

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

J.S., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL AIR
STATION, Meridian, MS, Employer**

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**Docket No. 06-1805
Issued: February 13, 2007**

Appearances:
William T. May, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 2, 2006 appellant filed a timely appeal from an April 14, 2006 decision of the Office of Workers' Compensation Programs denying modification of his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met his burden of proof in establishing a recurrence of disability beginning January 18, 2005 that was causally related to his October 6, 2003 employment injury.

FACTUAL HISTORY

On October 6, 2003 appellant, then a 52-year-old motor vehicle operator, filed a traumatic injury claim alleging that he strained his back that day when he fell from the sweeper he was driving. He stopped work on October 7, 2003 and returned to regular duty on

October 22, 2003. On October 29, 2003 appellant again experienced back pain and stopped work. He returned to work on December 9, 2003.

By letter dated October 20, 2003, the Office requested additional information concerning appellant's claim. Appellant submitted disability certificates from Dr. Gary L. Gibson, a Board-certified family practitioner, releasing him to return to work with various restrictions.

In a November 24, 2003 decision, the Office denied appellant's claim on the grounds that the medical evidence did not establish a causal relationship between appellant's back condition and the October 6, 2003 employment incident.

In an undated letter, appellant requested reconsideration and submitted reports from Dr. Gibson dated October 7 to December 2, 2003, who noted that appellant injured his back when he fell from his sweeper at work and diagnosed low back pain and a small herniated disc. In a November 25, 2003 report, he advised that appellant had recently aggravated his back strain while doing housework. On December 2, 2003 Dr. Gibson described the employment incident and stated that he believed the initial injury was work related and that appellant reinjured his back because he attempted to return to full duty too soon. In an October 10, 2003 magnetic resonance imaging scan report, Dr. George Frye, a Board-certified radiologist, diagnosed a small herniated disc at L5-S1 and mild broad-based posterior disc bulging at L3-4.

Appellant also submitted several notes indicating that he would soon be permitted to return to work with certain restrictions and a statement describing the circumstances under which he injured his back. He stated that he was operating a sweeper on October 6, 2003, when he fell and was injured. Appellant stopped work and returned on October 22, 2003. On October 29, 2003 he experienced back pain while pouring oil into the rear engine of his sweeper.

By decision dated January 28, 2004, the Office modified its prior decision and accepted that appellant sustained a herniated nucleus pulposus at L5-S1 that symptomatically resolved on October 29, 2003.¹

On January 21, 2005 appellant filed a recurrence of disability claim, indicating that his back popped out of alignment as he was stepping into the shower on January 1, 2005. He contended that he had never completely healed from his initially accepted employment injury. Appellant stopped work on January 18, 2005 and returned to work on January 21, 2005.

In an October 31, 2003 report, Dr. Gibson stated that appellant had returned to work without restrictions, despite the doctor's request to limit lifting to 25 pounds. Appellant reported reinjuring his back two days earlier when he poured oil into a machine. Dr. Gibson diagnosed low back strain noting that this "probably reactivated the previous injury that had not completely healed." In a December 9, 2003 report, he stated that appellant's low back pain seemed to have resolved. A February 1, 2005 report from Dr. Gibson advised that appellant had recently complained of back pain shooting down his right leg, similar to the pain he had experienced

¹ The Office's decision noted that, in a separate claim, No. 062099690, the Office accepted that appellant sustained a new injury, a lumbar strain, on October 29, 2003. The claim file pertaining to the October 29, 2003 injury is not before the Board in the present appeal.

following his previous injuries. Dr. Gibson opined: “I feel like he did have both hip [degenerative joint disease] and back pain related to his previous injury a couple of years ago.”² He also stated: “I felt this pain was from his previous back injury. I also feel like it could be from his hip with some degenerative joint disease of his hip.”

On February 10, 2005 the Office requested additional information concerning appellant’s claim for recurrence of disability.

By decision dated March 24, 2005, the Office denied appellant’s claim.

On May 6, 2005 appellant’s representative requested reconsideration of the March 24, 2005 decision. He noted that Dr. Gibson’s report opined that his current pain was related to his previous injury and noted that there was no evidence to contradict the doctor’s opinion.

On February 1, 2006 appellant’s representative requested information on the status of appellant’s claim for recurrence of disability.

By decision dated April 14, 2006, the Office denied modification of its March 24, 2005 decision.

LEGAL PRECEDENT

Section 10.5(x) of the Office’s regulations provides, in pertinent part:

“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.”³

The Board has held that in order to establish a claim for a recurrence of disability, a claimant must establish that he suffered a spontaneous material change in the employment-related condition without an intervening injury.⁴ The claimant has the burden of establishing that he sustained a recurrence of disability that is causally related to his initially accepted injuries.⁵ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical

² The record indicates that appellant had an accepted low back strain on June 30, 1999, File No. 060734318. The claim file for that injury is not presently before the Board.

³ 20 C.F.R. § 10.5(x) (2002).

⁴ *Carlos A. Marrero*, 50 ECAB 117 (1998).

⁵ *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

rationale.⁶ Where no such rationale is present, the medical evidence is of diminished probative value.⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability causally related to his employment injury. In the present claim, appellant injured his back on October 6, 2003 and returned to regular duty on October 22, 2003. After sustaining a separate injury, appellant returned to work on December 9, 2003 and claimed that he experienced a recurrence of back pain when he stepped into the shower on January 1, 2005. He stopped work on January 18, 2005. However, appellant did not submit sufficient medical evidence to support a causal relationship between his claimed recurrence of disability and his accepted October 6, 2003 employment injury.

The medical evidence submitted by appellant does not specifically support that the October 6, 2003 injury caused recurrent disability beginning January 18, 2005. On February 1, 2005 Dr. Gibson stated that “I feel like he did have both hip [degenerative joint disease] and back pain related to his previous injury a couple of years ago.” He described the pain as arising from appellant’s prior back injury. However, Dr. Gibson did not explain how appellant’s medical condition was causally related to the October 6, 2003 injury. That injury was accepted for aggravation of a herniated disc at L5-S1 which was temporary and resolved by October 29, 2003. The Office did not accept the diagnosis of degenerative arthritis of the hip. Dr. Gibson did not specifically reference the October 6, 2003 injury but, instead, referenced injuries to appellant’s back on “two different occasions.” He also stated that the hip and back symptoms “related to a previous injury a couple of years ago.” This report is insufficient to establish the claim as Dr. Gibson did not provide a rationalized medical opinion explaining how the claimed recurrence of disability arose from the October 6, 2003 employment injury.⁸ Instead, he generally referenced more than one injury and added that his pain also “could be related to a hip condition.”⁹ Thus, Dr. Gibson’s report is equivocal in the manner in which it addresses the cause of appellant’s claimed recurrent symptoms and disability.¹⁰ His opinion is insufficient to show a spontaneous change in the accepted condition resulting from the October 6, 2003 injury without intervening cause.

⁶ See *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁷ *Albert C. Brown*, 52 ECAB 152 (2000).

⁸ In order to be considered rationalized medical evidence, a physician’s opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the claimant’s specific employment factors. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989); *Steven S. Saleh*, 55 ECAB 169, 172 (2003). The Board has held that a medical opinion not fortified by medical rationale is of little probative value. *Caroline Thomas*, 51 ECAB 451, 456 n.10 (2000); *Brenda L. Dubuque*, 55 ECAB 212, 217 (2004).

⁹ The Office has not accepted a hip condition in the present claim. Appellant bears the burden of proof to establish that such condition is causally related to the accepted injury. See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁰ See *Melvina Jackson*, 38 ECAB 443 (1987) (medical reports that are speculative or equivocal in nature carry limited probative weight).

The medical evidence submitted by appellant in support of his claim for a recurrence of disability does not address how his disability beginning January 18, 2005 is causally related to the October 6, 2003 employment injury. Accordingly, the Board finds that the medical evidence is insufficient to discharge appellant's burden of proof in establishing that his claimed recurrence of disability beginning January 18, 2005 is causally related to his October 6, 2003 accepted injury.

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability that was causally related to his prior accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 14, 2006 is affirmed.

Issued: February 13, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board