injured is involved, is a new injury. *B.B.*, Docket No. 09-1858 (issued April 16, 2010); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 25, 2010 is affirmed.

Issued: June 6, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board