

ISSUE

The issue is whether appellant sustained recurrences of disability for the periods February 15 to 18, March 18 to April 1, April 26 to May 4, 2005 and February 22 to April 7, 2006 due to his accepted lumbar injuries. On appeal, appellant contends that the opinion of Dr. Kent A. Campbell, an attending osteopath, Board-certified in family practice, is sufficient to support his disability for the claimed periods.

FACTUAL HISTORY

The Office accepted that on October 27, 1983 appellant, then a 25-year-old maintenance mechanic, sustained a herniated L4-5 disc due to lifting heavy steel and twisting at work. He underwent chemonucleolysis on July 25, 1984. The Office also accepted that appellant sustained an acute lumbosacral strain due to lifting and twisting. Appellant also sustained secondary sciatica and an aggravation of a herniated disc at L5-S1. The Office authorized an October 24, 1991 microdiscectomy. Appellant had intermittent work absences beginning in 1991. The Office later accepted a lumbosacral sprain and intervertebral disc disorder with lumbar myelopathy.

Appellant submitted chart notes from May 1989 through January 2005 from Dr. Campbell.² From 1991 through 2001, Dr. Campbell diagnosed failed low back syndrome with sciatica and recommended an L4-5 laminectomy.

Appellant filed claims for wage loss for the periods February 15 to 18, March 18 to April 1, April 26 to May 4, 2005 and February 22 to April 7, 2006. He was working full duty prior to each of the claimed periods of disability.³ In letters from May 16, 2005 to May 12, 2006 letters, the Office advised appellant of the type of evidence needed to establish his claims for recurrence of disability. It noted that it paid appellant four hours of wage-loss compensation for each medical appointment he attended on February 15, 17, March 18, 28, April 26 and May 2, 2005.

In February 15 and 17, 2005 reports, Dr. Campbell diagnosed low back pain and sciatica. He checked a box “no” indicating that the condition was not caused or aggravated by employment. In a February 23, 2005 reports, Dr. Campbell indicated that appellant was totally disabled from February 15 to 18, 2005 due to low back pain and sciatica due to the May 1, 1989 injury. He again checked a box “no” indicating that condition was not caused or aggravated by employment. Dr. Campbell explained that appellant had failed low back syndrome, causing intermittent periods of pain which were “a worsening of his previous injury.”

² Appellant was also followed in 1999 and 2000 by Dr. Paul J. Sheehan, an attending Board-certified orthopedic surgeon, who diagnosed a right-sided L4-5 disc rupture and recommended a microdiscectomy. March 27, 2003 lumbar studies showed interval disc space height narrowing at L3-4, L4-5 and L5-S1 compared to an April 19, 1999 study.

³ Although appellant did not file formal claims for recurrence of disability on Office Form CA-2a, the Office developed the claims as asserting recurrence of disability.

In chart notes and forms from March 18 to May 2, 2005, Dr. Campbell held appellant off work from March 18 to April 1 and April 26 to May 6, 2005 due to low back pain and sciatica. He explained in a July 26, 2005 letter that while appellant's original injury was permanent his disability was only intermittent.⁴

In a February 22, 2006 report, Dr. Campbell noted that appellant was able to work, including lifting and welding in awkward positions, but that he had significant back pain. He noted worsening back pain in chart notes through March 15, 2006. Appellant was hospitalized from March 3 to 5, 2006 for an acute exacerbation of chronic back pain. He improved with narcotic medications and physical therapy. Dr. Campbell held appellant off work on March 29, 2006 due to lumbosacral pain.

In an April 14, 2006 report, Dr. Campbell opined that appellant was totally disabled for work from February 22 to April 14, 2006 due to lumbar pain and "the requirements and duration of physical activities listed on his job, the severity of the present aggravation and his history of previous low back injuries/surgeries." He opined that the current episode of aggravation was permanent.⁵ Dr. Campbell diagnosed back pain in reports through April 23, 2006.

On May 1, 2006 appellant telephoned the Office, asserting that doing "steel work" making mail chutes in February 2006 progressively worsened his back symptoms to the point he had to be hospitalized on March 3, 2006.

In a June 6, 2006 letter, Dr. Campbell stated that appellant's condition worsened in February 2006 and he required hospitalization for pain control on March 3, 2006. He opined that appellant was disabled for work from February 22 to April 7, 2006 due to back pain caused by his low back injuries.

By decision dated August 14, 2006, the Office denied appellant's claim for a recurrence of disability from February 15 to 18, March 18 to April 1 and April 26 to May 4, 2005 on the grounds that causal relationship was not established. It found insufficient rationalized medical evidence to establish a recurrence of disability for the claimed periods.

On September 27, 2006 appellant requested reconsideration. He submitted additional evidence and copies of evidence previously of record.

In an April 13, 2006 form report, Dr. Campbell noted work restrictions. In October 14, 2006 reports, he stated that the accepted back injuries caused chronic, intermittent back pain and periods of disability. Dr. Campbell opined that appellant sustained recurrences of disability from June 23 to 27 and October 11 to 28, 2005. In a January 30, 2007 form report, he found appellant totally disabled for work from May 15, 2006 to January 30, 2007 due to failed low back syndrome and a herniated lumbar disc. Dr. Campbell noted that surgery was pending.

⁴ In an October 5, 2005 report, Dr. Anthony Margherita, an attending Board-certified physiatrist, diagnosed sacroiliac joint dysfunction causing functional limitations that could improve with physical therapy.

⁵ An April 21, 2006 lumbar magnetic resonance imaging scan showed encroachment at the L3 nerve root on the right, new since a March 14, 2005 study.

By decision dated May 4, 2007, the Office denied modification on the grounds of insufficient evidence. The Office found that Dr. Campbell's additional reports did not establish the claimed recurrences of disability were due to work factors.⁶

LEGAL PRECEDENT

The Office's implementing regulations define a recurrence of disability as "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."⁷ The Office's procedure manual provides that a recurrence of disability includes a work stoppage caused by an objective, spontaneous, material change in the accepted condition, a recurrence or worsening of disability due to an accepted consequential injury; or withdrawal of a light-duty assignment made to accommodate the work-related condition, for reasons other than misconduct or nonperformance.⁸

When an appellant claims a recurrence of disability due to an accepted employment-related injury, he 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. 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. Moreover, sound medical reasoning must support the physician's conclusion.⁹ An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.¹⁰

ANALYSIS

The Office accepted that appellant sustained a herniated L4-5 disc, an aggravation of a herniated L5-S1 disc, acute lumbosacral strain, secondary sciatica, lumbosacral sprain, intervertebral disc disorder and lumbar myelopathy. Appellant then claimed to have sustained recurrences of disability for the periods February 15 to 18, March 18 to April 1 and April 26 to May 4, 2005 and February 22 to April 7, 2006 causally related to the accepted lumbar injuries. In order to prevail, he must demonstrate a spontaneous change in the nature and extent of his accepted lumbar conditions without an intervening injury or new exposures.¹¹

⁶ The Office found that appellant had not established a change in the requirements of his light-duty position. However, there is no indication that appellant was on light duty at the time of the claimed recurrence of disability. The Board finds that the Office's reference to a light-duty position was a harmless, clerical error.

⁷ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). *See also Philip L. Barnes*, 55 ECAB 426 (2004).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997). *See also Steven A. Andersen*, 53 ECAB 367 (2002).

⁹ *Ricky S. Storms*, 52 ECAB 349 (2001).

¹⁰ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

¹¹ *Philip L. Barnes*, *supra* note 7.

Appellant submitted reports from Dr. Campbell, an attending osteopath, Board-certified in family practice. In reports from February 15 to 23, 2005, Dr. Campbell noted a May 1, 1989 date of injury but checked a box “no” indicating that appellant’s back condition was not employment related. However, he opined that appellant’s back pain was a worsening of his previous injury. Thus, Dr. Campbell did not provide a consistent medical opinion on causal relationship. The Board finds that his opinion is too equivocal to establish causal relationship for the period February 15 to 18, 2005.¹²

Dr. Campbell submitted chart notes holding appellant off work from March 18 to April 1 and April 26 to May 6, 2005 due to low back pain. But he did not explain how the accepted lumbar injuries spontaneously worsened such that appellant was disabled for work for those periods. The Board has noted that pain is considered a symptom and, of itself, does not constitute a basis for payment of compensation.¹³ Therefore, appellant has not met his burden of proof in establishing recurrences of disability from March 18 to May 4, 2005.

Regarding the claimed recurrence of disability from February 22 to April 7, 2006, the record demonstrates that appellant attributed his condition beginning in February 2006 to new work factors. Appellant telephoned the Office on May 1, 2006 asserting that making mail chutes at work worsened his symptoms such that he was hospitalized on March 3, 2006 for pain control. Dr. Campbell supported this account of events, stating that appellant’s condition worsened in February 2006 due to the physical requirements of his job, requiring hospitalization for pain control on March 3, 2006. He characterized this as an aggravation of appellant’s condition, not a spontaneous worsening.

The factual record demonstrates that appellant was exposed to new work factors in February 2006. Therefore, he asserts a new injury. Appellant has not established that he sustained a recurrence of disability from February 22 to April 7, 2006 causally related to the accepted work factors occurring on or before May 1, 1989. The Office properly denied appellant’s claims for recurrences of disability.

CONCLUSION

The Board finds that appellant has not established that he sustained recurrences of disability as alleged.

¹² A.D., 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006); see *Leonard J. O Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

¹³ See *Robert Broome*, 55 ECAB 339 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 4, 2007 and August 14, 2006 are affirmed.

Issued: July 21, 2008
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