

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MOSES NOWELL and U.S. POSTAL SERVICE,
POST OFFICE, Newark, NJ

*Docket No. 99-476; Submitted on the Record;
Issued December 13, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant did not have a continuing condition after November 9, 1992 causally related to a September 29, 1992 employment injury.

In a decision dated July 30, 1998, the Office determined that residuals of a September 1992 injury had ceased by November 9, 1992.

The Board has reviewed the record and finds that the case record is not complete and therefore the case is not in posture for decision.

The record indicates that appellant has filed several different claims for compensation, including a September 4, 1980 claim for a back injury. In a decision dated August 5, 1993, with respect to the September 4, 1980 claim (File No. A2-461058), the Office noted that he had a separate claim for injury on September 29, 1992, which had been accepted for a lumbosacral sprain (File No. A2-655062). It is this claim for injury on September 29, 1992,¹ File No. A2-655062, that is addressed in the July 30, 1998 decision before the Board on this appeal. Although the record contains evidence from other claims, the record transmitted to the Board does not contain the original claim filed or the accompanying evidence that was submitted pursuant to File No. A2-655062. The Office apparently based its decision on evidence that was submitted in 1996 and thereafter, without explaining the absence of the original documents relating to the employment injury on September 29, 1992. Accordingly, the case will be remanded to the Office for proper assemblage of the case record and an appropriate decision that clearly specifies the periods of disability for wage-loss or medical benefits accepted for the September 29, 1992 employment injury. In this respect, the Board notes that if the Office

¹ In the July 30, 1998 decision, the Office states that the date of injury was September 30, 1992, but prior references to the claim report a date of injury of September 29, 1992.

determines that residuals ceased by a certain date, this finding must be supported by probative medical evidence.²

The July 30, 1998 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, DC
December 13, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

² Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. *Patricia A. Keller*, 45 ECAB 278 (1993). In this case the medical evidence cited by the Office is of little probative value. A November 9, 1992 note from Dr. James Aragona, an orthopedic surgeon, states that appellant had little relief of his back pain and then concludes that appellant "has returned to his job description at the [employing establishment] which was already under a rehabilitation description from a former injury." Appellant had been working light duty at the time of injury but apparently did not return to work after September 29, 1992; the meaning of Dr. Aragona's statement is unclear. It does not constitute a probative medical opinion that residuals of the employment injury had ceased. An April 9, 1997 report from Dr. Walter M. Flax, an orthopedic surgeon serving as a second opinion referral physician, stated that if the September 29, 1992 employment injury aggravated underlying degenerative changes, it was temporary in nature. Without an explanation as to the specific period of the aggravation, the opinion is of little probative value in determining the date residuals ceased.