

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

A.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Memphis, TN, Employer**

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**Docket No. 06-582
Issued: October 13, 2006**

Appearances:
Appellant, pro se
Jim C. Gordon, Jr., Esq., for the Director

Oral Argument September 6, 2006

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 17, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 18, 2005, which denied his recurrence of disability claim. He also appealed a decision dated November 15, 2005 which denied further merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a recurrence of disability on January 5, 2005 causally related to the accepted employment injury of April 1, 1988; and (2) whether the Office properly denied his request for reconsideration.

FACTUAL HISTORY

On April 15, 1988 appellant, then a 31-year-old mail handler, filed a traumatic injury claim alleging that he sustained a neck injury when pulling an overloaded container while in the performance of duty. He stopped work on April 2, 1988 and worked intermittently thereafter.

Appellant resigned in 1992. The Office accepted that he sustained a cervical strain and paid appropriate compensation.

In an April 5, 1988 report Dr. Jesse A. Lawrence, Board-certified in neurology and psychiatry, noted his history of a motor vehicle accident in 1985 for which appellant was in cervical traction. Appellant hurt his neck at work on April 1, 1988 and Dr. Lawrence diagnosed cervical sprain with conversion reaction. Dr. Lawrence opined that appellant was hysterical and malingering and could return to work. Appellant came under the treatment of Dr. Jerry Engelberg, a Board-certified neurosurgeon, who in reports dated April 6 to June 15, 1988, noted that he presented with neck and shoulder pain after injuring himself at work. Dr. Engelberg advised that a myelogram revealed a small abnormality at C5 and C6; however, he recommended conservative treatment. In a report dated June 2, 1989, he indicated that appellant sustained an insignificant injury to his back in May 1989 and was returned to work without restrictions. On August 16, 1996 Dr. Engelberg noted that a recent magnetic resonance imaging (MRI) scan of the cervical spine revealed abnormalities at C4-5, C5-6 and C6-7. An attending physician's report prepared by Dr. Engelberg dated February 17, 1998 noted that appellant injured himself on April 1, 1988 and was diagnosed with cervical spondylosis. He noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. An MRI scan of the cervical spine dated April 27, 1988 revealed a herniated disc at C6. A myelogram of the cervical and lumbar spine dated May 9, 1988 revealed ventrolateral extradural defects at C5-6 bilaterally and right-sided disc herniation at C6-7.

On February 1, 2005 appellant filed a recurrence of disability. He indicated that on January 5, 2005 he experienced a recurrence of pain in his neck, shoulder and left arm causally related to his injury of April 1, 1988.

In a report dated January 18, 2005, Dr. Engelberg noted that appellant experienced neck, left shoulder and arm pain for approximately two weeks. He noted findings upon physical examination of pain on flexion, no motor sensory or reflex weakness and decreased left bicep and tricep reflexes. On January 27, 2005 Dr. Engelberg performed an anterior decompression of C6-7 with removal of the herniated discs, decompression of the nerve roots and cord and interbody fusion at C6-7. He diagnosed herniated nucleus pulposus at C6-7. In a report dated March 25, 2005, Dr. Engelberg noted that appellant was progressing well postoperatively and could return to work on March 28, 2005.

By letter dated June 14, 2005, the Office advised appellant of the factual and medical evidence needed to establish his claim. It requested that he submit such evidence, including a physician's reasoned opinion addressing the relationship of his claimed recurrent condition to the accepted employment injury.

In a January 11, 2005 letter to his representative, appellant indicated that his neck condition had worsened and expressed dissatisfaction with the Office. Also submitted was a report from Dr. Engelberg dated July 7, 2005, who noted treating appellant since 1988 for back and neck problems. He advised that appellant presented on January 18, 2005 with neck, left shoulder and arm pain. Dr. Engelberg noted that an MRI scan of the cervical spine revealed a large cervical C6 disc extrusion. On January 27, 2005 he performed an anterior cervical C6 discectomy, allograft, fusion and plating. Appellant was returned to work on March 28, 2005.

In a decision dated July 18, 2005, the Office denied appellant's claim for recurrence of disability on the grounds that the evidence submitted was insufficient to establish that he sustained a recurrence of disability commencing January 5, 2005 causally related to his April 1, 1988 work injury.

In a letter dated August 29, 2005, appellant requested reconsideration and submitted additional medical evidence. He indicated that Dr. Engelberg terminated their doctor-patient relationship after a false accusation that appellant had threatened his receptionist. Appellant contended that Dr. Engelberg's letter dated July 7, 2005 prejudiced his claim and improperly inferred that he had not sought treatment since March 28, 2005. He submitted a January 20, 1998 report of Dr. Engelberg. In a letter dated August 16, 2005, Dr. Engelberg noted that he terminated the doctor-patient relationship because of appellant's unprofessional conduct toward his staff. Appellant submitted a report from Dr. Freddie L. Everson, a Board-certified family practitioner, dated January 13, 1999, who noted treating him for approximately two years and diagnosed severe cervical arthritis of the C5 and C6 fissure with frequent recurrent episodes of neck pain. He noted that an MRI scan of the cervical spine revealed central herniated discs at C4, C5 and C7 with spondylosis of C5. In a certificate of health care provider dated May 5, 2005, Dr. Everson noted a history of chronic low back and neck pain and recent neck surgery for a ruptured disc in the neck. He indicated that appellant's condition commenced in 1989 and advised that he could continue to work subject to a lifting restriction of 10 pounds.

By decision dated November 15, 2005, the Office denied appellant's reconsideration request on the grounds that it neither raised substantive legal questions nor included new and relevant evidence and was insufficient to warrant further review.

LEGAL PRECEDENT -- ISSUE 1

A "recurrence of disability" means an inability to work after an employee has returned to work, caused by a spontaneous change in a medial condition which resulted from a previous injury or illness without an intervening injury or a new exposure to the work environment.¹ Where appellant claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.² This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally

¹ 20 C.F.R. § 10.5(2002).

² *Robert H. St. Onge*, 43 ECAB 1169 (1992).

related to the employment injury.³ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁴

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁵ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁶ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁷

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a cervical strain. The medical record lacks a well-reasoned narrative from a treating physician relating his claimed recurrent condition beginning January 5, 2005 to the 1998 employment injury.

In a January 18, 2005 report, Dr. Engelberg noted that appellant reported neck, left shoulder and arm pain for approximately two weeks. He noted findings upon physical examination. On January 27, 2005 Dr. Engelberg performed an anterior decompression and fusion of C6-7 and diagnosed herniated nucleus pulposus at C6-7. However, the Board notes that none of the medical records submitted contemporaneous with the alleged recurrence of disability related findings on examination to the accepted employment injury of April 1, 1988. Dr. Engelberg did not provide an explanation as to why appellant's current condition or disability was due to the April 1, 1988 injury. The Board has found that unrationalized medical opinions on causal relationship are of diminished probative value.⁸ The record reflects that the

³ Section 10.104(a)-(b) of the Code of Federal Regulations provides that, when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The physician's report should include the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions and the prognosis. 20 C.F.R. § 10.104.

⁴ See *Robert H. St. Onge*, *supra* note 2.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁶ For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, *supra* note 2; *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 748 (1986).

⁷ See *Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

Office did accept that a herniated nucleus pulposus at C6-7 resulted from the accepted 1988 injury.⁹ Therefore, appellant has the burden to establish that his back condition in 2005 is related to the 1988 injury.

Other reports from Dr. Engelberg dated March 25, 2005 noted that appellant was progressing well postoperatively and could return to work on March 28, 2005. In a report dated July 7, 2005, he noted that appellant presented on January 18, 2005 with neck, left shoulder and arm pain and advised that an MRI scan of the cervical spine revealed a large cervical C6 disc extrusion. As noted, Dr Engelberg did not address whether appellant sustained a recurrence of disability on January 5, 2005 causally related to the accepted employment injury of April 1, 1988 why any current condition or disability was due to the April 1, 1988 employment injury.¹⁰

The medical evidence submitted by appellant does not specifically address causal relationship between his accepted condition and his claimed recurrence of disability for the relevant period. Therefore, appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,¹¹ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulation,¹² which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

- “(i) Shows that [Office] erroneously applied or interpreted a specific point of law; or
- (ii) Advances a relevant legal argument not previously considered by the [Office of Workers’ Compensation Programs]; or
- (iii) Constitutes relevant and pertinent new evidence not previously considered by [Office].”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.¹³

⁹ For conditions not accepted by the Office as being employment related, it is the employee’s burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office’s burden to disprove such relationship. See *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁰ See *Jimmie H. Duckett*, *supra* note 8.

¹¹ 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.606(b).

¹³ *Id.*

ANALYSIS -- ISSUE 2

Appellant's August 29, 2005 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. He did not advance a relevant legal argument not previously considered by the Office.

Appellant's request for reconsideration asserted that Dr. Engelberg's letter of July 7, 2005 prejudiced his claim. However, his letter did not show how the Office erroneously applied or interpreted a point of law, nor did it advance a point of law or fact not previously considered by the Office. Additionally, appellant did not set forth a particular point of law that the Office had not considered or establish that the Office had erroneously interpreted a point of law. Consequently, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

In support of his request for reconsideration, appellant submitted a report from Dr. Engelberg dated January 20, 1998, who opined that he sustained an eight percent impairment of the back. In a letter dated August 16, 2005, Dr. Engelberg noted that he terminated his doctor-patient relationship with appellant because of his unprofessional conduct toward himself and his staff. However, these reports are not relevant because they do not specifically address the issue of whether he sustained a recurrence of disability on January 5, 2005 causally related to the accepted work injury of April 1, 1988. Additionally, these reports are similar to appellant's prior reports already contained in the record¹⁴ and were previously considered by the Office in its decision dated July 18, 2005 and found deficient.

Appellant submitted a report from Dr. Everson dated January 13, 1999, who noted diagnoses and findings. In a certificate of health care provider dated May 5, 2005, Dr. Everson noted a history of chronic low back and neck pain and recent neck surgery for a ruptured disc in the neck. However, these reports are not relevant because they do not specifically address the issue of whether appellant sustained a recurrence of disability on January 5, 2005 causally related to the accepted work injury of April 1, 1988. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did he submit relevant and pertinent evidence not previously considered by the Office."¹⁵ The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his August 29, 2005 request for reconsideration.

¹⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; see *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

¹⁵ 20 C.F.R. § 10.606(b).

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability or a medical condition beginning January 5, 2005 causally related to his accepted employment-related injury on April 1, 1988. The Board further finds that the Office properly denied his requests for reconsideration without conducting a merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the November 15 and July 18, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 13, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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