United States Department of Labor
Employees' Compensation Appeals Board

JUAN J. FUENTES, Appellant	)	
and	)	**Docket No. 05-132**
	)	**Issued: August 10, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Hawthorne, CA, Employer	)	

Appearances:
Jerrell E. Woolridge, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On October 13, 2004 appellant filed an appeal of a decision dated July 19, 2004 in which the Office of Workers' Compensation Programs denied that he sustained a recurrence of disability causally related to his employment-related aggravation of preexisting degeneration of a lumbar or lumbosacral disc. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability causally related to his September 27, 2001 employment injury.

FACTUAL HISTORY

On October 19, 2001 appellant, then a 39-year-old city carrier, filed a traumatic injury claim, alleging that on September 27, 2001 he injured his lower back when he was attacked by a dog while performing his work duties. He stopped work that day and returned to limited duty on October 18, 2001. On November 8, 2001 the Office accepted that appellant sustained

aggravation of preexisting degeneration of lumbar or lumbosacral intervertebral disc. The Office, however, found that appellant was not entitled to continuation of pay because the medical evidence was insufficient to support that he was totally disabled during the period of the claimed disability.

On March 28, 2002 appellant submitted a CA-7, claim for compensation, stating that on January 22, 2002 he sustained a recurrence of a March 24, 1997 injury. In support of this claim, he submitted reports dated March 25 and 28, 2002 in which Dr. Charles L. Glatstein, Board-certified in neurology, noted appellant's complaint of intermittent disabling pain and diagnosed low back syndrome, stating that the condition began on January 22, 2002 and was chronic. He advised that appellant could not work for several months and should have a magnetic resonance imaging (MRI) scan and neurosurgery consultation. A March 29, 2002 MRI scan of the lumbar spine was read by Dr. Robert Cohen, a Board-certified radiologist, as demonstrating Grade 1 to 2 spondylolisthesis at L4-5 due to bilateral spondylitic defects with bilateral foraminal narrowing.

By letter dated April 4, 2002, the employing establishment stated that appellant was working limited duty at the time of the September 27, 2001 injury, provided a history of appellant's previous claims and controverted the CA-7 claim, stating that a medical report dated January 24, 2002 indicated that appellant had been injured while going through a turnstile at Knotts Berry Farm.[1]

X-rays of the lumbosacral spine on April 8, 2002 read by Dr. Ivan W. Rosen, Board-certified in radiology, demonstrated second degree spondylolisthesis of L4 upon L5 with bilateral spondylolytic defects at L4 and disc space narrowing at L4-5 and L5-S1. In a report dated April 29, 2002, Dr. David E. Zinke, a Board-certified neurosurgeon, noted a history that appellant had intermittent back discomfort dating back 10 to 15 years with severe back pain during his usual employment. He reviewed the MRI scan and noted findings on examination of tenderness in the lower back with decreased range of motion. Straight leg raising was equivocal. Dr. Zinke's impression was spondylolysis with Grade 1 to 2 spondylolisthesis at L5-S1. He stated that appellant "received a significant recurrence of this complaint [on] January 21, 2002, twisting getting through a turnstile and has not been able to resume employment...." Dr. Zinke recommended surgical intervention.

Electromyography of both lower extremities on April 17, 2002 was interpreted by Dr. Glatstein as showing only a minimal abnormality involving the left biceps femoris which could be indicative of sacroiliac radiculopathy.

On April 25, 2002 appellant filed a recurrence claim, alleging that on January 21, 2002 he sustained a recurrence of disability. He stated that since July 1992 he had sustained several recurrences. The employing establishment indicated that he was working limited duty at the time of the claimed recurrence. In reports dated May 9, 2002, Dr. Glatstein advised that appellant could not work until June 20, 2002 and that his injury dated back to March 24, 1997.

By letter dated May 13, 2002, the Office informed appellant that it could not process the CA-7 because the medical evidence did not support that he was totally disabled and informed

[1] The Board notes that the record does not contain a medical report dated January 24, 2002.

him of the type medical evidence needed to support this claim. Appellant was specifically asked to obtain a reasoned medical opinion regarding whether his current condition was caused by the accepted aggravation of preexisting degenerative condition or whether it was due to the twisting he encountered while going through a turnstile at Knotts Berry Farm. On May 15, 2002 appellant requested reconsideration of the denial of continuation of pay.[2]

In a May 24, 2002 letter, the employing establishment controverted the recurrence claim, stating that appellant had reported to his supervisor that on January 22, 2002 he was injured at Knotts Berry Farm while off duty. In a May 29, 2002 report, Dr. Glatstein stated that appellant had been treated for a number of years for fluctuating low back pain that was work related, which had been "clearly indicated in multiple reports in the past." He reported a history that the pain worsened in January "when he was simply walking, noting that there had never been a nonindustrial injury.

By decision dated July 25, 2002, the Office denied the recurrence claim, finding that appellant sustained an intervening injury at Knotts Berry Farm on January 21, 2002.[3] Dr. Glatstein continued to submit reports opining that appellant was disabled and on September 10, 2002 advised that appellant could return to work without restrictions. Appellant returned to work without restrictions on September 11, 2002.

On July 23, 2003 appellant requested reconsideration. He described the January 22, 2002 incident at Knotts Berry Farm, stating that he went to the first aid station there to obtain pain medication and submitted medical evidence concerning his 1999 claim. In reports dated September 27 and October 22, 2002, Dr. Glatstein noted appellant's continued complaints of pain and diagnosed low back syndrome.

In a decision dated July 19, 2004, the Office denied modification of the July 25, 2002 decision, finding that the medical evidence did not provide a rationalized opinion to support that his disabling back condition beginning January 22, 2004 was causally related to the September 2001 employment injury.[4]

[2] There is no indication in the record that the Office responded to this request.

[3] The record indicates that appellant was initially scheduled for a second opinion evaluation on August 8, 2002. The record does not indicate that the appointment was kept. A statement of accepted facts dated June 24, 2002 noted that appellant had an accepted 1992 claim for sprains and strains of the sacroiliac region, an accepted 1997 claim for lumbar sprain/strain, and an accepted 1999 claim for aggravation of degeneration of the lumbar intervertebral disc with radiculopathy.

[4] The record before the Board also contains the record for Office file number 132081343, an injury sustained on May 10, 2003 that was accepted on September 4, 2003 for lumbar strain. Appellant was placed on the periodic roll effective November 10, 2003. The record further indicates that on November 22, 2002 appellant sustained an employment-related lumbar strain when he was injured opening a gate while working. Appellant was referred for a second opinion evaluation with Dr. Ibrahim Yashruti, Board-certified in orthopedic surgery, and because his reports did not clarify the issue of the need for surgery, the Office referred appellant for another second opinion evaluation to Dr. William C. Boeck, Board-certified orthopedist. The record does not contain a final decision regarding an authorization for surgery.

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 had 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 or her 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 or her established physical limitations.[6]

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 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.[7]

In assessing medical evidence, the number of physicians supporting one position or another is not controlling. The weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

It is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause. An employee who asserts that a nonemployment-related injury was a consequence of a previous employment-related injury has the burden of proof to establish that such was the fact.[9]

ANALYSIS

The Board finds that appellant did not submit medical evidence sufficient to establish that he sustained a recurrence of disability on January 22, 2002 causally related to the September 27,

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[5] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB ____ (Docket No. 04-887, issued September 27, 2004).

[6] *Id.*

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

[8] *Anna M. Delaney*, 53 ECAB 384 (2002).

[9] *Bernitta L. Wright*, 53 ECAB 514 (2002).

2001 employment injury. In order to establish a claim for a recurrence of disability, a claimant must establish that he or she suffered a spontaneous material change in the employment-related condition without an intervening injury.[10]

The evidence in this case does not establish that appellant's January 22, 2002 injury sustained while going through a turnstile at Knotts Berry Farm was a consequence of his September 27, 2001 employment injury. While in his numerous medical reports Dr. Glatstein indicated that appellant's condition was work related, there is no indication that he was aware of the January 22, 2002 incident other than to state that appellant's pain worsened in January 2002 "when he was simply walking." He does not indicate that he was aware that appellant, by his own admission, stated that his back began to hurt when he twisted while going through a turnstile at Knotts Berry Farm. Dr. Zinke advised that appellant sustained "a significant recurrence" while twisting, getting through a turnstile on January 21, 2002.

By letter dated May 13, 2002, the Office specifically asked appellant to obtain a reasoned medical opinion regarding whether his current condition was caused by the accepted aggravation of preexisting degenerative condition or whether it was due to the twisting he encountered while going through a turnstile at Knotts Berry Farm.

It is well established that medical reports must be in the form of a reasoned opinion by a qualified physician and must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.[11] The medical evidence must explain from a medical perspective how the current condition is related to the injury.[12]

The Board finds that the triggering event for appellant's claimed recurrence of disability was the January 22, 2002 twisting incident at Knotts Berry Farm and was not due to the "natural progression" of aggravation of his preexisting degenerative condition. For this reason, his recurrence of disability is not compensable under the Act.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability causally related to his accepted September 27, 2001 employment injury.

[10] 20 C.F.R. § 10.5(x); *Bernitta L. Wright, supra* note 9.

[11] *William D. Farrior*, 54 ECAB ____ (Docket No. 02-2139, issued May 13, 2003); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[12] *Tomas Martinez*, 54 ECAB ____ (Docket No. 03-396, issued June 16, 2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 19, 2004 be affirmed.

Issued: August 10, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board