

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TERRY D. WOODSON and U.S. POSTAL SERVICE,  
POST OFFICE, Richmond, VA

*Docket No. 99-2483; Submitted on the Record;  
Issued December 20, 2000*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,  
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability commencing March 29, 1999 causally related to his accepted March 1, 1995 lumbar radiculopathy, left leg; and (2) whether the Office of Workers' Compensation Programs, by its July 7, 1999 decision, abused its discretion by refusing to reopen appellant's case for further consideration of the merits of his claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to establish that he sustained a recurrence of disability commencing March 29, 1999, causally related to his accepted March 1, 1995 lumbar radiculopathy, left leg and that the Office, by its July 7, 1999 decision, did not abuse its discretion.

On January 31, 1996 appellant filed an occupational disease claim for pain in lower back and left leg and numbness in thigh, which the Office accepted on March 29, 1996 for lumbar radiculopathy, left leg. On April 1, 1999 appellant filed a claim for recurrence of disability. In this case, appellant alleged that he sustained a recurrence of disability commencing March 29, 1999 causally related to his accepted March 1, 1995<sup>1</sup> left leg radiculopathy. The Office denied appellant's claim on May 25, 1999, finding that the evidence of record failed to establish a causal relationship between the injury of March 1, 1995 and the claimed recurrence of March 29, 1999. By letter dated June 3, 1999, appellant requested reconsideration of the Office's May 25, 1999 decision. By decision dated July 7, 1999, the Office denied appellant's request for reconsideration finding the evidence of record was insufficient to warrant review of the prior decision.

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<sup>1</sup> The recurrence claim, Form CA-2a, showed the date of original injury as September 30, 1993. However, the record does not support a claim for a September 30, 1993 injury or accepted condition.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was filed within the applicable time limitations of the Act.<sup>3</sup> An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,<sup>4</sup> that the injury was sustained while in the performance of duty<sup>5</sup> and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.<sup>6</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>7</sup>

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the accepted employment injury and supports that conclusion with sound medical reasoning.<sup>8</sup>

The medical evidence submitted in support of appellant's claim for recurrence of disability commencing March 29, 1999 consists of undated Office notes by Dr. Nicholas Rulli, a chiropractor, who diagnosed myospasm and facet imbrication at L5/S1; an April 14, 1999 duty status report (Form CA-17) by Dr. Rulli diagnosing lumbar sprain/strain and lumbar intersegmental dysfunction; an April 13, 1999 attending physician's report by his diagnosing lumbar sprain/strain, and lumbar intersegmental dysfunction; and an April 28, 1999 report, by Dr. Rulli who stated that he first saw appellant on April 5, 1999. Dr. Rulli related a history of injury as given to him by appellant, reported his findings on examination, noted x-rays revealed a subluxation at L5/S1 and diagnosed lumbar multiple subluxations, lumbar intersegmental dysfunction, lumbar chronic sprain/strain and facet imbrication.

In the undated office notes, the April 14, 1999 duty status report and the April 13, 1999 attending physician's report, Dr. Rulli, a chiropractor, did not diagnose a subluxation as

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>5</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *Steven R. Piper*, 39 ECAB 312 (1987).

<sup>7</sup> *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *Lourdes Davila*, 45 ECAB 139 (1993); *Louise G. Malloy*, 45 ECAB 613 (1994).

demonstrated by x-rays to exist.<sup>9</sup> Therefore, the evidence submitted has no probative medical value.<sup>10</sup>

In the April 28, 1999 report, Dr. Rulli did diagnose a subluxation, but failed to provide his own rationalized opinion causally relating a diagnosed condition to the accepted March 1, 1995 condition. Therefore, the report is insufficient to establish appellant's recurrence of disability claim.

By letter dated April 16, 1999, the Office advised appellant of the specific type of evidence needed to establish his recurrence of disability claim, but such evidence was not submitted. By another letter dated April 16, 1999, the Office denied a change of physicians to Dr. Rulli, a chiropractor as a subluxation was not diagnosed in his case.

By decision dated May 25, 1999, the Office denied appellant's claim for an alleged recurrence of disability on the grounds that the evidence of record filed to establish that the alleged recurrence was causally related to the March 1, 1995 employment injury.

The Board finds that appellant failed to meet his burden of proof.

In summary, none of the medical evidence submitted provided a rationalized medical opinion from appellant's authorized treating physician, based on a complete and accurate history, explaining how a claimed recurrence of disability commencing March 29, 1999 was causally related to appellant's accepted March 1, 1995 left leg lumbar radiculopathy, or to provide bridging information between the two, especially since appellant's doctor at the time of the original injury found that appellant was able to return to regular full-time work in 1996.

The Board also finds that the refusal of the Office, in its July 7, 1999 decision, to reopen appellant's case for further consideration of the merits of his claim did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review, section 10.606 provides that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and setting forth arguments or submitting evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; (3) or constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>11</sup> When a claimant fails to meet

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<sup>9</sup> Under the Act a chiropractor is considered a physician and his reports considered medical evidence, to the extent that he treats spinal subluxations as demonstrated by x-ray to exist.

<sup>10</sup> *Ruth S. Johnson* 46 ECAB 237 (1994). (The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship; *Lucrecia M. Nielson* 42 ECAB 583 (1991).

<sup>11</sup> 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.<sup>12</sup>

In support of the June 3, 1999 request for reconsideration, appellant submitted a June 3, 1999 report by Dr. Rulli. The report included several diagnosed conditions and addressed the relevant issue of causal relationship. However, Dr. Rulli, a chiropractor, is a physician only to the extent that he diagnoses a subluxation as demonstrated by x-ray to exist. Therefore, his opinion on other conditions and their relationship to appellant's accepted March 1, 1995 condition is not considered medical evidence as previously explained in this decision. Although Dr. Rulli diagnosed subluxation, it was not diagnosed in 1995 nor was it an accepted condition. Therefore, the June 3, 1999 report is insufficient to reopen the case on the merits.

As appellant's June 3, 1999 request for reconsideration does not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying that request.

The decisions of the Office of Workers' Compensation Programs dated July 7 and May 25, 1999 are hereby affirmed.

Dated, Washington, DC  
December 20, 2000

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member

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<sup>12</sup> 20 C.F.R. § 10.606(a).