United States Department of Labor
Employees' Compensation Appeals Board

G.M., Appellant	)	
and	)	**Docket No. 11-1152**
	)	**Issued: January 20, 2012**
DEPARTMENT OF THE ARMY, TOBYHANNA ARMY DEPOT, Tobyhanna, PA, Employer	)	

Appearances:
Michael J. Parker, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 13, 2011 appellant, through his attorney, filed a timely appeal of the November 9, 2010 and March 10, 2011 merit decisions of the Office of Workers' Compensation Programs (OWCP) denying his recurrence of disability claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 established that he sustained a recurrence of disability commencing September 20, 2010 causally related to his accepted employment-related injuries.

On appeal, counsel contends that the medical evidence is sufficient to establish that appellant is incapable of returning to work.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on June 24, 2009 appellant, then a 43-year-old electronics worker, sustained a lumbar sprain and aggravation of spondylolisthesis as a result of lifting a locker at work. Appellant stopped work on June 29, 2009. OWCP paid compensation for total disability and authorized a L4 laminectomy, L3-4, L4-5 discectomy, tranverse lumbar interbody fusion at L3-4, L4-5 and posterolateral instrumented fusion at L3, L5 with spondylolisthesis reduction. Surgery was performed on December 17, 2009 by Dr. Michel Lacroix, an attending Board-certified neurosurgeon.

On May 7, 2010 Dr. Lacroix released appellant to return to work four hours a day with restrictions through August 2, 2010. Appellant returned to work four hours a day on May 24, 2010. On August 4, 2010 he returned to full-duty work, eight hours a day.

On September 29, 2010 appellant filed a recurrence of disability claim (Form CA-2a) beginning September 20, 2010. Following his return to full-time work, his back condition worsened due to standing on his feet.

In disability certificates dated September 22 and 27, 2010, Dr. Neal M. Davis, a Board-certified family practitioner, advised that appellant was unable to work through October 10, 2010. Appellant could return to work on October 11, 2010.

By letter dated October 1, 2010, OWCP requested that appellant submit factual and medical evidence, including a rationalized medical opinion from an attending physician explaining the causal relationship between his inability to work and the accepted employment injuries.

On October 22, 2010 appellant reiterated that his current disability was causally related to his accepted employment injuries because his pain worsened after he returned to work eight hours a day.

In an October 9, 2010 report, Dr. Joseph N. Bruno, Jr., a radiologist, indicated that an x-ray of the lumbar spine revealed a posterior fusion of L3 through L5. The x-ray was otherwise normal.

In an October 12, 2010 progress note, Dr. Lacroix advised that appellant's right low back and bilateral feet pain had improved by 50 percent status post lumbar fusion. Appellant could probably return to work soon.

In an October 18, 2010 report, Mark Lacy, a physician's assistant, stated that appellant required pain management treatment. A return to work date would be determined in two months following appellant's treatment.

By decision dated November 9, 2010, OWCP denied appellant's recurrence of disability claim. The medical evidence of record was found insufficient to establish that he became totally disabled commencing September 20, 2010 due to his accepted employment-related injuries.

On December 7, 2010 appellant requested a review of the written record by an OWCP hearing representative.

In reports dated November 9 and 11, 2010, Dr. Ryan J. Ness, a Board-certified anesthesiologist, noted appellant's complaint of right leg and foot and back pain. He obtained a history of his medical, family, social and occupational background. Dr. Ness reviewed diagnostic test results and listed his findings on physical and psychological examination. He advised that appellant had lumbago and feet neuropathy.

In a November 9, 2010 report, Stephen Konkolics, a physician's assistant, advised that appellant had lumbago and feet neuropathy. In a treatment note of the same date, he stated that a lumbar epidural steroid injection was the recommended treatment for appellant's back condition.

In a November 9, 2010 report, Lisa Owens, a registered nurse, advised that appellant had lumbosacral neuritis not otherwise specified and lumbar postlaminectomy syndrome.

In a December 7, 2010 report, Dr. Davis obtained a history of the June 24, 2009 employment injuries and appellant's medical treatment. He noted that following appellant's back surgery, appellant experienced pain in both feet. The pain was constant and more pronounced since appellant began walking again. It was worse while sitting or relieved by movement. Dr. Davis advised that appellant's diagnoses remained status post L4 laminectomy, L3-4, L4-5 discectomy, transverse lumbar interbody fusion at L3-4, L4-5 and posterolateral instrumented fusion at L3, L5 with spondylolisthesis reduction. He concluded that the diagnosed conditions were directly related to the accepted injuries and as a result, appellant remained unable to work.

In a January 4, 2011 report, Dr. Lacroix noted that appellant was anxious to return to work. Appellant complained about persistent dysesthetic pain in both feet which was resistance to medication. He also complained about point palpation in the right parasacral area. Dr. Lacroix listed his findings on physical examination and reviewed diagnostic test results. He diagnosed status post lumbar fusion with persistent bilateral feet neuropathic pain, and trigger point and spasm in the paraspinal area. Dr. Lacroix also diagnosed possible sacroliitis. He concluded that appellant was unable to return to work. In an undated prescription, Dr. Lacroix ordered physical therapy for functional capacity.

In a decision dated March 10, 2011, OWCP's hearing representative affirmed the November 9, 2010 decision. The medical evidence was insufficient to establish that appellant sustained a recurrence of disability commencing September 20, 2010 due to his June 24, 2009 employment injury.

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.[2]

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which he claims compensation is causally related to the accepted employment injury.[3] Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.[4] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.[5] Moreover, the physician's conclusion must be supported by sound medical reasoning.[6]

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[7] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[8] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[9]

ANALYSIS

OWCP accepted that appellant sustained a lumbar sprain and aggravation of spondylolisthesis while in the performance of duty on June 24, 2009. Appellant claimed a recurrence of total disability commencing September 20, 2010. The Board finds that appellant failed to submit sufficient medical evidence to establish that his claimed recurrence was related to his accepted injuries.

[2] 20 C.F.R. § 10.5(x).

[3] *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

[4] *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

[5] *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

[6] *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

[7] *See Ricky S. Storms*, *supra* note 5; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

[8] For the importance of bridging information in establishing a claim for a recurrence of disability, *see Richard McBride*, 37 ECAB 748, 753 (1986).

[9] *See Ricky S. Storms*, *supra* note 5; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

Dr. Davis' September 22 and 27, 2010 disability certificates listed only that appellant was unable to work through October 10, 2010. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[10] The disability certificates are not sufficient to establish appellant's claim as they do not provide a diagnosis or any explanation as to how his condition and disability were causally related to the June 24, 2009 employment injuries. On December 7, 2010 Dr. Davis noted appellant's complaint of constant bilateral feet pain following his back surgery. After reviewing a history of the accepted employment injuries and appellant's medical records, he noted appellant's status as post L4 laminectomy, L3-4, L4-5 discectomy, transverse lumbar interbody fusion at L3-4, L4-5 and posterolateral instrumented fusion at L3, L5 with spondylolisthesis reduction were directly related to the accepted injuries and consequently he remained disabled for work. A medical opinion not fortified with medical rationale is of diminished probative value.[11] Dr. Davis did not adequately address how appellant's recurrent disability was causally related to the accepted conditions. The Board finds that his opinion on causal relationship is not sufficient to establish that appellant was disabled commencing September 20, 2010 due to the accepted lumbar conditions.

Dr. Lacroix's progress note found that appellant could probably return to work soon as his right low back and bilateral feet pain had improved by 50 percent status post lumbar fusion. His January 4, 2011 report found that appellant was totally disabled for work. Dr. Lacroix determined that appellant was status post lumbar fusion with persistent bilateral feet neuropathic pain, and had trigger point and spasm in the paraspinal area and possible sacroiliitis. The Board has consistently held that pain is a symptom, not a compensable medical diagnosis.[12] Further, Dr. Lacroix's diagnosis of "possible" sacroliitis is speculative in nature.[13] He did not provide sufficient rationale explaining how appellant's diagnosed conditions and disability commencing September 20, 2010 were causally related to the accepted conditions.[14] Dr. Lacroix's prescription ordered physical therapy for functional capacity. He did not provide any opinion addressing appellant's disability for work due to the accepted conditions.[15] For these reasons, the Board finds that Dr. Lacroix's reports are insufficient to establish appellant's claim.

Dr. Bruno's diagnostic test report provided essentially normal findings. He did not provide a medical opinion on causal relationship between the claimed period of disability and the accepted conditions.[16] The Board finds that Dr. Bruno's report is insufficient to establish appellant's claim.

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[10] *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

[11] *See Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[12] *Robert Broome*, 55 ECAB 339 (2004); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[13] Medical opinions that are speculative or equivocal in character are of little probative value. *See Kathy A. Kelley*, 55 ECAB 206 (2004).

[14] *See Roma A. Mortenson-Kindschi*, *supra* note 11.

[15] *See* cases cited *supra* note 10.

[16] *Id.*

The reports from Mr. Lacy and Mr. Konkolics, physician's assistants and Ms. Owens, a registered nurse, have no probative medical value in establishing appellant's claim. Neither a physician's assistant nor a registered nurse is a physician as defined under FECA.[17]

Appellant failed to submit rationalized medical evidence establishing that his disability commencing September 20, 2010 resulted from the residuals of his accepted lumbar conditions.[18] He has not met his burden of proof.[19]

On appeal, counsel contended that the medical evidence of record established that appellant was totally disabled for work. For the reasons stated above, the Board finds that appellant did not submit rationalized medical evidence establishing his recurrence of disability claim.

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 failed to establish that he sustained a recurrence of disability commencing September 20, 2010 causally related to his accepted employment injuries.

[17] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

[18] *Cecelia M. Corley*, 56 ECAB 662 (2005).

[19] *Tammy L. Medley*, 55 ECAB 182 (2003).

ORDER

IT IS HEREBY ORDERED THAT the March 10, 2011 and November 9, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 20, 2012
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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