

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

C.R., Appellant)

and)

DEPARTMENT OF THE ARMY, PUEBLO)
CHEMICAL DEPOT, Pueblo, CO, Employer)

**Docket No. 11-1901
Issued: April 12, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 16, 2011 appellant filed a timely appeal from a May 20, 2011 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 that he sustained a recurrence of disability on and after December 22, 2009 causally related to the accepted March 20, 2006 employment injury.

FACTUAL HISTORY

On March 20, 2006 appellant, then a 50-year-old security guard, filed a traumatic injury claim alleging that on that day he injured his back while putting an equipment bag into the patrol

¹ 5 U.S.C. § 8101 *et seq.*

vehicle.² OWCP accepted his claim for aggravation of lumbar intervertebral disc displacement without myelopathy.

On March 9, 2010 appellant filed a claim for a recurrence of disability beginning December 22, 2009.

By correspondence dated March 29 and September 30, 2010, OWCP advised appellant as to the definition of a recurrence and the evidence required to support his claim.

In response to OWCP's March 29, 2010 letter, appellant related that he had received medical treatment from Dr. Jere G. Sutton, a treating osteopath, for his back pain. He noted that on December 27, 2009 he woke up in more discomfort than normal and informed Barbara Springer. According to appellant she advised him to fill out and send a CA-2a form to her if the pain continued. In concluding, he related that he was taking Advil for his pain and received no medical treatment.

In a July 16, 2010 letter, OWCP informed appellant that he had not sustained a recurrence of disability. It informed him that he had sustained a new work injury with respect to his leg injury, to which is assigned claim number xxxxxx431 and that this claim was in a "short form closure status."

On October 12, 2010 OWCP received an undated letter from appellant noting that the original injury to his back occurred in May 1993 and that he has been living with his back problems since then. Appellant believed the evidence established that he had had recurrences of his back condition in September 2001, March 2007 and February 2010.

In an October 19, 2010 treatment note, Dr. Kenneth Danylchuk, an examining Board-certified orthopedic surgeon, noted that appellant was last seen in 2006. Appellant stated that he wanted a new magnetic resonance imaging (MRI) scan and that he would be seeking treatment from another physician. Dr. Danylchuk took x-ray interpretations and gave a new prescription for Ibuprofen.

By decision dated November 3, 2010, OWCP denied appellant's recurrence claim.

Subsequent to the decision appellant submitted medical and factual evidence from 2006 and a November 13, 2010 lumbar spine MRI scan from Dr. John L. Sherman, an examining Board-certified diagnostic radiologist, who found mild degenerative findings, L4-5 left paramedian disc herniation without nerve compression and a L5-S1 shallow posterior central and right paracentral disc herniation with nerve compression.

On November 15, 2010 appellant requested an oral hearing before an OWCP hearing representative. A telephonic hearing before the hearing representative was held on March 14,

² This was assigned claim number xxxxxx794. On January 11, 2007 OWCP combined claim number xxxxxx794 and claim number xxxxxx408 with the former claim number as the master file number. Under claim number xxxxxx408 it accepted that appellant sustained a herniated lumbar disc as a result of a May 10, 1993 employment injury.

2011 in which appellant testified and was advised by the hearing representative regarding the medical and factual evidence required to support his claim.³

By decision dated May 20, 2011, an OWCP hearing representative affirmed the November 3, 2010 denial of appellant's recurrence claim.

LEGAL PRECEDENT

OWCP's implementing regulations define a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴ If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken and an appropriate new claim should be filed.⁵

ANALYSIS

OWCP accepted appellant's claim for aggravation of lumbar intervertebral disc displacement without myelopathy. Appellant claimed that he sustained a recurrence of disability beginning December 22, 2009 as a result of his accepted March 20, 2006 injury. The issue on appeal is whether he has submitted sufficient medical evidence supporting his claim. The Board finds that appellant failed to meet his burden of proof.

In order to establish his claim for recurrence, appellant is required to submit evidence from a qualified physician containing medical opinion establishing that his current disability is causally related to the accepted employment injury.⁶ He was informed of this requirement by OWCP in letters dated March 29 and September 30, 2010 and by the hearing representative.

Appellant did not submit any medical evidence in support of his claim for his recurrence of disability beginning December 22, 2009 causally related to the accepted March 20, 2006 injury. The only evidence received was medical evidence from 2006, his statements, a November 13, 2010 MRI scan by Dr. Sherman and a progress note from Dr. Danylchuk. The medical evidence from 2006 predates the alleged recurrence of disability commencing December 22, 2009 and is not relevant to the issue of whether his current back condition and disability are due to the accepted condition.

Dr. Danylchuk noted that appellant had not been seen since 2006 and gave him a prescription for Advil. Dr. Sherman, in the November 13, 2010 MRI scan, noted diagnoses of

³ Appellant testified that he retired from the employing establishment in 2010.

⁴ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). *See also Phillip L. Barnes*, 55 ECAB 426 (2004).

⁵ *Id.* at Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB 631 (2003).

⁶ *See B.B.*, Docket No. 09-1858 (issued April 16, 2010); *S.S.*, 59 ECAB 315 (2008); *Mary A. Ceglia*, 55 ECAB 626 (2004).

mild degenerative findings, L4-5 left paramedian disc herniation without nerve compression and an L5-S1 shallow posterior central and right paracentral disc herniation with nerve compression and did not address the issue of disability. However, these reports fail to support a recurrence of total disability as neither Dr. Danylchuk nor Dr. Sherman offered an opinion on disability. Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁷

An award of benefits may not be based on surmise, conjecture, speculation or upon a claimant's own belief that there is causal relationship between his claimed condition and his employment.⁸ As appellant has failed to submit any medical evidence containing a rationalized opinion establishing that he sustained a recurrence of medical condition on December 22, 2009, the Board finds that he has not met his burden of proof.⁹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability on and after December 22, 2009 causally related to the accepted March 20, 2006 employment injury.

⁷ See *A.D.*, 58 ECAB 149 (2006); *Robert Broome*, 55 ECAB 339 (2004) (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).

⁸ *S.S.*, 59 ECAB 315 (2008); *Paul E. Thams*, 56 ECAB 503 (2005).

⁹ *J.F.*, 58 ECAB 124 (2006); *Mary A. Ceglia*, *supra* note 6; *Joan R. Donovan*, 54 ECAB 615 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 20, 2011 is affirmed.

Issued: April 12, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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