

FACTUAL HISTORY

On January 21, 2003 appellant, then a 37-year-old letter carrier, had low back pain performing her duties. OWCP assigned the claim file number xxxxxx464 and accepted the condition of low back strain. Appellant lost minimal time from work.

On November 23, 2007 appellant filed an occupational disease claim alleging that the aggravation of her back condition on October 9, 2007 was related to her January 21, 2003 work injury. She stopped all work October 10, 2007. OWCP assigned the claim file number xxxxxx495 and accepted the condition of temporary aggravation of degenerative disc disease L4-5. Appellant worked limited-duty positions with decreasing work restrictions until being released to full unrestricted work duties on June 4, 2009. OWCP paid appropriate benefits.² Appellant's two claims were administratively combined under master claim file number xxxxxx495.

On July 22, 2010 appellant filed a notice of recurrence of disability (Form CA-2a) commencing June 21, 2010. She stated that, while lifting a laundry basket at home on June 20, 2010, she felt extreme pain in her lower back and down her right leg. Appellant indicated that since the October 9, 2007 injury she used anti-inflammatory medicines to cope with her lower back pain. She did not return to work.

In a July 26, 2010 letter, OWCP requested additional factual and medical evidence from appellant. In response, it received evidence that included October 18, 2007 and July 15, 2010 magnetic resonance imaging (MRI) scans of the lumbar spine; CA-7 forms claiming wage-loss compensation from June 21 to August 13, 2010; and a request to change the attending physician to Dr. Jamie Gottlieb, a Board-certified orthopedic surgeon. Appellant also submitted a July 15, 2010 letter describing the type of compensation that she claimed; an August 11, 2010 letter indicating that she was at home doing the laundry when she felt extreme back pain; and an August 26, 2010 letter from her regarding a request for surgery.

In a June 28, 2010 attending physician's report, Dr. Samuel West, a Board-certified family practitioner, noted examining appellant on June 21, 2010 and related that there was no specific incident of injury. He stated that she had a history of degenerative disc disease and osteoarthritis of the spine. Dr. West opined that appellant was disabled since June 21, 2010 and referred her to Dr. Gottlieb.

In a July 14, 2010 report, Dr. Gottlieb indicated that appellant had been followed by him in the past for degenerative disc disease and stenosis at L4-5 and cervical stenosis at C3-4 and C5-6. He provided a history of injury as "things really exacerbated about a month ago and she actually could not get up." Dr. Gottlieb noted examination findings and opined that appellant could not work. In a July 14, 2010 Form CA-17 duty status report, he found her disabled. In an August 11, 2010 medical report, Dr. Gottlieb discussed possible surgery.

² This included a December 14, 2010 anterior interbody spine fusion at L4-5 and wage loss from the December 14, 2010 surgery until the return to work.

In an August 13, 2010 report, Dr. Gottlieb related that his December 14, 2007 examination of appellant for an October 9, 2007 work injury revealed most of the disease was related to L4-5. He indicated that she has been consistently followed for low back problems and has been on restrictions since the October 9, 2007 work injury. Dr. Gottlieb diagnosed lumbar spondylosis and lumbar stenosis and discussed examination findings along with objective testing. He opined that appellant's need for surgery was related to the October 9, 2007 work injury. Dr. Gottlieb also opined that the work injury exacerbated her condition to the point of being symptomatic and requiring further treatment. He noted that appellant's pain has been acutely exacerbated and worsened and he has taken her off work. In an August 11, 2010 CA-17 form duty status report, Dr. Gottlieb noted the length of her disability after surgery.

In an October 14, 2010 decision, OWCP denied the recurrence of disability claim finding on the grounds that the evidence supported that appellant had an intervening injury at home while doing laundry. It found that her physicians did not provide a rationalized medical opinion supporting a consequential injury. OWCP found that appellant had not proven that she was disabled from work as a consequence of the claimed recurrence.

In an October 15, 2010 report, Dr. Julie Wehner, a Board-certified orthopedic surgeon and OWCP referral physician, reviewed a statement of accepted facts, appellant's medical record and set forth examination findings. She diagnosed low back pain. Radiologic findings showed a degenerative disc at L4-5 as well as a small disc protrusion. The degenerative disc was a preexisting condition and the October 9, 2007 work injury was a temporary exacerbation of appellant's lumbar degenerative disc disease at L4-5. Dr. Wehner indicated that appellant was released back to work in June 2009; therefore, maximum medical improvement was reached in June 2009. She indicated that the new exacerbation in June 2010 was due to a lifting injury at home and was not work related as she reached maximum medical improvement in 2009 for that condition. Dr. Wehner advised that appellant's restrictions were based on a nonwork-related lifting injury at home and not the 2007 work injury.

On February 28, 2011 appellant requested reconsideration. She argued that the June 2010 exacerbation was consequential to her original condition and indicated that Dr. West admitted making an error about this. A December 14, 2010 operative report, a March 21, 2011 physical therapy report and authorization requests were submitted.

In a November 2, 2010 report, Dr. West noted that when he saw appellant on June 21, 2010 for an acute exacerbation of back pain, he stated that there was no specific injury related to the episode. He indicated that her pain began during routine household activity as opposed to a fall or unusual level of physical activity which could be expected to bother her back. Dr. West indicated that he should have answered yes to the question that the condition was caused or aggravated by work activity. He explained that appellant had well-documented degenerative disc disease and arthritis of her spine. Dr. West stated that, while this may have been a genetic propensity that could not be proven and that once a patient becomes symptomatic, heavy physical labor would usually provoke recurrent symptoms in time. He noted that this had been the case off and on since her 2007 back magnetic resonance imaging (MRI) scan. Dr. West indicated that appellant's back problems were such that even normal household activities might provoke pain as it did in June 2010. He stated that appellant was taken off work in June 2010 to allow her pain to improve to a level which would allow her to return to work. On May 9, 2011

Dr. West opined that years of heavy labor at the employing establishment exacerbated her problems and accelerated her degenerative changes.

Reports from Dr. Gottlieb dated November 5 and December 13, 2010, March 9 and 24 and April 20 and 27, 2011 were received. In his March 24, 2011 Family Medical Leave Act report, Dr. Gottlieb indicated that appellant had back surgery on December 14, 2010 and still had left leg numbness. He stated that she was totally disabled from December 14, 2007 until at least April 20, 2011. Dr. Gottlieb indicated that appellant periodically will have flare ups which will occur without warning and that, currently, she was incapable of sedentary work. In his April 27, 2011 report, he indicated that she continued with symptoms four months after surgery. Dr. Gottlieb also indicated that a March 14, 2011 MRI scan the left knee revealed patella chondromalacia and lateral patella subluxation. He opined that appellant was unable to work due to her condition as she was unable to sit or stand for long or short periods of time and her unpredictable bouts of pain required her to lie down for a period of time, usually on a daily basis.

By decision dated May 31, 2011, OWCP denied modification of its October 14, 2010 decision. It found the medical reports and appellant's argument did not establish that the June 2010 claimed recurrence was related to the accepted condition of 2007 or consequential to the original acceptance.

On September 21, 2011 appellant requested reconsideration. New evidence submitted included an August 9, 2011 denial decision from the Social Security Administration and additional medical evidence.³ Progress reports dated January 5, March 9 and October 5, 2011 from Dr. Gottlieb discussing appellant's progress after the December 14, 2010 back surgery were received. No mention is made of the June 21, 2010 work stoppage.

In a July 19, 2011 report, Dr. Kirnjot Singh, a Board-certified orthopedic surgeon, provided a history of ongoing back pain since 2003 and noted appellant's medical treatment, including the lifting incident at home and her December 2010 back surgery. He indicated that the October 2010 MRI scan showed degenerative disc disease with mild stenosis L4-5 and opined that it was essentially the same from 2007 to 2010. Dr. Singh provided an impression of spinal fusion, anterior posterior, healed L4-5 and recommended continued treatment. No discussion was provided concerning appellant's work stoppage beginning June 21, 2010.

By decision dated December 5, 2011, OWCP affirmed its prior decision.

LEGAL PRECEDENT

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴ Where an employee claims a recurrence of disability due to an accepted employment-related injury, she has the burden to establish that the recurrence is casually related

³ While appellant's attorney mentions a report from a Dr. Gregorius, there is no report of record.

⁴ 20 C.F.R. § 10.5(x).

to the original injury.⁵ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.⁶ The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁷ The Board has held that the fact that a condition manifests itself or worsens during a period of employment⁸ or that work activities produce symptoms revelatory of an underlying condition⁹ does not raise an inference of causal relationship between a claimed condition and employment factors.

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employees own intentional conduct.¹⁰ The claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, she must present rationalized medical opinion evidence.¹¹

ANALYSIS

OWCP accepted that appellant sustained a temporary aggravation of degenerative disc disease in June 2007. Appellant missed work intermittently and worked limited-duty positions with decreasing work restrictions until being released to full unrestricted work duties on June 4, 2009. On June 21, 2010 she stopped work after lifting a laundry basket at home on June 20, 2010. Appellant underwent an anterior interbody spine fusion at L4-5 on December 14, 2010, which OWCP subsequently determined was medically necessary. OWCP denied her claim for a recurrence of disability or consequential injury on June 21, 2010 on the grounds that the June 20, 2010 lifting of a laundry basket at home was an intervening cause.

In support of her recurrence claim, appellant submitted reports of Dr. West, Dr. Gottlieb and Dr. Singh. In a June 28, 2010 report, Dr. West stated that there was no specific incident of injury for her complaints and opined that she was disabled beginning June 21, 2010. He made no mention of the June 20, 2010 lifting of a laundry basket at home and he did not specifically indicate that appellant's disability was employment related. Dr. West's reports of November 2 and May 9, 2011 provide some support for causal relationship and his November 2, 2010 report noted that her pain began during routine household activity. However, he did not provide sufficient reasoned support for causal relationship in light of his more contemporaneous June 28,

⁵ *Id.* at § 10.104(b); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁶ *Helen K. Holt*, 50 ECAB 279, 282 (1999).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (March 2011).

⁸ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁹ *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

¹⁰ *S.S.*, 59 ECAB 315 (2008).

¹¹ *Charles W. Downey*, 54 ECAB 421 (2003).

2010 report, which provided no indication that appellant's disability beginning June 21, 2010 was employment related.¹² Dr. West, on November 2, 2010, stated that once symptomatic, heavy physical labor will usually provoke recurrent symptoms, such as she had intermittently since her 2007. He opined that appellant's back problems were significant enough that even normal household activities may provoke pain as happened in June 2010. Dr. West, however, did not discuss how the lifting of the laundry basket at home exacerbated appellant's back symptoms or provide reasoning to explain why the lifting of the laundry basket would not be an independent cause of the disability beginning June 21, 2010. Instead, he seems to relate in his May 9, 2011 report that her work environment was the contributing cause of her symptoms. However, appellant clearly stated that her claimed recurrent disability began after she lifted a laundry basket at home, an intervening incident. Dr. West did not explain the medical process by which the intervening incident of lifting a laundry basket at home could have caused the claimed disability. Thus, his reports are not sufficiently well rationalized on the matter of causal relationship to establish a recurrence of disability due to or as a consequence of appellant's 2007 accepted condition.

The reports from Dr. Gottlieb are also of limited probative value on the issue of causal relationship. Dr. Gottlieb examined appellant in July 14, 2010 and took her off work. In his August 13, 2010 report, he opined that her work injury exacerbated her condition to the point of being symptomatic and requiring further treatment. However, like Dr. West, he did not provide a reasoned explanation of how the June 2007 temporary aggravation of degenerative disc disease caused or contributed to disability beginning June 21, 2010. Dr. Gottlieb's other reports relate appellant's disability due to her accepted December 14, 2010 back surgery and make no mention of the June 21, 2010 work stoppage or the June 20, 2010 lifting of the laundry basket at home.¹³ Thus, his reports do not show that she sustained a recurrence of disability or consequential injury to the original acceptance on or after June 21, 2010.

Dr. Singh's July 19, 2011 report is insufficient to establish the claim for recurrent disability as the physician provides no discussion of any work stoppage beginning June 21, 2010. Similarly, other evidence submitted, such as MRI scan reports, are insufficient to establish appellant's claim as no opinion on causal relationship is provided for the period at issue.

Furthermore, the Board notes that Dr. Wehner, an OWCP referral physician examined appellant and on October 15, 2010 opined that she exacerbated her condition in June 2010 due to a lifting injury at home and that this was not attributable to her work-related condition.

Thus, the evidence reflects that appellant had no change in her accepted medical condition such that she was unable to perform her work duties at the time of her June 21, 2010 work stoppage.

¹² The Board has held that contemporaneous evidence is entitled to greater probative value than later evidence. S.S., 59 ECAB 315 (2008).

¹³ Matters relating to the authorized back surgery and the extent of any disability due to the surgery are not presently before the Board.

On appeal, appellant's attorney argued that OWCP's decision is contrary to fact and law. However, as discussed above, appellant has the burden to establish that she sustained a recurrence of disability. The record does not contain any well-rationalized medical opinion that her disability beginning June 21, 2010 was a recurrence of or a consequence of her 2007 accepted condition.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.¹⁴ Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability on or after June 21, 2010 was causally related to the accepted employment injury and, therefore, OWCP properly denied her claim for compensation.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability or consequential condition beginning June 21, 2010 causally related to her accepted work injury.

¹⁴ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

ORDER

IT IS HEREBY ORDERED THAT the December 5, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 29, 2012
Washington, DC

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

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

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