

Appellant stopped work on March 20, 2009. She filed a claim (Form CA-2a) alleging a recurrence of disability commencing March 20, 2009.

In a March 25, 2009 report, Dr. William Beringer, an osteopath, advised that appellant had lumbar pain radiating into the left hip and leg, with the pain stable and not getting any worse. He stated that appellant also had intrascapular pain at the T5 level and cervical paraspinal muscle spasms. Dr. Beringer noted that these issues were not initially addressed with her compensation claim, “but it may be necessary to address these secondary issues in this setting.”

In a report dated April 7, 2009, Dr. Beringer stated that appellant was treated for “follow up of her thoracic pain, neck pain, numbness and tingling in her hands, headaches and just body wide muscle spasms that she has been having.” He was not sure why appellant was having the muscle spasms and headaches. Dr. Beringer advised that appellant should remain off work as she was not able to function in any capacity. In a report dated May 22, 2009, he reported that an electromyogram (EMG) showed a left L4 radiculopathy, but appellant’s pain pattern was not consistent with an L4 radiculopathy.

By decision dated June 18, 2009, the Office denied the recurrence of disability claim. It found the medical evidence was not sufficient to establish that appellant’s disability commencing March 20, 2009 was due to her accepted injury.

Appellant requested a telephonic hearing before an Office hearing representative, which was held on October 1, 2009. In a July 10, 2009 report, Dr. Beringer noted that she was under treatment for low back and lower extremity radicular pain. He stated “it is not unreasonable to feel that her “pain” is an exacerbation from her approved diagnoses of lumbar sprain, 847.2, as well as lumbosacral sprain, 846.0.” Dr. Beringer reiterated that appellant had lumbar radiculopathy.

In a report dated July 16, 2009, Dr. R.J. Langerman, Jr., an osteopath, diagnosed lumbar radiculopathy and stated that appellant remained totally disabled. By report dated October 2, 2009, Dr. Beringer stated that a magnetic resonance imaging (MRI) scan revealed what looked like a small disc herniation at L5-S1 and he recommended a nerve root block. On October 13, 2009 he advised that appellant reported that she was unable to work since March 20, 2009. Dr. Beringer again noted that an EMG had indicated an L4 radiculopathy.

In a decision dated December 9, 2009, an Office hearing representative affirmed the June 18, 2009 Office decision. The hearing representative found the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

The Office’s regulations define the term recurrence of disability as follows:

“Recurrence of disability means an 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 that caused the illness. This 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."¹

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-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 show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.² To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a rationalized medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.³

ANALYSIS

Appellant sustained injury on July 25, 2008 accepted for sprains of her left hip and thighs, low back, knee and leg. She returned to work at modified duty and stopped on March 20, 2009. Appellant did not allege a change in the nature and extent of the light-duty requirements. It is her burden of proof to submit probative medical evidence to establish a change in the nature and extent of her injury-related condition, resulting in disability commencing March 20, 2009.

On March 25, 2009 Dr. Beringer noted lumbar pain radiating into the left leg. He indicated the pain was stable, and he primarily discussed complaints of cervical and thoracic pain. The Office has not accepted a cervical or thoracic condition as causally related to the July 25, 2008 employment injury. Dr. Beringer did not provide a rationalized medical opinion on the issue of causal relation.⁴ He also did not discuss appellant's disability for work. An April 7, 2009 report listed various complaints, including "body wide muscle spasms." The accepted conditions are lumbar, left hip, thigh, leg and knee sprains. While Dr. Beringer stated that appellant was disabled, he did not discuss the accepted conditions or provide a rationalized opinion explaining how appellant's disability as of March 20, 2009 related to the accepted conditions.

¹ 20 C.F.R. § 10.5(x).

² *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *Maurissa Mack*, 50 ECAB 498 (1999).

⁴ A rationalized medical opinion on causal relationship is an opinion based on a complete factual and medical background, and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the identified employment factor or factors. See *Jennifer Atkerson*, 55 ECAB 317 (2004).

On July 10, 2009 Dr. Beringer stated that it was not unreasonable to conclude that appellant's pain was an exacerbation of an accepted sprain; however, he did not provide further explanation. He did not discuss the claimed disability commencing March 20, 2009. As to a lumbar radiculopathy, this was not an accepted condition and Dr. Beringer did not provide a fully rationalized opinion as to the causal relationship between the current symptoms of radiculopathy to the July 25, 2008 employment injury. In an October 13, 2009 report, Dr. Beringer stated that appellant reported she was unable to work as of March 20, 2009. This report lists appellant's own opinion as to her ability to work without a probative medical opinion from Dr. Beringer addressing this issue. Dr. Beringer's reports are not sufficient to establish appellant was disabled commencing March 20, 2009 due to the employment-related conditions.

The Board finds that the medical evidence of record is of diminished probative value to the issue presented. Appellant did not meet her burden to establish a recurrence of disability commencing March 20, 2009.

CONCLUSION

The Board finds that appellant did not establish a recurrence of disability commencing March 20, 2009 causally related to her July 25, 2008 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 9, 2009 is affirmed.

Issued: October 13, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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