

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

R.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Greensboro, NC, Employer**

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**Docket No. 14-1068
Issued: January 7, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 8, 2014 appellant filed an appeal from an October 17, 2013 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 met his burden of proof to establish a recurrence of his medical condition.

On appeal, appellant generally asserts that the medical evidence establishes the claimed recurrence.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On February 29, 2008 appellant, then a 49-year-old storekeeper, filed a traumatic injury claim alleging that on January 31, 2008 he injured his lower back while helping to lift a heavy tool box that weighed approximately 250 pounds. He came under the care of Dr. David P. Hopper, a Board-certified family physician, on February 29, 2008. On April 17, 2008 OWCP accepted that appellant sustained an employment-related lumbar sprain.

On November 14, 2008 appellant filed a claim for recurrence. He stated that on September 15, 2008 he sustained a recurrence, noting that his back condition had never gotten better. Appellant indicated that he was working limited duty, but continued to have low back pain. An employing establishment supervisor indicated that appellant had work limitations on lifting, bending, and stooping. In a January 13, 2009 decision, OWCP denied the recurrence of medical condition claim on the grounds that the medical evidence of record was insufficient to establish that he had a worsening of the accepted condition.²

Appellant retired from the employing establishment, effective October 31, 2009.³ On November 5, 2010 he filed a recurrence claim for medical treatment only. Appellant indicated that he sustained a recurrence on June 10, 2008. He noted that he never left work and was not performing the full duties of a storekeeper and was not bending, walking, kneeling, or twisting, which would aggravate his back. Appellant indicated that he primarily worked at a computer but that the back pain never went away and got worse. By letter dated December 3, 2010, OWCP informed him of the evidence needed to support his claim.

The medical evidence relevant to the claimed recurrence of medical condition includes treatment notes and duty status reports dated February 29 to December 14, 2008 in which Dr. Hopper and his associate Dr. Jeffrey R. Greene, also a Board-certified family physician, noted appellant's complaint of low back pain, diagnosed lumbar strain, and recommended modified duty. In a June 10, 2008 treatment note, Dr. Hopper indicated that appellant was seen for a recheck on his back. He stated that appellant's low back pain was aggravated when he lifted items in and out of drawers and off shelves at work and that there had been no acute change. Dr. Hopper diagnosed low back pain. On July 30, 2008 he indicated that appellant's back had improved. On September 22, 2008 Dr. Greene noted that appellant was complaining of stiffness and soreness in the low back that had worsened over the last month. He diagnosed low back pain, strain, and muscle spasm. On September 25 and 29, 2008 Dr. Hopper indicated that appellant's back pain was worse. On October 14, 2008 he indicated that appellant's back still hurt, especially with bending. Dr. Hopper referred him to an orthopedic surgeon.

On November 13, 2008 Dr. John L. Graves, a Board-certified orthopedic surgeon, noted his initial evaluation of appellant's complaint of chronic back pain. He provided physical examination findings and indicated that he was worried that appellant had an annular tear caused

² The record indicates that OWCP authorized physical therapy from June 18 to August 21, 2008. It also reflects that, on June 25, 2009, OWCP denied appellant's request to authorize a physical performance test as the evidence did not show that the requested treatment was medically necessary or causally related to the accepted condition.

³ The record does not indicate that appellant received wage-loss compensation at any time.

by the January 2008 employment injury. Dr. Graves diagnosed chronic back pain and recommended a magnetic resonance imaging (MRI) scan study. A December 16, 2008 MRI scan of the lumbar spine demonstrated an annular tear of the L4-5 disc with mild bulging and a small central disc protrusion at L5-S1 without focal nerve root impingement or compression of the thecal sac and no significant facet joint disease. Dr. Graves continued to submit reports dated from December 18, 2008 to June 18, 2009 describing appellant's complaint of continued back pain, especially with bending, and advised that his pain correlated with the MRI scan findings. On February 28, 2009 Dr. Hao Wang, a Board-certified physiatrist and associate of Dr. Graves, saw appellant in consultation to help evaluate and manage his back pain. He reported the history of the January 31, 2008 injury and indicated that since that time appellant's back condition had gotten progressively worse. Dr. Wang advised that appellant's back pain correlated with his MRI scan findings and recommended epidural steroid injections. In a report dated January 12, 2010, Dr. Graves reported that appellant had retired and recently had severe back pain while on a flight. On February 2, 2010 he reported appellant's low back pain was worsening. Dr. Graves diagnosed low back pain with radicular left leg pain, most likely related to an annular tear at L4-5. He opined that this was related to the January 13, 2008 employment injury.

By decision dated February 7, 2011, OWCP denied appellant's claim for recurrence of medical condition on the grounds that the evidence was insufficient to establish that his current medical condition was due to the accepted employment injury.

On November 7, 2011 appellant, through counsel, requested reconsideration and approval for further medical treatment. He submitted an October 6, 2011 report from Dr. Graves who indicated that he saw appellant multiple times from November 2008 to November 2010 due to continued pain resulting from a January 31, 2008 employment injury, which he stated was accepted for low back sprain and displacement of lumbar intervertebral disc without myelopathy. Dr. Graves noted a history of injury that, after picking up a box on January 31, 2008, appellant felt immediate pain in his low back and when seen in November 2008, he had significant positional low back pain. He indicated that straight-leg raising was positive, and that appellant's symptoms progressed and continued. Dr. Graves opined that the accepted conditions over time progressed to include and cause intermittent low back pain with occasional intermittent radicular symptoms, and that this was the natural history of the underlying condition caused by the January 31, 2008 employment injury. He recommended a repeat MRI scan, to be followed by physical therapy and epidural steroid injection. An October 18, 2011 MRI scan of the lumbar spine demonstrated a slightly progressive but still mild stenosis at L5-S1 due to disc protrusion, mild stable stenosis at L4-5, and mildly progressive facet spurring that contributed to mild stenosis at L5-S1.

In a July 27, 2012 decision, OWCP denied modification of the February 7, 2011 decision. It noted that Dr. Graves did not sufficiently explain how appellant's current need for medical care was caused by the accepted lumbar sprain. On July 22, 2013 appellant, through his attorney, again requested reconsideration, asserting that the diagnosed annular tear was caused by the employment injury and that condition should be accepted and appellant approved for continued medical care.

In a July 1, 2013 report, Dr. Graves noted that, while displacement of lumbar intervertebral disc without myelopathy had not been accepted, appellant had been under the care

of other physicians with light-duty restrictions without relief for over 10 months when he first saw appellant. He indicated that at that time it was his opinion that the employment injury produced more than a back sprain, and a December 2008 MRI scan study showed an annular tear at L4-5 and a small disc protrusion at L5-S1. Dr. Graves indicated that in January 2010 appellant's condition had progressed despite retiring and that he had not incurred an intervening injury. Regarding causation, he reiterated his opinion that appellant suffered an annular tear at the time he was helping lift a 200-pound box on January 31, 2008, stating that the progression of his symptoms indicated that the tear may have been slight at the outset but gradually worsened over time.

By decision dated October 17, 2013, OWCP denied modification of the prior decisions. It stated that the medical evidence of record indicated that appellant had a new injury or exposure to new occupational conditions in June 2008 caused by lifting during his modified duties that aggravated his condition resulting in the need for further treatment. Appellant therefore did not sustain a recurrence of medical condition.

LEGAL PRECEDENT

A claimant has the burden of establishing that he or she sustained a recurrence of a medical condition that is causally related to the accepted employment injury. To meet the burden, a claimant must furnish 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.⁴ Where no such rationale is present, the medical evidence is of diminished probative value.⁵

OWCP regulations define a recurrence of medical condition as the documented need for further medical treatment after release from treatment of the accepted condition when there is no work stoppage. Continuous treatment for the original condition or injury is not considered a renewed need for medical care, nor is examination without treatment.⁶

ANALYSIS

The Board finds that appellant has not established that he sustained a recurrence of medical condition causally related to the January 31, 2008 employment injury accepted for lumbar sprain.

Appellant was under the care of Drs. Hopper and Greene from February 29, 2008 until Dr. Hopper referred him to an orthopedic surgeon on October 14, 2008. He was thereafter under the care of Dr. Graves, a Board-certified orthopedic surgeon. However, a need for continuing medical treatment does not establish a recurrence of medical condition.⁷

⁴ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁵ *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁶ 20 C.F.R. § 10.5(y).

⁷ *See id.*; *K.H.*, Docket No. 08-659 (issued August 15, 2008).

On July 22, 2013 appellant's attorney asserted that the diagnosed annular tear was caused by the employment injury and that the condition should be accepted and appellant approved for continued medical care. The issue in this case is whether appellant sustained a recurrence of medical condition, which is a lumbar sprain that occurred on January 31, 2008. In a June 10, 2008 report, Dr. Hopper stated that appellant's pain was aggravated when he lifted items in and out of drawers and off shelves at work, thereby implicating new job duties that did not occur on January 31, 2008. While Dr. Graves consistently advised that, the January 31, 2008 employment injury caused an annular tear, OWCP has not accepted this condition under this claim.⁸ He first saw appellant in November 2008. Dr. Graves did not discuss appellant's additional job duties in his reports.

It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for a recurrence of medical condition.⁹ The record does not contain a medical report providing a reasoned medical opinion that his claimed recurrence of medical condition was caused by the January 31, 2008 employment injury accepted for lumbar sprain.¹⁰ Furthermore, appellant did not show a change in his light-duty requirements. He therefore did not meet his burden of proof to establish a recurrence of medical condition.¹¹

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 meet his burden of proof to establish a recurrence of medical condition causally related to the January 31, 2008 employment injury accepted for lumbar sprain.

⁸ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury).

⁹ *Mary A. Ceglia*, *supra* note 5.

¹⁰ *Ronald A. Eldridge*, *supra* note 4.

¹¹ See *D.H.*, Docket No. 08-432 (issued June 6, 2008).

ORDER

IT IS HEREBY ORDERED THAT the October 17, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 7, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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