United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
	)	
and	)	**Docket No. 09-1862**
	)	**Issued: March 10, 2010**
U.S. POSTAL SERVICE, GLENBROOK STATION, Stamford, CT, Employer	)	

Appearances:
Alan J. Shapiro, 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 July 7, 2009[1] appellant, through his representative, filed a timely appeal from January 12 and June 25, 2009 decisions of the Office of Workers' Compensation Programs denying his recurrence claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that he sustained a recurrence of a medical condition in December 2007 causally related to his January 24, 2003 employment injury.

FACTUAL HISTORY

On January 24, 2003 appellant, then a 43-year-old T-6 clerk, filed a traumatic injury claim alleging that he injured his back while lifting boxes at work. He began working light duty

[1] Appellant's request was postmarked on July 7, 2009 and received by the Office on July 14, 2009. *See* 20 C.F.R. § 501.3.

after the injury. Appellant stopped work on March 10, 2003. On April 22, 2003 Dr. Eric M. Garver, an attending Board-certified orthopedic surgeon, returned him to light duty with work restrictions of sedentary work with no lifting over 20 pounds. Appellant accepted a position offered by the employing establishment and returned to full-time, modified duty on June 2, 2003. The Office accepted his claim for lumbar strain and herniated L4-S1 lumbar discs.

On December 16, 2004 appellant experienced a recurrence of disability related to his herniated disc. He was out of work from December 17, 2004 through January 18, 2005, when he returned to full-time, light duty. Appellant continued medical treatment through February 23, 2005 and physical therapy through April 2005, at which point his claim was closed for medical treatment.

On October 28, 2008 appellant filed a claim for a December 2007 recurrence.[2] He claimed that he reinjured himself at work due to heavy lifting during the holiday season. Appellant stated that he continued to experience episodes of pain due to his chronic conditions making it difficult to perform his employment duties.

Appellant submitted physical therapy notes dated January 18, 2007 through August 29, 2008 from Thomas L. Calvanese, a registered physical therapist. In a May 14, 2008 report, Mr. Calvanese diagnosed lumbar displacement and pain for a herniated disc. He noted that appellant had a long history of low back pain with symptoms that had progressively worsened over the prior three months.

In May 13 and June 19, 2008 notes, appellant's treating physician, Dr. Eric J. Katz, diagnosed lumbar strain and herniated lumbar disc. He prescribed physical therapy. Appellant also submitted reports from Dr. Katz dated November 1, 2005 through February 27, 2007.

In a December 5, 2008 letter, the Office notified appellant of the deficiencies in his claim and requested he provide additional factual and medical evidence.

By decision dated January 12, 2009, the Office denied appellant's claim on the grounds that he did not submit a rationalized medical opinion to establish that he experienced a recurrence in December 2007 causally related to the January 24, 2003 employment injury.

On January 20, 2009 appellant, through his representative, filed a request for a hearing before an Office hearing representative. At a May 8, 2009 telephonic hearing, appellant testified that in 1993 he sustained a work-related low back injury requiring surgery for an L5-S1 herniated disc. On September 15, 2005 he also sustained a cervical injury due to a motor vehicle accident for which he received treatment for several months. Appellant claimed that he reherniated his L5-S1 disc on December 6, 2007 due to heavy lifting, bending, twisting and moving heavy equipment as required by the holiday season. His representative noted that appellant had filed a separate claim for an occupational disease due to his description of the injury.

[2] Appellant did not indicate whether he was claiming a recurrence of disability or only medical treatment. However, the record does not include any claims for wage loss or indicate that appellant missed time from work.

Appellant submitted neurological testing reports dated January 2, 2007 and magnetic resonance imaging (MRI) scan reports dated December 15 and 29, 2006. A February 18, 2008 MRI scan report revealed a large, recurrent and extruded left L5-S1 disc.

By decision dated June 25, 2009, the Office hearing representative affirmed the denial of appellant's claim for a recurrence of medical condition. She found that he did not provide sufficient medical evidence to establish that his back condition or need for treatment in December 2007 was causally related to his January 24, 2003 employment injury.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.[4]

A recurrence of a medical condition is defined in the Office's procedure manual as "the documented need for further treatment of the accepted condition when there has been no work stoppage."[5] When a claim for a recurrence of medical condition is made more than 90 days after release from medical care, an employee is responsible for submitting a medical report that contains a description of objective findings and supports causal relationship between the employee's current condition and the previous work injury.[6] In order to establish that a claimed recurrence of medical condition was caused by the accepted injury, medical evidence bridging the symptoms between the present condition and the accepted injury must support the physician's conclusion of a causal relationship.[7]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[8]

---

[3] 5 U.S.C. §§ 8101-8193.

[4] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[5] *J.F.*, 58 ECAB 124 (2006); *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(a) (January 1998).

[6] *J.F.*, *id.*; Federal (FECA) Procedure Manual, *id*. at Chapter 2.1500.5(b) (September 2003).

[7] *See Ricky S. Storms*, 52 ECAB 349 (2001).

[8] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

The Office accepted that appellant sustained a lumbar strain and herniated L4-S1 lumbar discs on January 24, 2003 in the performance of duty. He experienced a recurrence of his back condition on December 16, 2004. Appellant subsequently returned to work and his claim was closed in 2004. The issue is whether he established that he sustained a recurrence of medical condition in December 2007 connected to this injury. The Board finds that he has not met his burden of proof.

In support of his claim, appellant submitted notes dated May 13 and June 19, 2008 from Dr. Katz diagnosing lumbar strain and herniated lumbar disc and prescribing physical therapy. These notes are of diminished probative medical value as Dr. Katz did not provide any opinion on the cause of the diagnosed conditions or explain how they were related to appellant's January 24, 2003 employment injury.[9] The reports from Dr. Katz dated November 1, 2005 through February 7, 2007 predate appellant's claimed recurrence and, therefore, do not address the cause of the claimed December 2007 condition.[10]

Appellant submitted notes dated January 18, 2007 through August 29, 2008 from Mr. Calvanese, a registered physical therapist. As a physical therapist is not a physician as defined under the Act, Mr. Calvanese's opinion does not have probative medical value on the issue of causal relation.[11]

Appellant also submitted several diagnostic tests dated December 15, 2006 through January 2, 2007 and an MRI scan dated February 18, 2008. The studies dated prior to January 2, 2007 predate appellant's December 2007 recurrence claim. The 2008 MRI scan does not contain a physician's opinion on causal relation. As the diagnostic tests do not provide an opinion on causation, they are of diminished probative value.[12]

The Board finds that appellant did not provide a rationalized medical report addressing how his back condition in December 2007 and the need for treatment were caused by the accepted employment injury.[13]

The Board notes that appellant stated that he reinjured himself in December 2007 due to heavy lifting at work during the holiday season. He also testified to this claim at the May 8,

---

[9] Medical opinion, which does not offer any opinion regarding the cause of an employee's condition, is of limited probative value. *See A.F.*, 59 ECAB ___ (Docket No. 08-977, issued September 12, 2008); *Michael E. Smith*, 50 ECAB 313 (1999).

[10] *See Ricky S. Storms*, *supra* note 7.

[11] Under section 8101(2), the definition of a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). *See also A.C.*, 60 ECAB ___ (Docket No. 08-1453, issued November 18, 2008); *Jerre R. Rinehart*, 45 ECAB 518 (1994).

[12] *See Conard Hightower*, 54 ECAB 796 (2003).

[13] *See Mary A. Ceglia*, *supra* note 5; *Ricky S. Storms*, *supra* note 7.

2009 hearing before the Office hearing representative.[14] As appellant identified new employment factors as the cause of his injury, his claim does not meet the definition of a recurrence.[15]

CONCLUSION

The Board finds that appellant did not establish that he sustained a recurrence of medical condition in December 2007 causally related to his January 24, 2003 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 25 and January 12, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 10, 2010
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

[14] Appellant's representative stated that appellant had already filed a claim for the December 2007 condition as a new injury.

[15] *See Bryant F. Blackmon*, 56 ECAB 752 (2005).