

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

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<b>L.F., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 06-1997</b>
	)	<b>Issued: February 1, 2007</b>
<b>DEPARTMENT OF INTERIOR, SHERMAN</b>	)	
<b>INDIAN HIGH SCHOOL, Riverside, CA,</b>	)	
<b>Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*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 28, 2006 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated July 26 and March 20, 2006, which denied his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on and after August 23, 2005 causally related to his accepted employment injury of April 18, 2005.

**FACTUAL HISTORY**

On April 18, 2005 appellant, then a 39-year-old school janitor, filed a claim alleging that he sustained an injury to his lower back and right knee while moving gym floor mats. He took

three days of sick leave from April 18, 2005 and worked modified duties April 19 to 26, 2005. The Office accepted a lumbosacral strain and right knee sprain, with both conditions resolved as of April 26, 2005.

In an April 26, 2005 medical report, Dr. Ralph Farinella, a family practitioner, noted that appellant's right knee examination revealed no swelling, no click/lock and a negative drawer sign. He further noted that there was no back spasm. Appellant was advised to finish his medications and was discharged from care with no future treatment or medical care and no permanent disability expected.

On January 11, 2006 appellant filed a claim (Form CA-2a) alleging that he sustained a recurrence of total disability on August 23, 2005 when he started having pain in his right knee at work. He stopped work on August 23, 2005 and returned to work on August 26, 2005. Appellant advised that he underwent a magnetic resonance imaging (MRI) scan on November 16, 2005.

Evidence submitted pertaining to the claimed recurrence included an MRI scan report dated November 16, 2005 and medical reports from Dr. Farinella dated August 25 and September 28, 2005.<sup>1</sup> Dr. Farinella noted that appellant injured his right knee on April 18, 2005 and presented with pain complaints with no history of an acute injury. The examination revealed no objective findings for appellant's pain complaints. Dr. Farinella provided an impression of "reinjury right knee sprain" and opined with a checkmark in the appropriate box that he believed the condition was caused or aggravated by employment activity. He referred appellant for an MRI scan and released him to full duty as of August 25, 2005.

In a February 8, 2005 letter, the Office advised appellant about the factual and medical evidence needed to establish his recurrence of total disability claim. Appellant submitted a March 1, 2006 statement advising that his right knee pain came back while at work.

In a March 1, 2006 statement, initialed by Sarah Munion and Dr. Farinella, appellant's medical history and treatment were outlined. He was diagnosed with a lumbar strain and right knee strain from his original injury of April 19, 2005, put on light duty and provided medications. On April 26, 2005 appellant was discharged from care and returned to regular duty. He returned to the clinic on August 25, 2005 complaining of persistent pain in the right knee with no history of new trauma and with no decrease in pain. Based on a November 16, 2005 MRI scan, appellant was diagnosed with lateral and medial meniscus tears. An orthopedic evaluation was requested on November 28, 2005, but was not authorized.

In a March 30, 2006 decision, the Office denied appellant's claim for a recurrence of disability because he submitted insufficient medical evidence to establish his claim.

On April 31, 2006 appellant requested reconsideration of the Office's decision. He advised that he experienced discomfort and pain in his right knee and chronic pain in his lower back which were due to his April 18, 2005 work injury. Appellant stated: "I also injured my right knee previously at work again." Evidence received included duplicative copies of the

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<sup>1</sup> Additional evidence received concerned appellant's initial claim of April 18, 2005.

November 16, 2005 right knee MRI scan and Dr. Farinella's March 1, 2006 report. Progress notes were submitted from Dr. Farinella dated from April 19, 2005 through March 29, 2006.<sup>2</sup> Dr. Farinella included an April 29, 2005 x-ray report of the right knee and an April 19, 2005 x-ray report of the lumbosacral spine. Appellant also submitted an April 18, 2006 statement from Whitney Rhea addressing his April 18, 2005 work injury.

In an April 11, 2006 letter, Dr. Farinella reiterated his prior history and findings of his March 1, 2006 letter. He noted that appellant had been using over-the-counter medications since his discharge from care on April 26, 2005 and had experienced no decrease in pain. Dr. Farinella further noted that appellant's referral to an orthopedic surgeon was pending authorization.

By decision dated July 26, 2006, the Office denied modification of its March 30, 2006 decision.

### **LEGAL PRECEDENT**

A recurrence of disability means the 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 a new exposure to the work environment.<sup>3</sup> A recurrence of a medical condition is also defined as a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.<sup>4</sup>

Where appellant claims a recurrence of disability due to an accepted employment-related injury, 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.<sup>5</sup> 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 related to the employment injury.<sup>6</sup> Moreover, the physician's conclusion must be supported by sound medical reasoning.<sup>7</sup>

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<sup>2</sup> This progress note was from Dr. Thomas L. Satrom, a Board-certified family practitioner.

<sup>3</sup> 20 C.F.R. § 10.5(x).

<sup>4</sup> 20 C.F.R. § 10.5(y). Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment. *Id.*

<sup>5</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>6</sup> 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 physicians 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.

<sup>7</sup> See *Robert H. St. Onge*, *supra* note 5.

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

A claimant for each period of disability claimed, has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he is disabled for work as a result of his employment injury. Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>11</sup>

### ANALYSIS

The Office accepted that appellant sustained a lumbosacral strain and a right knee strain on April 18, 2005. He was treated by Dr. Farinella and released on April 26, 2005. Appellant subsequently claimed a recurrence of disability as of August 23, 2005. The medical record lacks a well-reasoned narrative from appellant's physicians relating his claimed recurrent condition beginning August 23, 2005 to his accepted employment injury.

Appellant submitted evidence which pertained to the April 18, 2005 work injury. This included several reports and progress notes from Dr. Farinella dated April 19, 20 and 26, 2005, x-ray reports dated April 19 and 20, 2005 of the lumbosacral spine and right knee and an April 18, 2006 statement from Ms. Rhea. However, this evidence is of no probative value in establishing the claimed recurrence of disability as of August 23, 2005. This evidence predates the claimed recurrent condition and pertains to the accepted April 18, 2005 work injury.

In reports dated August 25 and September 28, 2005, Dr. Farinella dismissed appellant's original injury of April 18, 2005, provided an impression of "reinjury right knee sprain" and checked a box "yes" to indicate appellant's condition was caused or aggravated by his employment. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition is employment related is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship between appellant's current conditions beginning August 23, 2005 to the April 18, 2005 accepted work injury.<sup>12</sup> On March 1 and April 11, 2006 Dr. Farinella diagnosed tears of the lateral and medial

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<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

<sup>9</sup> For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, *supra* note 5; *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 748 (1986).

<sup>10</sup> See *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>11</sup> *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

<sup>12</sup> *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

meniscus based on November 16, 2005 MRI scan results. However, in neither of these reports did Dr. Farinella discuss how appellant's right knee condition was caused by the April 18, 2005 work injury. Dr. Farinella noted in an April 11, 2006 letter that appellant had persistent pain in his right knee since his April 26, 2005 discharge from care. However, there was no history of new trauma and no discussion explaining how the tears to the right knee meniscus were caused or contributed to by his accepted right knee strain.

The Board notes that an award of compensation may not be based on surmise, conjecture or speculation.<sup>13</sup> The mere fact that appellant's knee pain never stopped following the employment injury, without more, is insufficient to establish a causal relationship, as the work activities may produce symptoms which are revelatory of an underlying condition.<sup>14</sup> To be of probative value, a physician's opinion must be based on a complete factual and medical background and be supported by medical rationale explaining the nature of the relationship between the claimed condition and the employment injury or factors of her federal employment.<sup>15</sup>

Dr. Farinella's medical reports are insufficient to establish appellant's claim because the physician did not present adequate medical rationale showing how appellant's current right knee condition is causally related to the April 18, 2005 work injury. The other 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.<sup>16</sup> Thus, appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability.

### **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 on or after August 23, 2005 causally related to his accepted employment conditions of April 18, 2005.

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<sup>13</sup> *Shirloyn J. Holmes*, 39 ECAB 938 (1988).

<sup>14</sup> *See Gary R. Fullbright*, 40 ECAB 737 (1989); *Dominic M. DeSala*, 37 ECAB 369 (1986).

<sup>15</sup> *Lucrecia M. Nielson*, *supra* note 12.

<sup>16</sup> Although appellant asserted that he had a recurrence of his back pain, he submitted no evidence which discussed a back condition arising on or after August 23, 2005.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 26, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 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