

FACTUAL HISTORY

On August 26, 2000 appellant, then a 42-year-old licensed practical nurse, sustained injury while lifting a patient. In a September 1, 2000 report, Dr. David Kessler, appellant's treating Board-certified internist, noted that she hurt herself on August 26, 2000 while trying to lift a very heavy patient. There was no evidence of neurologic impairment and that he stated that appellant's injury represented a low back strain. On October 13, 2000 OWCP accepted her claim for a lumbar strain. Appellant returned to light-duty work. On December 5, 2000 Dr. Kessler released appellant to return to her regular duties.²

On September 10, 2009 appellant filed a claim for a recurrence of disability. She listed that date of first medical treatment following the recurrence as August 9, 2001. Appellant indicated that she was placed on light duty following her August 26, 2000 employment injury and was never released to duty without restrictions. She worked on the night shift (light duty) from 2001 through 2005 and did not have any major problems with her back until 2006. Appellant related that pushing patients in wheelchairs and walking up and down corridors caused pain in her lower back that never ceased but was tolerable on light duty.

Lionne Chapuis-Mimms responded for the employing establishment. She advised that there was no evidence that appellant was on light duty for a period of nine years. By letter dated October 13, 2009, Ms. Chapuis-Mimms asked OWCP for assistance. She noted that, as a result of Hurricane Katrina, there was no documentation in the employing establishment with regard to appellant's injury and asked for any medical evidence that indicated permanent restrictions on appellant's return to full duty.

By letter dated November 13, 2009, OWCP informed appellant that it needed more information to support her claim for a recurrence. On December 2, 2009 appellant stated that she was placed on light duty in 2000 and placed her on the night shift. Under this assignment, she did not have to lift greater than 20 pounds or stand or walk more than 20 minutes. Appellant indicated that since Hurricane Katrina the employing establishment did not have night shift or light-duty work.

By decision dated December 17, 2009, OWCP denied appellant's claim for a recurrence. It found the evidence insufficient to establish that her disability commencing in 2001 was due to her accepted back sprain.

By letter dated January 12, 2010, appellant, through counsel, requested a telephone hearing, held on April 16, 2010. She testified that she injured her back in 2000 and continued to receive treatment from 2000 to 2009, when she stopped work. Appellant stated that, when Dr. Kessler released her to work, she was provided limitations and was placed on the night shift, where she did not have to do much other than monitor patients or lift anything. Following Hurricane Katrina, the hospital closed and she was no longer able to work the night shift or work light duty. Appellant started working the day shift in 2006 and, in January 2009, her back started hurting. On the day shift she pushed patients in wheelchairs and had to walk up and down the halls pushing patients. In an eight-hour day, appellant was on her feet most of the time and

² Appellant has a claim in File No. xxxxxx347, accepted for later epicondylitis.

engaged in bending stooping, lifting, carrying and walking. She took Morphine and Vicodin at work.

In a November 2, 2009 note, Dr. Thao P. Dola, a Board-certified internist, stated that appellant was a patient at the Southeast Louisiana Veterans Health Care System with chronic arthritis, which was controlled with her current treatment. He opined that she was able to resume work with restrictions of no lifting greater than 20 pounds and no prolonged standing for greater than 20 minutes at a time. In a November 5, 2009 health care certificate, Dr. Dola advised that she had degenerative disc disease of the lumbar spine and chronic degenerative arthritis of her knees on both sides. Appellant was unable to stand or walk for a prolonged period (greater than 20 minutes). In response to a question as to the date of commencement of her condition, Dr. Dola noted that she hurt her low back at the employing establishment in 2000 while lifting a 500-pound patient. Dr. Dola also noted that appellant's left arm was injured on February 26, 2001 while lifting a patient, that required surgery. He stated that she was unable to perform the duties of a licensed practical nurse due to her medical problems. Dr. Dola concluded that appellant was disable from any work because she was taking numerous medications which made her too drowsy to work or drive.

In a report dated May 14, 2010, Dr. Clement Brrg-Wen, a Board-certified radiologist, interpreted appellant's magnetic resonance imaging (MRI) scan as showing mild degenerative disc space narrowing and disc bulge demonstrated at the L3-4 and L4-5 disc without any evidence for lumbar disc herniations. He also noted bilateral L5-S1, L4-5 and minor left L3-4 facet arthropathy and mild bilateral L4-5 foraminal stenosis.

By decision dated July 7, 2010, OWCP's hearing representative affirmed the December 17, 2009 decision.

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. It can also mean an inability to work that takes place 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 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.³

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁴

³ *J.F.*, 58 ECAB 124 (2006); 20 C.F.R. § 10.5(x).

⁴ *James H. Botts*, 50 ECAB 265 (1999).

ANALYSIS

OWCP accepted appellant's claim that on August 26, 2000 she sustained a lumbar strain while lifting a patient. Appellant was released by Dr. Kessler for regular-duty work as of December 5, 2000. She alleged recurrence of disability, noting that she first received medical treatment on August 9, 2001. Appellant alleged that in 2006 her light-duty night work assignment was discontinued following Hurricane Katrina. She made a claim for recurrence of disability on September 10, 2009.

The Board found that the medical evidence of records does not establish a spontaneous change in her accepted medical condition, the lumbar strain that occurred on August 26, 2000. The last report from Dr. Kessler was dated June 20, 2001 and discussed her unrelated condition of lateral epicondylitis. Prior to this report, he had released appellant to regular duty as of December 5, 2000. The next medical reports are dated November 2 and 5, 2009, at which time Dr. Dola advised that she had chronic arthritis and gave her work restrictions. In a December 5, 2009 health care report, Dr. Kessler noted that appellant's condition commenced when she hurt her lower back in 2000 while working for the employing establishment. He did not provide a fully history of injury or medical treatment or address how her disability in 2009 related to the 2000 back strain. The Board finds that Dr. Dola provided no bridging symptoms between appellant's claimed recurrence in 2009 and the accepted 2000 injury. Dr. Dola's opinion is of diminished probative value.⁵

Dr. Brrg-Wen did not address appellant's employment injury when he interpreted her MRI scan. The Board finds that the medical evidence of record is not sufficient to satisfy her burden of proof as it does not indicate that she sustained a recurrence of disability causally related to her August 26, 2000 lumbar strain.

Appellant contends that her light-duty position was withdrawn when she was taken from the night shift. The evidence in the record does not support her assertions that she was on restricted duty for her accepted back strain. On December 5, 2000 Dr. Kessler, appellant's treating physician, released her to return to her regular duties at work. There is no evidence that appellant performed limited-duty work after that point. There is no evidence that any accommodation was made or necessary due to her accepted back strain after her release to full-duty work on December 5, 2000. The Board notes that appellant contends that, after she stopped working nights, her duties became more physically demanding and involved more walking and pushing patients in wheelchairs; however, if these work activities caused or aggravated her back condition, she could file a new occupational disease. This aspect of her case has not been adjudicated by OWCP and is not presently before the Board.

⁵ The Board has affirmed the denial of recurrence of disability in the absence of documented evidence of bridging symptoms. See, e.g., *Leslie S. Pope*, 37 ECAB 798 (1986) (nine months); *Leon Harris Ford*, 31 ECAB 514 (1980) (10 years); *Ned Clark*, 8 ECAB 219 (1955) (11 years).

An award of compensation may not be based on surmise, conjecture or speculation.⁶ Appellant has not submitted evidence supporting her claim that she sustained a spontaneous recurrence of her accepted medical condition.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability causally related to her accepted August 26, 2000 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Program dated July 7, 2010 is affirmed.

Issued: July 12, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

⁶ H.C., Docket No. 10-1233 (issued March 4, 2011).