

August 31, 1994.¹ Appellant had an accepted lumbar strain on April 4, 1995. On January 16, 1997 appellant underwent decompression of L4-5, left, and discectomy of L5-S1, left that was authorized by the Office.² He returned to light duty, eight hours per day, on April 28, 1997.³ The record indicates that appellant was out of work from June 1999 through February 2000.⁴ It is not clear whether appellant returned to his modified light-duty housekeeping aid position. The Office has not accepted appellant's underlying herniated disc and degenerative disc conditions as employment-related conditions.

On December 20, 2002 appellant filed a Form CA-7 claiming partial disability for four hours per day secondary to his June 18, 1992 injury commencing November 21, 2002. Submitted with the Form CA-7 were medical notes from Dr. Jeffrey J. Sketchler, a Board-certified orthopedic surgeon. In a November 20, 2002 note, Dr. Sketchler advised that appellant was able to resume light-duty work immediately with the same restrictions for four hours per day. In a December 6, 2002 note, Dr. Sketchler advised that appellant had an epidural injection and could return to work on December 9, 2002. In a December 18, 2002 note, Dr. Sketchler advised that appellant suffered from chronic pain and that he should remain on work restrictions of four hours per day. In notes dated December 18, 2002, January 20 and February 17, 2003, Dr. Sketchler provided work restrictions of four hours per day. A December 5, 2002 medical note from Dr. David Shawa, a Board-certified anesthesiologist, indicated that appellant had left L5 radiculopathies and lumbar postlaminectomy syndrome. Epidural steroid injections for pain relief were provided.

In a letter dated January 30, 2003, the Office advised appellant that his situation might meet the description of a recurrence and informed him of the information needed regarding a recurrence claim. By decision dated March 17, 2003, the Office denied appellant's claim for wage-loss compensation for partial disability commencing November 21, 2002 on the grounds that the evidence was insufficient to establish partial disability for work.

In a letter dated April 11, 2003, appellant requested reconsideration. A June 4, 2002 magnetic resonance imaging (MRI) scan demonstrated multilevel disc disease from L1 to L5-S1

¹ The record reflects that, by decision dated July 24, 1997, the Office determined that appellant's position as a housekeeping aide-modified light duty represented his wage-earning capacity and, accordingly, terminated appellant's entitlement to wage-loss compensation as no loss of wage had occurred. By decision dated August 13, 1999, appellant received a schedule award for a three percent permanent impairment to the left lower extremity. By decision dated September 28, 1999, the Office denied appellant's claim for lost wages beginning June 17, 1999. In a decision dated May 17, 2001, the Office denied modification of its September 28, 1999 decision. In a decision dated March 25, 2002, the Office denied appellant's recurrence claim of May 30, 2001. Appellant did not file appeals with the Board regarding these Office decisions.

² While a September 29, 1995 statement of accepted facts indicates that the April 4, 1995 injury aggravated appellant's underlying herniated disc and degenerative disc condition, the record does not indicate that these conditions were accepted as employment related.

³ Although the record reflects that appellant worked in a light-duty housekeeping position in April 1997 and worked in a supply area in April 1998, the record is unclear as to what appellant's exact duties as a housekeeping aide -- modified light duty were following the Office's wage-earning capacity decision of July 24, 1997. *See supra* note 1.

⁴ *See supra* note 1.

along with postsurgical changes at L5-S1. In a March 28, 2003 report, Dr. Sketchler advised that appellant should be limited to work restrictions of four hours per day as he suffered multilevel disc degeneration and herniation based on an MRI scan with increased pain on straight leg raise maneuver, decreased sensation in sciatic nerve distribution of the left lower extremity, a slight limp with walking and diffuse spasm of the lumbar spine. In notes dated March 17 and April 14, 2003, Dr. Sketchler continued to restrict appellant to four hours of work.

In a March 31, 2003 report, Dr. Shawa stated that appellant had lumbar radiculitis in the left L5 and S1 distributions, lumbar postlaminectomy syndrome and multiple bulging discs on MRI scan. He further indicated that appellant had objective evidence for his chronic pain. A copy of his March 27, 2003 examination report and a request to repeat transforaminal epidural steroid injection was provided.

By decision dated May 7, 2003, the Office denied modification of its March 17, 2003 decision on the basis that there was no well-rationalized medical evidence supporting the reduction in appellant's work hours beginning November 21, 2002 and continuing.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, 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.⁵

ANALYSIS

In this case, appellant has not shown a change in the nature and extent of his injury-related condition or of the light-duty requirements. The record shows that appellant returned to light-duty work on or about August 31, 1994. The record does not establish nor did appellant allege that the claimed partial disability on or about November 21, 2002 was caused by a change in the nature or extent of his light-duty job requirements.

Appellant has not submitted any rationalized medical evidence establishing that his accepted condition has materially changed or worsened on or after November 21, 2002, the date wage-loss compensation for partial disability is claimed. Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.⁶ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and

⁵ *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁶ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139, 142 (1993).

accurate factual and medical history concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁷

Appellant submitted various reports from Dr. Sketchler who stated that appellant could not work more than four hours a day without providing any medical rationale for the reduction of hours. In his March 28, 2003 report, Dr. Sketchler attempted to explain appellant's partial disability based on findings of multilevel disc degeneration and herniation along with examination findings indicating pain on straight leg raise maneuver, decreased sensation in sciatic nerve distribution of the left lower extremity, and limp on walking with diffuse spasm of the lumbar spine. However, the record indicates that appellant has been diagnosed and treated for those same conditions for several years. Dr. Sketchler has not provided a well-rationalized opinion supporting appellant's partial disability for work as of November 21, 2002 explaining how the accepted 1992 lumbosacral strain or resulting surgery worsened to the degree that appellant could no longer perform the light-duty work which he was performing full time.

Appellant also submitted reports from Dr. Shawa who advised that appellant suffered from multiple conditions, which was supported by objective evidence. There is, however, no evidence that the conditions of lumbar radiculitis in the left L5 and S1 distributions, lumbar postlaminectomy syndrome or multiple bulging discs on MRI scan are new conditions as the record reflects that appellant has been treated for those conditions for several years. Moreover, Dr. Shawa, too, failed to provide any well-rationalized explanation as to why appellant was incapable of working eight hours per day in his light-duty position on or after November 21, 2002. Therefore, the medical evidence does not demonstrate a material change in the accepted condition that would have precluded appellant from performing his light-duty assignment on or after November 21, 2002.

As appellant has not submitted rationalized medical evidence supporting a causal relationship between his accepted employment injury and a recurrence of partial disability on or after November 21, 2002, he has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant is not entitled to compensation for partial disability for the period November 21, 2002 and continuing causally related to his accepted June 18, 1992 injury.

⁷ *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

ORDER

IT IS HEREBY ORDERED THAT the May 7 and March 17, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 27, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member