



lumbar sprain and commenced payment for temporary total disability compensation. By decision dated July 11, 1996, it terminated appellant's compensation benefits. In a December 2, 1998 decision,<sup>2</sup> the Board affirmed OWCP's decision terminating compensation. In a September 7, 2006 decision,<sup>3</sup> the Board affirmed its decision denying a claim for recurrence of disability as of September 24, 2003. The facts of this case are set forth in the Board's December 2, 1998 and September 7, 2006 decisions and by reference herein incorporated.

On April 16, 2007 and May 7, 2008 appellant filed CA-7 forms, claims for compensation, alleging that he was entitled to compensation for wage loss as of September 6, 1995 and continuing.

On June 18, 2008 OWCP expanded the claim to include the following accepted conditions: aggravation of displacement of lumbar intervertebral disc without myelopathy; lumbosacral neuritis; radiculitis; sciatica and aggravation of preexisting degeneration of lumbar or lumbosacral intervertebral disc.

By decision dated June 19, 2008, OWCP denied appellant's claim for a recurrence of disability. It found that he failed to submit medical evidence sufficient to establish that the claimed disability as of September 6, 1995 was caused or aggravated by the accepted conditions.

By letter dated July 3, 2008, appellant's attorney requested an oral hearing.

By decision dated January 8, 2009, OWCP's hearing representative affirmed the June 19, 2008 decision.

In a report dated July 7, 2009, Dr. John D. Marshall, Board-certified in family practice, stated that appellant had an extended history of an aggravated lumbosacral disc, herniated disc at L5-S1, sciatica and lumbar disc degeneration. He advised that appellant had difficulty with kneeling and squatting, which produced low back pain.

By decision dated September 2, 2009, OWCP denied modification of the June 19, 2008 decision.

By letter dated August 2, 2010, appellant requested reconsideration.

In a June 3, 2010 report, received by OWCP on August 9, 2010, Dr. Marshall reviewed appellant's extensive medical record which documented his history of low back pain. He noted that a magnetic resonance imaging (MRI) scan dated February 26, 1993 noted a small central herniation with some degenerative disc disease and that an MRI scan dated December 7, 2005 showed severe degenerative disc disease at the L5-S1 with a probable subligamentous disc herniation at this level. Dr. Marshall advised that appellant had persistent pathology of herniation and degenerative disc disease at the L5-S1 level which had progressed more rapidly than normal since the May 2, 1992 injury as indicated by an MRI scan dated October 23, 2008. He further stated that appellant had experienced persistent left leg pain and lower extremity

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<sup>2</sup> Docket No. 97-164 (issued December 2, 1998).

<sup>3</sup> Docket No. 06-468 (issued September 7, 2006).

radiculopathy since the work injury, nerve root irritation and some atrophy of the left leg. Dr. Marshall opined that appellant was totally and permanently disabled from any significant work and could not return to gainful employment due to the severity of his condition. He opined that the trauma which appellant sustained on May 20, 1992 caused his myelopathy, which is a permanent disabling condition. Dr. Marshall recommended that appellant continue his pain management program and find a maintenance exercise program.

By decision dated September 15, 2010, OWCP denied modification of the June 19, 2008 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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>4</sup> A person who claims a recurrence of disability due to an accepted employment-related injury 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 injury.<sup>5</sup>

### **ANALYSIS**

Appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his disability as of September 6, 1995 to his accepted lumbar conditions. He has failed to submit evidence to show that he sustained a worsening of his low back condition or was totally disabled from all work after September 6, 1995. As appellant did not submit medical evidence sufficient to establish that he sustained a recurrence of his work-related lower back condition, OWCP properly denied compensation in its September 15, 2010 decision.<sup>6</sup>

In support of his claim, appellant submitted reports from Dr. Marshall. In his July 7, 2009 report, Dr. Marshall stated that appellant had complaints of low back pain and stated that he had a long history of aggravated lumbosacral disc, herniated disc at L5-S1, sciatica and lumbar disc degeneration. He noted that kneeling and squatting aggravated appellant's low back pain. In his June 3, 2010 report, Dr. Marshall summarized appellant's history of back pain and indicated that appellant had persistent pathology of herniation and degenerative disc disease at the L5-S1 level; he advised that appellant also had persistent left leg pain, lower extremity radiculopathy and nerve root irritation, which, as indicated by an October 23, 2008 MRI scan, had developed at a greater than normal pace since his 1992 employment injury. He stated that appellant was totally and permanently disabled and could not return to gainful employment due to the severity of his condition. Dr. Marshall opined that the trauma which appellant sustained on May 20, 1992 caused his myelopathy and his state of permanent disability.

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<sup>4</sup> R.S., 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

<sup>5</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman* 8 ECAB 508 (1956).

<sup>6</sup> S.S., 59 ECAB 315, 319 (2008).

Dr. Marshall's reports failed to provide a discussion of how appellant's accepted conditions caused or contributed to any disability as of September 6, 1995. While his reports provided a diagnosis of appellant's current condition and noted that he complained of disabling lower back pain since his 1992 employment injury, they did not provide an explanation of how appellant's accepted injury caused or contributed to total disability from work as of September 6, 1995.

Dr. Marshall did not provide a medical explanation as to whether appellant's condition on and after September 6, 1995 was a spontaneous change in the accepted lumbar sprain condition, causing further disability. The Board will affirm the September 15, 2010 OWCP decision.

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 failed to establish that he was entitled to compensation for a recurrence of disability as of September 6, 1995.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 15, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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