

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

R.Z., Appellant

and

**DEPARTMENT OF THE ARMY, McALESTER
MUNITION PLANT, McAlester, OK, Employer**

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**Docket No. 12-1391
Issued: January 28, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On June 4, 2012 appellant filed a timely appeal from the December 29, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 beginning April 24, 2007 due to his accepted March 27, 2006 employment injury.

On appeal, appellant contends that OWCP erred in its evaluation of the medical evidence and that there is an unresolved conflict in the medical opinion evidence.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board on appeal. In a September 12, 2008 decision, the Board set aside a July 16, 2007 OWCP decision denying appellant's recurrence claim and a November 29, 2007 OWCP decision denying reconsideration and remanded the case to OWCP for additional development of the medical evidence.² The Board found the May 7, 2007 report from appellant's treating physician, Dr. John W. Ellis, a Board-certified family practitioner, while not completely rationalized as to whether appellant sustained a recurrence of disability, was consistent in indicating that he had a worsening of his accepted condition. In a second appeal, the Board in an October 19, 2010 decision affirmed a December 23, 2009 OWCP decision denying appellant's claim for a recurrence of disability commencing April 24, 2007.³ The Board found that appellant failed to establish that his recurrence of disability commencing April 24, 2007 was causally related to his accepted March 27, 2006 lumbar sprain/strain. The Board found the weight of the medical evidence rested with the opinion of Dr. Christopher Jordan, a second opinion Board-certified orthopedic surgeon. The facts and the circumstances of the case as set out in the Board's prior decision are adopted herein by reference.⁴

The relevant medical evidence from the prior appeals is set forth below.

In his May 7, 2007 report, Dr. Ellis noted the history of appellant's March 27, 2006 employment injury, his medical history, the medical treatment received and return to full-duty work. He diagnosed lumbosacral muscle tendon strain, lumbar spine deranged disc and left lower extremity radiculopathy, which he attributed to appellant's employment injury. Dr. Ellis reported that after appellant returned to full-duty work he continued to have "problems with numbness and tingling of the left foot" and that appellant "is having the exact same complaints that he was having as a result of the work-related injury of [March] 27, [20]06." He noted that appellant continued to have problems, particularly with his left leg, since returning to full duty and that the condition progressively worsened until he sought treatment on April 24, 2007. Dr. Ellis concluded that appellant was temporarily totally disabled due to the accepted March 27, 2006 employment injury.

In a March 7, 2009 report, Dr. Jordan reviewed appellant's history of injury, magnetic resonance imaging (MRI) scans, objective tests and medical treatment and he performed a physical examination. He noted that the only physical finding he found on examination was in the left sacroiliac joint region. Dr. Jordan stated that appellant's injury would have resulted in a muscle strain which would have resolved. Based on the objective test and physical examination, he related that it was hard to attribute appellant's subjective pain complaints to the accepted employment injury. Lastly, Dr. Jordan noted that appellant had work restrictions as a result of his limited spinal motion so that a sedentary job would be appropriate.

² Docket No. 08-1033 (issued September 12, 2008).

³ Docket no. 10-735 (issued October 19, 2010).

⁴ On March 27, 2006 appellant, then a 45-year-old electrical worker, filed a traumatic injury claim alleging that on that date he injured his lower back and left buttocks while lifting his leg to get into a truck. OWCP accepted the claim for lumbar strain/sprain. Appellant filed a recurrence of disability claim on May 9, 2007, alleging that it commenced on April 24, 2007.

In a May 6, 2009 addendum, Dr. Jordan stated that there was no evidence, based on his examination, that appellant's April 24, 2007 recurrence was causally related to the accepted March 27, 2006 employment injury. In support of this conclusion, he stated that a December 13, 2008 electromyogram (EMG) was normal and a December 16, 2008 discogram was nondiagnostic. In concluding, Dr. Jordan reiterated that appellant's symptoms were not causally related to the accepted March 27, 2006 employment injury.

In a July 28, 2011 report, Dr. M. Stephen Wilson, an examining physician, provided physical findings and a permanent impairment rating. He opined that as a result of appellant's employment injury and activities that he sustained a significant lumbar spine injury. Dr. Wilson reported that appellant felt sharp lower back pain with radicular symptoms going into his left lower extremity while getting into the passenger side of a truck at work on March 26, 2006. He reported that an April 3, 2006 MRI scan revealed L2-L5 narrowing of the neural foramen, a pronounced L2 and L3 disc bulge, a central disc bulge at L5 and moderate disc bulge at L4.

On September 29, 2011 counsel requested reconsideration and argued that there was an unresolved conflict in the medical opinion evidence regarding the denial of appellant's recurrence claim between Dr. Ellis, appellant's treating physician, and Dr. Jordan, a second opinion Board-certified orthopedic surgeon. He also contends that the report from Dr. Wilson is new, pertinent and requires further development of the medical evidence.

By decision dated December 29, 2011, OWCP denied modification. It found the evidence and argument submitted by appellant was insufficient to warrant modification on the 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.⁵ 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.⁶

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and that such a relationship must be supported with affirmative evidence, explained by medical rationale and be based on a complete and

⁵ 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).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB 631 (2003).

accurate medical and factual background of the claimant.⁷ Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.⁸

ANALYSIS

OWCP accepted appellant's claim for a lumbar strain/sprain. Appellant filed a claim for a recurrence of disability beginning April 24, 2007 due to his accepted employment injury. OWCP denied his claim based on the opinion of Dr. Jordan, a second opinion Board-certified orthopedic surgeon, who concluded that appellant's disability was unrelated to his accepted employment injury. The issue on appeal is whether appellant has established his recurrence of disability on and after April 24, 2007 due to his accepted March 27, 2006 employment injury.

In support of his reconsideration request, appellant submitted a report from Dr. Wilson who diagnosed a significant lumbar spine injury. Dr. Wilson provided an impairment rating for appellant and opined that he sustained a significant injury as a result of the employment injury. He offered no opinion as to whether appellant was disabled from working due to his accepted March 27, 2006 employment injury beginning April 24, 2007. As Dr. Wilson's report did not address the period of appellant's alleged disability, it is of diminished probative value and insufficient to establish appellant's claim for a recurrence of disability.⁹

On appeal, appellant contends that there is an unresolved conflict in the medical opinion evidence between Dr. Jordan and Dr. Ellis. However, the Board addressed this issue in the prior appeal when it found there was no conflict in the medical opinion evidence between Dr. Jordan and Dr. Ellis. As noted above, the Board found Dr. Jordan's opinion constituted the weight of evidence when it affirmed the denial of appellant's recurrence claim. The Board also found Dr. Ellis' opinion was insufficient to create a conflict with Dr. Jordan's opinion on this issue. Therefore, the issue of whether there was a conflict in the opinion evidence between Dr. Jordan and Dr. Ellis is *res judicata* and not subject to further consideration.¹⁰

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 on and after April 24, 2007 due to his accepted March 27, 2006 employment injury.

⁷ *Conard Hightower*, 54 ECAB 796 (2003).

⁸ *Albert C. Brown*, 52 ECAB 152 (2000).

⁹ *See Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁰ A decision of the Board is final upon the expiration of 30 days from the date of the decision. 20 C.F.R. § 501.6(d). *See also Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 29, 2011 is affirmed.

Issued: January 28, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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