

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

M.R., Appellant

and

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Cincinnati, OH,
Employer**

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**Docket No. 11-1650
Issued: February 16, 2012**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 6, 2011 appellant, through his attorney, timely appealed the May 25, 2011 merit decisions of the Office of Workers' Compensation Programs (OWCP), which affirmed the denial of two recurrence claims. 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.²

ISSUE

The issue is whether appellant sustained recurrences of disability on March 8 and July 30, 2010, causally related to his February 10, 2001 employment injury.

¹ 5 U.S.C. §§ 8101-8193.

² The record on appeal includes evidence received after OWCP issued its May 25, 2011 decisions. The Board's review is limited to evidence that was in the case record at the time OWCP issued its final decision. 20 C.F.R. § 501.2(c)(1) (2011). Accordingly, any new evidence received after the May 25, 2011 decisions will not be considered on appeal.

FACTUAL HISTORY

Appellant, a 55-year-old mail processing clerk, has an accepted occupational disease claim for aggravation of lumbosacral sprain, which arose on or about February 10, 2001.³ Magnetic resonance imaging (MRI) scans revealed multi-level degenerative changes throughout the lumbar spine, which OWCP has not accepted as employment related. Appellant received compensation for intermittent periods of wage loss, including payment for lost wages when he attended medical appointments for treatment of his accepted condition.

On March 29, 2010 appellant filed a claim for compensation, Form CA-7, for temporary total disability during the period March 8 to 12, 2010.⁴ He later filed a notice of recurrence, Form CA-2a, for disability beginning March 8, 2010. Appellant indicated that several times a year his lumbar degenerative disc disease (DDD) rendered him incapable of performing his job duties. On the Form CA-2a, he attributed his March 8, 2010 recurrence of disability to an incident that occurred while “stepping out of my shower.” Appellant stated that a distinct pain developed in his lower back, and by the next morning it was impossible to bend. He further stated that both he and his physician believed that his job duties aggravated his lumbar DDD. He requested that OWCP expand his claim to include aggravation of lumbar DDD.

The medical evidence includes March 8, 2010 treatment records for low back pain. The notes referenced a “shower” incident. In a March 23, 2010 report, a treating physician Dr. David S. Littrell, a Board-certified family practitioner, noted that appellant had a history of degenerative changes of the lumbar spine that caused intermittent severe back pain. He reported having seen appellant on March 8, 2010 for a flare-up of his back pain but there was no evidence of sciatica by symptoms or on physical examination. Dr. Littrell advised that appellant had severe low back pain that required medication, treatment and a restriction on work activities. He stated that appellant was incapacitated from March 8 to 12, 2010 due to his lumbar condition. Dr. Littrell further stated that this recent flare-up was directly related to appellant’s previous workers’ compensation injury for lumbosacral sprain.

In a May 17, 2010 report, Dr. Littrell summarized appellant’s treatment dating back to January 2001. Appellant’s current clinical examination revealed normal range of motion in the lumbar spine, negative straight leg raising and a normal lower extremity neurological examination. Dr. Littrell diagnosed degenerative joint disease of the lumbar spine with intermittent flair. He noted that appellant’s most recent flair-up on March 8, 2010 began when he “slipped getting out of the shower,” causing increased back pain and immobility. Dr. Littrell explained that appellant required time off from work to allow his flair to resolve. He also noted that appellant had since returned to full duty.

³ On his March 6, 2006 Form CA-2, appellant described his injury as lumbar disc degeneration. On May 18, 2006 OWCP mistakenly accepted his claim for aggravation of arthritis and aggravation of cervical radiculopathy. It advised appellant of its mistake on August 30, 2006, and substituted aggravation of lumbosacral sprain as the only accepted condition. Since then, several OWCP decisions have incorrectly identified aggravation of cervical radiculopathy as an accepted condition, including both May 25, 2011 decisions currently on appeal.

⁴ Appellant returned to work on March 15, 2010.

In a decision dated June 4, 2010, OWCP denied appellant's recurrence claim. It found that factors outside of his employment, namely the March 8, 2010 shower incident, aggravated his back condition, causing him to miss work. OWCP relied primarily on Dr. Littrell's May 17, 2010 report as a basis for denying appellant's claimed recurrence of disability beginning March 8, 2010.

On August 26, 2010 appellant filed another, Form CA-7, claiming temporary total disability for the period July 30 to August 11, 2010.

Dr. William E. Reutman, a Board-certified family practitioner, examined appellant on August 2, 2010. He noted a history of chronic lumbar disc problems. Appellant reportedly had been doing well until the previous week when he "twisted and bent forward" at work. He suddenly felt pain and an electric shock sensation down the posterior right lower extremity into the foot. Appellant reported that he experienced pain, but it had decreased. He also indicated that he had been unable to work since the prior Friday (July 30, 2010). Dr. Reutman diagnosed lumbar disc disease and right-sided sciatica and excused appellant from work for the period July 30 to August 9, 2010. He later extended the period of disability through August 11, 2010. In a report dated August 18, 2010, Dr. Reutman indicated that appellant's August 2, 2010 "flare" was related to his workers' compensation injury.

OWCP subsequently received an October 15, 2010 lumbar MRI scan that revealed spondylotic degenerative changes at L2 through L5, moderate to advanced narrowing of the left L3-4 neural foramen and moderate narrowing of the right L4-5 neural foramen.

By decision dated November 4, 2010, OWCP denied appellant's claim for recurrence of disability beginning July 30, 2010. It found that Dr. Reutman's August 2, 2010 report detailed new factors of injury and that he had treated appellant for lumbar disc disease and sciatica, neither of which were accepted conditions under the current claim. OWCP advised appellant of the possibility of filing a claim for a new injury.

On February 25, 2011 appellant requested reconsideration of the June 4 and November 4, 2010 decisions. In a November 1, 2010 report, Dr. Littrell diagnosed herniated nucleus pulposus and nerve root impingement of the lumbar spine. He also diagnosed intermittent aggravation of lumbar disc degeneration. Dr. Littrell began treating appellant in 2001 for low back pain with intermittent sciatica, which Dr. Littrell attributed to repetitive lifting, bending and squatting at work. He explained that since 2001 appellant intermittently aggravated his lumbar DDD by "work flares" and "some simple activities ... outside of work..." Dr. Littrell further explained that while weight control efforts and a home exercise program minimized flare-ups, appellant should be expected to have intermittent flares due to ongoing degeneration of the lumbar disc disease. He believed appellant's lumbar DDD initially stemmed from his employment activities.

OWCP reviewed the merits of the two recurrence claims, and on May 25, 2011 it issued two separate decisions denying modification of the June 4 and November 4, 2010 decisions.

LEGAL PRECEDENT

A 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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵ This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his 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 established physical limitations.⁶ Moreover, when the claimed recurrence of disability follows a return to light-duty work, the employee may satisfy his burden of proof by showing a change in the nature and extent of the injury-related condition such that he was no longer able to perform the light-duty assignment.⁷

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing that the recurrence of disability is causally related to the original injury.⁸ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.⁹ The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.¹⁰

ANALYSIS

OWCP denied appellant's claimed recurrence of disability beginning March 8 and July 30, 2010 findings that the evidence did not establish that the reported periods of disability were causally related to his February 10, 2010 employment injury, which had been accepted for aggravation of lumbosacral sprain. As noted, a 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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.¹¹

According to both appellant and Dr. Littrell, the March 8, 2010 work stoppage was due to an incident at appellant's home when he slipped while getting out of the shower. The March 8,

⁵ 20 C.F.R. § 10.5(x).

⁶ *Id.*

⁷ *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

⁸ 20 C.F.R. § 10.104(b); *Carmen Gould*, 50 ECAB 504 (1999); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁹ See *Helen K. Holt*, *supra* note 9.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

¹¹ *Supra* note 6.

2010 treatment notes referenced the shower incident, which appellant reported on his Form CA-2a. Dr. Littrell's May 17, 2010 report attributed the March 8, 2010 flair-up to the shower incident, which reportedly caused increased back pain and immobility and precluded appellant from working for a week.

Based on the evidence of record, appellant's March 8, 2010 work stoppage was not caused by a "spontaneous change" in his previously accepted lumbosacral sprain. The March 8, 2010 shower incident that was the listed cause of his disability was not the result of a spontaneous change in his accepted lumbosacral sprain. Accordingly, the Board finds that appellant failed to establish a recurrence of disability beginning March 8, 2010, causally related to his February 10, 2001 employment injury.

As to appellant's claim for disability beginning July 30, 2010, Dr. Reutman's August 2, 2010 treatment records indicated that appellant reported a sudden onset of lumbar pain and an electric shock sensation radiating down his right leg when he "twisted and bent forward" at work a few days prior. He diagnosed lumbar disc disease and right-sided sciatica and excused appellant from work for the period July 30 to August 11, 2010. The reported history of injury establishes that appellant's claimed disability on or after July 30, 2010 was not the result of a spontaneous change in his accepted lumbar condition.¹² The nature of what appellant was doing when he twisted and bent forward is not described. Moreover, the conditions Dr. Reutman diagnosed on August 2, 2010 have not been accepted by OWCP as employment related. He did not address any ongoing lumbosacral sprain causally related to appellant's February 10, 2001 employment injury. Consequently, Dr. Reutman's opinion is insufficient to establish a recurrence of disability beginning July 30, 2010.

Dr. Littrell's November 1, 2010 report, does not specifically address appellant's condition on either of the two claimed dates, Dr. Littrell generally described a pattern of intermittent flare-ups due to appellant's underlying lumbar DDD. He noted that these occasional flare-ups were precipitated by both work activities and simple activities outside of work. If Dr. Littrell's premise that appellant's work activities in 2001 initially caused or aggravated his lumbar DDD, the subsequent flare-ups he described were not the result of a spontaneous change in appellant's condition, but were due to additional injurious factors he encountered both in and out of the workplace. His latest report supports OWCP's denial of the claimed recurrence of disability. Appellant was advised to file a claim for a new injury if he attributed his condition to new work exposures.

CONCLUSION

Appellant failed to establish that he sustained recurrences of disability on March 8 and July 30, 2010, causally related to his February 10, 2001 employment injury.

¹² While appellant's July 30, 2010 work stoppage was most likely due to new exposure to the work environment, the question of whether he has established a new traumatic injury is not an issue currently before the Board.

ORDER

IT IS HEREBY ORDERED THAT the May 25, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 16, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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