

August 11, 2009 as a result of moving desks and partitions in the performance of duty. It authorized low back surgery which was performed by Dr. Hugo Benalcazar, a Board-certified neurosurgeon, on January 29, 2010. Appellant was placed on the periodic rolls and returned to full duty on March 29, 2010.

On February 25, 2010 Dr. Stephanie Staples, a physiatrist, indicated that appellant could return to work effective March 29, 2010 with no restrictions.

On March 29, 2013 appellant filed a claim for wage-loss compensation (Form CA-7) for four hours of leave without pay (LWOP) due to a doctor's appointment he attended on January 31, 2013.

In an April 1, 2013 letter, OWCP notified appellant that it was unable to accept his claim for compensation because he had not been treated for his employment-related conditions since 2010 and his case was closed. It advised him to file a recurrence claim in order to resume medical treatment and receive wage-loss compensation.

On April 16, 2013 appellant filed a recurrence claim (Form CA-2a). He stated that his surgery relieved most of the pain in his leg, but he experienced tingling and pressure since returning to work and saw a doctor on January 31, 2013.

In an April 18, 2013 letter, OWCP requested additional evidence in support of the claim, including a narrative medical report from appellant's attending physician regarding the relationship between the need for continued medical treatment and the accepted conditions. It afforded appellant 30 days to respond to its inquiries.

Appellant submitted an April 29, 2013 narrative statement reiterating that after his surgery on January 29, 2010 most of the pain in his right leg was gone, however, he was left with tingling and pressure. He went back to his doctor on February 25, 2010 and she indicated that his problems "should go away and may take a year or more." Since the problems never went away and he lost strength in his leg, appellant went back to the doctor on January 31, 2013. He believed that this appointment was approved by OWCP. Appellant indicated that since returning to work his job assignments had not changed and he was very careful not to reinjure himself. He stated that he had no accidents since his surgery and only did low impact exercise.

In a report dated January 31, 2013, Dr. Benalcazar diagnosed lumbar degenerative disc disease and ordered diagnostic studies, including a magnetic resonance imaging (MRI) scan of the lumbar spine.

By decision dated June 12, 2013, OWCP denied the claim and found that medical treatment at its expense was not authorized because the medical evidence was insufficient to establish a recurrence of appellant's accepted conditions causally related to the employment injury.

On January 23, 2014 appellant requested reconsideration and submitted an unsigned February 25, 2010 report from Dr. Staples which noted that appellant felt a tingle in his leg, but no pain, and opined that the issue would resolve in time.

In a January 31, 2013 report, Dr. Jason Tharpe, appellant's chiropractor, diagnosed lumbar degenerative disc disease, lumbar disc displacement, lumbar radiculitis, and numbness. He indicated that appellant's leg pain had onset three years ago, occurred constantly, and was worsening. Dr. Tharpe reported that a tingling sensation in appellant's lower leg had been unchanged since 2010 after his surgery and a strength concern was more recent as appellant felt that he was losing power in the leg and his symptoms worsened in a sitting position.

By decision dated May 2, 2014, OWCP denied modification of its June 12, 2013 decision.

LEGAL PRECEDENT

A recurrence of a medical condition is defined as a documented need for further medical treatment after release from treatment for the accepted condition or injury.² Continuous treatment for the original condition or injury is not considered a recurrence of a medical treatment nor is an examination without treatment.³ As distinguished from a recurrence of disability, a recurrence of a medical condition does not involve an accompanying work stoppage.⁴ It is the employee's burden to establish that the claimed recurrence is causally related to the original injury.⁵ Causal relationship is a medical issue that can generally be resolved only by rationalized medical opinion evidence.⁶

ANALYSIS

OWCP accepted that appellant's August 11, 2009 employment injury resulted in a lumbar sprain and a herniated lumbar intervertebral disc at L3-4. It authorized back surgery and placed him on the periodic rolls. Appellant underwent surgery on January 29, 2010 and returned to full duty on March 29, 2010. On April 16, 2013 he filed a claim for a recurrence of the need for medical treatment due to his August 11, 2009 employment injury.

The record indicates that appellant received medical treatment on only one occasion, January 31, 2013, almost three years after he underwent back surgery on January 29, 2010. Although Dr. Benalcazar did not formally discharge appellant from treatment, a sufficiently lengthy gap in treatment has the same effect as a formal discharge.⁷ Appellant has the burden of

² 20 C.F.R. § 10.5(y).

³ *Id.*

⁴ *Id.* at § 10.5(x).

⁵ *Id.* at § 10.104. *See also Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

⁶ *See Jennifer Atkerson*, 55 ECAB 317 (2004).

⁷ *See Kent W. Rasmusen*, Docket No. 04-1137 (issued August 4, 2004).

proof to establish that the need for treatment beginning January 31, 2013 was causally related to his August 11, 2009 employment injury.⁸

In his January 31, 2013 report, Dr. Benalcazar diagnosed lumbar degenerative disc disease and ordered diagnostic studies, including an MRI scan of the lumbar spine. He failed to provide sufficient medical rationale explaining how appellant's symptoms beginning on January 31, 2013 were causally related to the August 11, 2009 employment injury.

The January 31, 2013 report from appellant's chiropractor, Dr. Tharpe, is of no probative medical value as the he failed to diagnose spinal subluxation or document whether x-rays were taken.⁹

The Board finds that the evidence submitted by appellant lacks adequate rationale to establish a causal connection between the alleged recurrence of his medical conditions and the accepted employment injury. Appellant had the burden of submitting sufficient medical evidence to document the need for further medical treatment. He did not submit such evidence as required and failed to establish a need for continuing medical treatment.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 has not met his burden of proof to establish a recurrence of his medical conditions commencing January 31, 2013 causally related to his August 11, 2009 employment injury.

⁸ Where the treatment for an employment-related condition is continuous, OWCP has the burden of proof to terminate medical benefits and must establish that there are no residuals of the employment-related condition that require further treatment. *Furman G. Peake*, 41 ECAB 361 (1990). Such is not the case here.

⁹ Section 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the secretary. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁰ *See J.F.*, 58 ECAB 331 (2006).

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 26, 2015
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