

FACTUAL HISTORY

This case has previously been before the Board.² In a January 20, 2011 decision, the Board affirmed a March 11, 2010 OWCP decision, finding that appellant failed to establish that he sustained a recurrence of disability commencing September 11, 2008 causally related to his accepted employment injury. The facts from the Board's prior decision are hereby incorporated by reference.³

By letter dated September 21, 2011, appellant, through his attorney, requested reconsideration and submitted additional evidence.

In medical reports dated February 11, 2011 through April 26, 2012, Dr. Eric G. Dawson, an attending orthopedic surgeon, listed findings on physical examination and diagnostic testing. He diagnosed lumbar disc and nerve irritability impingement, chronic low back pain, lumbar discopathy and neural radiculopathy and possible lumbar disc disease. Dr. Dawson set forth appellant's physical restrictions and treatment plan. He related that appellant did not have a substantial preexisting condition as he was fully functional at his job without inhibition or inability to carry out functions at the workplace prior to the May 2005 employment injury.

Dr. Dawson advised that appellant had a back condition caused by this injury. He stated that appellant's injury was caused by a forced extension against flexion mechanism, the details of which he discussed in his prior May 8, 2007 report. Appellant had symptoms consistent with an injury to his lower back, disc structures and nerve endings. He advised that, although appellant had other injuries, this was the ongoing source of most of his problems. Dr. Dawson stated that electromyogram (EMG) and nerve conduction velocity (NCV) studies performed by Dr. Daniel R. Ignacio, a Board-certified physiatrist, showed nerve impingement based on direct measurement. Because these results had been questioned by the Board, he recommended additional EMG/NCV testing. Dr. Dawson stated that appellant's work restrictions, as demonstrated by photographs in the record, were violated which aggravated and exacerbated his condition. Despite appellant's treatment, adherence to his directives for diet, nutrition and exercise, he had ongoing problems which were clearly present and well documented by hands-on serial clinical examinations. He further advised that appellant's prognosis was guarded and recommended semi-sedentary work.

In a March 4, 2011 report, Dr. Dawson noted appellant's complaints of pain, spasm and stiffness in the lower back and numbness, tingling and pain extending down the right leg, but also unremitting pain in the back. He had not worked for some time. Dr. Dawson listed findings on physical examination and diagnostic testing. He diagnosed nerve impingement at L4 and L5. Dr. Dawson advised that appellant's pain and discomfort were consistent with his mechanism of

² Docket No. 10-1272 (issued January 20, 2011).

³ On May 19, 2005 appellant, then a 45-year-old letter carrier, filed an occupational disease claim for a lower back condition. On August 22, 2005 OWCP accepted his claim for lumbar sprain/strain. Appellant returned to light-duty work. On September 17, 2008 he filed a claim for wage-loss compensation (Form CA-7) from September 11 through 23, 2008. By letter dated October 3, 2008, appellant stated that his light-duty work did not change or become more demanding.

injury. He stated that examination findings related to appellant's lumbar disc and legs clearly showed disc and nerve issues secondary to his injury as there were no other etiologic factors.

In a February 17, 2011 report, Dr. Rashid M. Khan, a Board-certified physiatrist, advised that EMG/NCV studies showed evidence of right L5-S1 nerve root irritation, radiculitis and radiculopathy.

An unsigned report dated February 23, 2011, which contained the typed name of Dr. Timothy J. Greenan, a Board-certified radiologist, provided the results of a magnetic resonance imaging (MRI) scan of the lumbar spine. The MRI scan showed mild discogenic disease, spondylosis and a diffuse posterior disc bulge at L1-2, L4-5 and L5-S1. It also showed a moderate degree of facet joint osteoarthropathy bilaterally at L4-5 and L5-S1. A central herniated nucleus pulposus was impressing on the ventral aspect of the thecal sac without definite lateralization at L5-S1. There was no central canal or neural foraminal stenosis. The conus medullaris appeared unremarkable.

Appellant resubmitted Dr. Dawson's May 8, 2007 report and a July 12, 2007 lumbar MRI scan report of Dr. Raymond K. Tu, a Board-certified radiologist, and October 1, 2009 EMG report of Dr. Ignacio which addressed his lumbar and right leg conditions.

In an August 27, 2012 decision, OWCP denied modification of its denial of appellant's recurrence of disability claim. It found that the medical evidence he submitted, particularly, Dr. Dawson's February 11, 2011 report, did not provide a rationalized medical opinion sufficient to establish that the claimed recurrence of disability was causally related to the accepted back condition.

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.⁴

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that he cannot perform such limited-duty work. As part of this burden, the

⁴ 20 C.F.R. § 10.5(x).

employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.⁵

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁶

ANALYSIS

The Board finds that appellant has not established a recurrence of total disability commencing September 11, 2008 that is causally related to the accepted lumbar sprain/strain. Appellant did not establish that the nature and extent of his injury-related condition changed so as to prevent him from continuing to perform his limited-duty assignment.

A partially disabled claimant who returns to a light-duty job has the burden of proving that he or she cannot perform the light duty, if a recurrence of total disability is claimed.⁷ The issue of whether an employee has disability from performing a modified position is primarily a medical question and must be resolved by probative medical evidence.⁸ A claimant's burden includes the necessity of furnishing medical evidence from a 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 and supports that conclusion with sound medical rationale. Where no such rationale is present, the medical evidence is of diminished probative value.⁹

In reports dated February 11 and March 4, 2011, Dr. Dawson found that appellant had a lumbar condition, namely, nerve impingement at L4 and L5 due to the accepted employment injury. He stated that examination findings clearly showed disc and nerve issues secondary to his injury as there were no other etiologic factors. Dr. Dawson further stated that appellant did not have a substantial preexisting condition as he was fully functional and able to perform his duties prior to the accepted injury. He advised that appellant's injury was caused by a forced extension against flexion mechanism. Dr. Dawson further advised that appellant's symptoms of pain and discomfort were consistent with an injury to his lower back, disc structures and nerve endings. The Board notes that the accepted conditions was a lumbar strain/sprain.¹⁰ Dr. Dawson did not provide sufficient opinion addressing how appellant's disability commencing September 11, 2008 was causally related to the accepted employment injury. The Board notes that OWCP has not accepted appellant's claim for a disc condition or nerve impingement at L4

⁵ *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁶ *James H. Botts*, 50 ECAB 265 (1999).

⁷ *See William M. Bailey*, 51 ECAB 197 (1999).

⁸ *Cecelia M. Corley*, 56 ECAB 662 (2005).

⁹ *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹⁰ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Willie M. Miller*, 53 ECAB 697 (2002); *Michael E. Smith*, 50 ECAB 313 (1999).

and L5. Dr. Dawson's opinion is insufficiently rationalized as he did not explain how the accepted sprain/strain caused or contributed to the conditions he diagnosed or disability as of September 11, 2008.¹¹ His remaining reports did not include a rationalized medical opinion associating appellant's diagnosed lumbar disc or nerve conditions with his employment.¹² Dr. Dawson's May 8, 2007 report was previously considered and found insufficient to establish appellant's claim. The Board finds that his reports are insufficient to establish appellant's recurrence of disability claim.

Dr. Khan's diagnostic test report found evidence of right L5-S1 nerve root irritation, radiculitis and radiculopathy. This evidence failed to provide an opinion on causal relationship between the claimed period of disability and the accepted condition.¹³ The Board finds, therefore, that Dr. Khan's report is insufficient to establish appellant's claim.

The diagnostic test reports of Drs. Tu and Ignacio were previously considered and found insufficient to establish appellant's claim.

The unsigned February 23, 2011 report, which contained the typed name of Dr. Greenan has no probative value in establishing that appellant sustained a recurrence of disability commencing September 11, 2008 due to the accepted employment injury. It is well established that medical evidence lacking proper identification is of no probative medical value.¹⁴

The Board finds that the evidence submitted by appellant does not provide adequate rationale to show a change in the nature or extent of the injury-related condition or a change in the nature and extent of the limited light-duty requirements which would prohibit him from performing the limited light-duty position he assumed after he returned to work. Therefore, appellant did not meet his burden of proof to establish disability as a result of a recurrence.

On appeal, counsel contends that OWCP's decision is contrary to fact and law. For the reasons stated above, the Board finds that counsel's argument is not substantiated.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a recurrence of disability commencing September 11, 2008 causally related to his accepted employment injury.

¹¹ See *G.A.*, Docket No. 09-2153 (issued June 10, 2010) (for conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship).

¹² *Id.*

¹³ See cases cited, *supra* note 10.

¹⁴ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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