

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of LAWRENCE PANNELL and U.S. POSTAL SERVICE,
POST OFFICE, Omaha, Nebr.

*Docket No. 96-90; Submitted on the Record;
Issued October 14, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability after April 12, 1993 that was causally related to his January 20, 1993 accepted injury of lumbar strain.

On January 20, 1993 appellant, then a 45-year-old mail carrier, filed a claim alleging injury to his back from a fall on ice and snow. Appellant's claim was accepted for lumbar strain and contusion.¹ Appellant stopped work on January 20, 1993, returned to work on January 25, 1993 and was released for regular duty work on January 30, 1993. On May 14, 1993 appellant filed a claim alleging that he sustained a recurrence of disability on April 12, 1993. By letter dated July 8, 1993, the Office of Workers' Compensation Programs notified appellant that the information on his CA-2a form identified a new injury and advised him to file a traumatic injury CA-1 claim form. On July 30 and August 18, 1993 appellant filed traumatic injury claims.² By decision dated October 4, 1993, the Office denied appellant's traumatic injury claims on the grounds that the medical evidence did not establish any injury related to his performance of duty on April 12, 1993 or any injury related to his January 20, 1993 employment injury. Appellant requested a hearing before an Office hearing representative. In a memorandum dated May 24, 1994, the Chief of the Branch of Hearings and Review indicated that appellant had withdrawn his request for a hearing and wanted to pursue his claim as a recurrence of disability under Claim No. A11-122218. On June 7, 1994 appellant filed a request that his claim for recurrence of disability be adjudicated, asserting that the traumatic injury claim was filed in error since

¹ The OWCP number for this claim was A11-122218.

² The OWCP number for these claim is A11-127244.

there had been no intervening incident since his original injury.³ On May 8, 1995 appellant submitted a request for reconsideration on his claim for recurrence with medical evidence he believed supported his claim. By decision dated August 9, 1995, the Office denied appellant's claim for recurrence on the grounds that the evidence of record failed to establish that the claimed condition was causally related to the January 20, 1993 accepted employment injury.

The Board has carefully reviewed the entire case record on appeal and finds that appellant has met his burden of proof in establishing that he sustained a recurrence of disability after April 12, 1993.

Where appellant claims recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.⁴ 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 and supports that conclusion with sound medical reasoning.⁵

In the present case, appellant has presented sufficient medical evidence to establish that his claimed condition is causally related to his accepted employment injury of January 20, 1993. Appellant has submitted several reports from Dr. Lyal Leibrock, a Board-certified neurosurgeon and appellant's treating physician. In an operative report dated May 4, 1993, Dr. Leibrock noted that appellant had fallen while at work in January 1993 and developed low back pain subsequent to that incident, followed by lower extremity discomfort. He diagnosed a left L4 to L5 herniated disc with left L5 radiculopathy and performed a left L4 hemilaminotomy and left L4 to L5 discectomy. In a report dated May 16, 1994, Dr. Leibrock clearly indicates that appellant was initially injured in January 1993 by his fall on the ice. He further expresses the opinion that this injury from January 1993 progressed into an injury of the annulus of the nucleus pulposus and possibly an injury of the posterior longitudinal ligament which on April 1993 culminated in a ruptured disc with symptomatology that included radiating pain down the lower extremity. In his report of December 19, 1994, Dr. Leibrock essentially reiterates his conclusions as noted above but added that "as time passed ... to the events that took place when he was sorting the letters in April [19]93" the axial loading pressure caused the disc to rupture. Dr. Leibrock indicated that discs can rupture several weeks, months or years after the initial injury. In these reports by Dr. Leibrock, he indicates that he did not believe there was any intervening factor which caused appellant's ultimate injury of a ruptured disc. Rather, he has expressed the opinion that appellant's final diagnosed injury was due to the natural progression of his initial injury sustained in January 1993. As Dr. Leibrock negates the possibility of any intervening injury as a cause of appellant's claimed conditions, appellant has met his burden of proof in establishing

³ By letter dated June 29, 1994, the Office asserted that there was an intervening incident when appellant was injured at work on April 12, 1993 while casing mail.

⁴ *John E. Blount*, 30 ECAB 1374 (1979).

⁵ *Frances B. Evans*, 32 ECAB 60 (1980).

that he sustained a recurrence of disability after April 12, 1993 that was causally related to his accepted employment injury.

The decision of the Office of Workers' Compensation Programs dated August 9, 1995 is hereby reversed.

Dated, Washington, D.C.
October 14, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member