

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

C.O., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, LOS ANGELES REGIONAL)
OFFICE, Los Angeles, CA, Employer)

**Docket No. 07-1793
Issued: January 22, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 25, 2007 appellant filed a timely appeal of a May 22, 2007 decision of the Office of Workers' Compensation Programs which denied her claim for a recurrence. 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 on appeal is whether appellant met her burden of proof to establish a recurrence of disability causally related to her February 21, 2001 employment injury.

FACTUAL HISTORY

This case has previously been on appeal before the Board.¹ In a December 16, 2003 decision, the Board found that appellant had met her burden of proof to establish that she sustained an injury in the performance of duty on February 21, 2001. The Board reversed the

¹ Docket No. 03-2064 (issued December 16, 2003).

Office's April 30, 2003 decision denying appellant's claim and remanded the claim to the Office for further development as to the extent of the injuries sustained in her fall and for any additional period or periods of disability causally related to the injury. The Board found that, after this and other such development, the Office should issue an appropriate decision. The facts and the history contained in the prior appeal are incorporated by reference.

On February 19, 2004 the Office accepted appellant's claim for a lumbar strain and left knee strain, which had resolved.² The Office also informed appellant that to accept her claim for left knee osteoarthritis and sciatica as work related, appellant would need to submit a narrative report from her attending physician, with objective findings, to support her diagnosis. Furthermore, the Office noted that appellant's physician had cleared her to return to work with no limitations or restrictions on October 28, 2002. Appellant was allotted 30 days to submit the requested information.

The Office subsequently received several reports dating from March 2004 to May 2005 from appellant's treating physician, Dr. Rama E. Chandran, a Board-certified orthopedic surgeon. In Dr. Chandran's April 26, 2004 report, he noted that appellant was seen for an orthopedic evaluation as she had complaints of constant, moderate pain in the lower back with pain radiating to the lower extremities. He conducted an examination and determined that appellant had tenderness in the lumbosacral spine from L3 to S1 and paraspinal region. Dr. Chandran noted that there was no paraspinal muscle spasm, straight leg raising was 90 degrees on both sides and reflexes were equal and normal, with no sensory deficit. He recommended physical therapy three times a week for four weeks and recommended returning to regular duties. Dr. Chandran continued to submit reports, in which she diagnosed lumbar spine strain.

On March 13, 2007 appellant filed a claim for a recurrence of disability causally related to the February 21, 2001 employment injury. Regarding the date of the recurrence, she alleged that it "never stop" and that she hurt all of the time. Appellant also indicated that she was not working. In a separate statement dated March 15, 2007, she alleged that she was injured on February 13, 1996 and that she had pain every day since the injury. Appellant also alleged that she was not working.

By letter dated March 28, 2007, the Office informed appellant that it had received her notice of recurrence; however, it was unclear whether she was alleging total disability due to her injury. The Office noted that appellant had returned to limited-duty work after her injury and she was returned to work without restrictions on January 2, 2002. The Office informed appellant that the evidence was insufficient to establish that her recurrence was related to her work injury and requested additional factual and medical evidence.

In an April 7, 2007 statement, appellant alleged that "[t]his is not a recurrence." She alleged that the pain had never gone away since 1996 and would be with her all her life. Appellant also alleged that she had not been working since May 3, 2007.

² The Office also advised appellant that she would receive compensation for time lost from work for the period March 21 to April 1, 2001.

The Office subsequently received a copy of a March 14, 2001 report from Dr. Chun-Chieh Chiu, a physician, who noted that, on February 21, 2001, appellant alleged that she went to sit down, the chair moved, fell down and injured her left knee, left thigh and low back. Dr. Chiu diagnosed back and left knee strain and noted that appellant was totally disabled on February 21, 2001.

The Office subsequently received information from appellant advising that she was retiring on May 3, 2007.

By decision dated May 22, 2007, the Office denied appellant's claim for a recurrence of disability beginning February 21, 2001.

LEGAL PRECEDENT

Section 10.5(x) of the Office's regulations provide that 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.³

Section 10.5(y) of the Office's regulations provide that a recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. 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.⁴

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.⁵

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁶

³ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

⁴ 20 C.F.R. § 10.5(y).

⁵ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

⁶ *Walter D. Morehead*, 31 ECAB 188 (1986).

ANALYSIS

The Office accepted appellant's claim for a lumbar strain and left knee strain in the performance of duty on February 21, 2001, and both had resolved over time. Appellant's physician cleared her to return to work with no limitations or restrictions on October 28, 2002.

On March 13, 2007 appellant filed a claim for a recurrence of total disability causally related to her February 21, 2001 employment injury. She did not specify a specific recurrence date, but rather, she alleged that her injury "never stop" and that she hurt all of the time. In a separate statement dated March 15, 2007, appellant alleged that she was injured on February 13, 1996, that she was not working and had pain every day since the injury. However, the Board notes that the present claim was accepted for an injury in the performance of duty on February 21, 2001.⁷

The Board also notes that appellant did not submit sufficient reasoned medical evidence to establish that her present condition was causally related to her accepted injury. For example, she did not submit a medical report in which her treating physician explained why her current disability would be related to the accepted injury. This is particularly important, as appellant's treating physician cleared her to return to work with no limitations or restrictions on October 28, 2002.

Appellant submitted a copy of a March 14, 2001 report from Dr. Chiu. The Board notes that this report was previously received, and served as a basis for acceptance of appellant's injury on February 21, 2001. However, it is not relevant to support a recurrence of disability after her treating physician cleared her to return to work with no limitations or restrictions on October 28, 2002, as he did not examine appellant or provide an opinion as to her condition after that time.

Appellant also submitted several reports dating from March 2004 to May 2005 from Dr. Chandran, who diagnosed a lumbar spine strain. The submitted material included an April 26, 2004 report, in which Dr. Chandran noted that appellant had complaints of pain in the lower back and lower extremities, and recommended a course of physical therapy. However, she did not provide any opinion that appellant's lumbar spine sprain was due to the accepted condition, which as noted above, had resolved in 2002. To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.⁸

Appellant did not submit any other evidence to support a recurrence of disability with objective findings to support that her recurrence was causally related to the work injury of February 21, 2001. Consequently, she has not met her burden of proof in establishing her claim for a recurrence of disability.

⁷ The record reflects that appellant also has a February 13, 1996 injury in File No. 131102403. If appellant wishes to file a recurrence related to her 1996 employment injury, she should file it with the Office under that claim as that claim is not presently before the Board.

⁸ *Robert A. Boyle*, 54 ECAB 381 (2003).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability causally related to her February 21, 2001 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 2008
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