

months, with intermittent work stoppages. She resumed full-time, limited-duty work on February 4, 2002. Appellant was restricted to lifting no more than 25 pounds. She sustained another low back injury on February 22, 2002 (09-2019059).² Appellant returned to work on February 25, 2002 under her previous lifting restriction.

On March 4, 2002 appellant filed a traumatic injury claim for a low back injury she allegedly sustained on March 1, 2002 (09-2019067).³ She was on her morning break when she bent over to get change from a vending machine and felt something pop in her lower back. The Office denied the claim on April 23, 2002.⁴ By decision dated January 16, 2003, the Office hearing representative affirmed the April 23, 2002 decision. Appellant filed a request for reconsideration on October 28, 2003, which the Office denied on January 9, 2004. On appeal, the Board affirmed the Office's January 9, 2004 decision.⁵ The Board found, *inter alia*, that the evidence submitted on reconsideration did not demonstrate a causal relationship between appellant's back condition and the March 1, 2002 employment incident.⁶

On June 27, 2005 appellant filed a claim for recurrence of disability beginning March 1, 2002.⁷ She alleged that her recurrence was causally related to the January 23, 2001 employment injury (09-2006001).

Appellant was treated in the Hackley Hospital emergency room on March 1, 2002. She indicated that her back gave out earlier that day while she was bending over. Dr. Kathryn E. Kampen, Board-certified in emergency medicine, offered a provisional diagnosis of "acute exacerbation of chronic back pain." She excused appellant from work for two days.

On March 4, 2002 appellant followed-up with her treating physician, Dr. Scott A. Addison, a Board-certified family practitioner, whose assistant, David Wilkins, noted that appellant complained of back pain, which began about two weeks earlier. Mr. Wilkins also

² Appellant reported feeling a sharp pain in her lower back while climbing stairs on her delivery route.

³ The Office consolidated the case records from appellant's four lower back injury claims under file number 09-2006001.

⁴ The Office accepted that the March 1, 2002 vending machine incident occurred as alleged; however, the Office found that the medical evidence did not establish that appellant's back condition was related to the March 1, 2002 employment incident.

⁵ Docket No. 04-1249 (issued September 17, 2004). Because of the timing of the appeal, the Board did not have jurisdiction over the merits of appellant's claim. The Board's September 17, 2004 nonmerit decision is incorporated herein by reference.

⁶ The evidence that accompanied the October 28, 2003 reconsideration request did not attribute appellant's back condition to the March 1, 2002 employment incident, but instead to her prior fall on January 23, 2001.

⁷ She previously filed a Form CA-7 (Claim for Compensation) on February 2, 2005, for wage-loss compensation during the period March 1, 2002 to February 13, 2003. Appellant claimed she was totally disabled from March 1 to June 8, 2002, when she returned to part-time, limited duty. She claimed wage loss from June 8 to August 9, 2002 and November 30, 2002 to January 21, 2003 based on her part-time, limited-duty work schedule. Appellant's last day of work was January 10, 2003. She reported receiving a disability annuity from the Office of Personnel Management effective January 22, 2003. By letter dated February 10, 2005, the Office advised appellant to file a notice of recurrence of disability (Form CA-2a) under file number 09-2006001.

noted that appellant had a long-standing history of chronic back pain and most recently she felt a pop in her back when bending over to pick up something. Since then appellant had been experiencing shooting pain down her left leg. She received a diagnosis of lumbar radiculopathy and was advised to remain off work until March 7, 2002. Additionally, appellant was referred for a lumbar magnetic resonance imaging (MRI) scan.

A March 9, 2002 lumbar MRI scan revealed small central disc bulges at L4-5 and L5-S1, which were unchanged from a prior examination in October 2001. This latest MRI scan also showed borderline central canal stenosis at L4-5. But there was no evidence of disc herniation.

Dr. Addison personally examined appellant on March 13, 2002, at which time he diagnosed low back pain with radiculopathy. He later referred appellant to Dr. Mark J.R. Moulton, a Board-certified orthopedic surgeon. The record includes multiple reports from Dr. Addison and Dr. Moulton, both of whom attributed appellant's current back complaints and associated disability to her January 23, 2001 employment injury. Another physician, Dr. David M. Krencik, a Board-certified anesthesiologist, also related appellant's current low back and left leg pain to her January 23, 2001 injury.⁸ In an April 19, 2005 report, Dr. Krencik diagnosed chronic low back pain, post lumbar laminectomy syndrome, lumbar radiculopathy, spondylolysthesis and facet joint arthropathy. He also indicated that appellant was currently on opiate pain medication, which allowed her to be somewhat more active and functional.

Dr. Richard A. Sahlhoff, a family practitioner, assumed responsibility for appellant's treatment in October 2002. In a June 22, 2005 report, Dr. Sahlhoff indicated that since the time appellant first saw him, she continued to have problems with severe low back pain with radiation into her left leg, which had been quite severe and disabling. He explained that appellant's problem began on January 23, 2001 when she slipped and fell on ice, which resulted in a torn and bulging disc. After 13 months of treatment, appellant returned to limited duty in February 2002, but was unable to tolerate the activity required at work. Dr. Sahlhoff further noted that appellant stopped work on March 1, 2002 due to very severe pain and she sought treatment in the emergency room. He reported that a March 2002 lumbar MRI scan showed multiple torn and bulging discs, which were unchanged from appellant's prior MRI scans. Dr. Sahlhoff stated that it was "as likely as not" that appellant's current condition was a continuation of her January 23, 2001 injury and there was no indication that she sustained a new injury on March 1, 2002. He also noted that there was no evidence of outside activity that either caused or aggravated her back injury. Dr. Sahlhoff explained that, since her January 23, 2001 injury, appellant continued to have bulging and torn discs at L3-4, L4-5 and L5-S1, with low back pain radiating into the lower extremities that markedly limited her activities.

In an August 3, 2005 decision, the Office denied appellant's claim for recurrence of disability. She subsequently requested an oral hearing, which was held on February 22, 2006. Appellant testified that she stopped working on March 1, 2002 because her back went out while she bent over to retrieve change from a vending machine. She drove herself to the emergency room later that same day. Appellant returned to limited-duty work on June 8, 2002 and beginning August 10, 2002, she was reassigned to another facility as a temporary supervisor

⁸ The above-referenced findings of Drs. Addison, Moulton and Krencik are described in greater detail in the Board's prior decision dated September 17, 2004, which is incorporated herein.

(204-B). She worked full time as a supervisor until November 29, 2002, when she returned to her regular facility to resume her letter carrier duties. Appellant testified that approximately three weeks later, the employing establishment gave her a letter of termination. According to her, the stated reason for termination was her inability to perform the duties of a letter carrier.

By decision dated April 20, 2006, the Office hearing representative affirmed the August 3, 2005 decision denying appellant's claimed recurrence of disability. The hearing representative found that there was no credible evidence demonstrating a material worsening of appellant's accepted condition. She also found that "[t]he evidence [did] not establish that the employing establishment would not or could not continue to provide the claimant with full-time limited duties." The current appeal followed.

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁹ 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.¹⁰

Where an employee claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing that the recurrence of disability is causally related to the original injury.¹¹ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.¹² The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.¹³

ANALYSIS

The Board finds that the case is not in posture for decision. There is insufficient evidence to properly ascertain whether the employing establishment had limited-duty work available for appellant in January 2003. She testified that, soon after returning from her temporary assignment

⁹ 20 C.F.R. § 10.5(x) (2006).

¹⁰ *Id.*

¹¹ 20 C.F.R. § 10.104(b); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

¹² *See Helen K. Holt*, *supra* note 11.

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

as a supervisor, the employing establishment advised that she would be terminated because of her inability to perform the duties of a letter carrier. The record indicates that appellant last worked on January 10, 2003 and she requested leave through January 21, 2003. A June 10, 2003 telephone conversation log indicates that the employing establishment contacted the Office and expressed concern that appellant might be eligible for compensation because they had not provided her work after January 21, 2003.

The hearing representative concluded that “[t]he evidence [did] not establish that the employing establishment would not or could not continue to provide the claimant with full-time limited duties.” There is no documentary evidence in the record either confirming or refuting appellant’s February 22, 2006 testimony regarding the employing establishment’s effort to remove her from service. Thus, the record does not support the hearing representative’s finding regarding the continued availability of limited-duty work. The Office should solicit additional information from the employing establishment regarding the circumstances surrounding appellant’s January 2003 departure from work.

The Board also finds that the record requires further development regarding the cause and extent of appellant’s current back condition. Proceedings under the Federal Employees’ Compensation Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.¹⁴ Although the opinions of Drs. Addison, Moulton and Sahlhoff are insufficient to discharge appellant’s burden of proving that her claimed recurrence is causally related to the accepted January 23, 2001 employment injury, this evidence is sufficient to require further development of the case record by the Office.¹⁵

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate specialists for an evaluation and a rationalized medical opinion regarding whether her claimed March 1, 2002 recurrence of disability was causally related to her January 23, 2001 employment injury. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The case is not in posture for decision.

¹⁴ *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁵ *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the April 20, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further consideration consistent with this decision.

Issued: June 20, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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