

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL A. LECHMAN and U.S. POSTAL SERVICE,
POST OFFICE, Oxnard, CA

*Docket No. 99-2058; Submitted on the Record;
Issued October 11, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on or about October 23, 1998 due to his July 19, 1997 employment injury.

On July 19, 1997 appellant, then a 35-year-old letter carrier, filed a claim for compensation benefits alleging that he sustained an injury to his back and shoulder, when delivering mail, he slipped on the wet sidewalk and fell on his back and shoulder. The Office of Workers' Compensation Programs accepted that appellant sustained an employment-related injury to his back and shoulder.

Accompanying appellant's claim was a duty status report dated July 19, 1997, prepared by Dr. Jonathan Gamson, a family practitioner, were: progress notes dated July 19, 1997 to August 25, 1998; a doctor's report of first injury or illness dated July 21, 1997 prepared by Dr. Lynn Horton, a family practitioner; an x-ray of the lumbar spine dated July 23, 1997; physical therapy notes from July 30 to August 27, 1997; and photographs. The duty status report prepared by Dr. Gamson indicated that appellant slipped and fell and sustained a left scapular contusion and left rhomboid strain. He noted appellant should be on restricted duty. The progress notes from July 19 to August 25, 1997 indicated appellant was being treated for a back strain and noted appellant was healing well. Dr. Gamson's report prepared by Dr. Horton noted a history of the injury with a diagnosis of left scapular contusion with left rhomboid strain. The x-ray report of July 21, 1997 indicated a normal lumbar spine. Appellant was released to regular work on August 4, 1997.

On October 23, 1998 appellant filed a Form CA-2a, notice of recurrence of disability. He indicated a recurrence of pain in his back due to employment-related injuries sustained on July 19, 1997. Appellant stopped work. He indicated that his recurrence of symptoms began on October 23, 1998.

In support of his claim appellant submitted a duty status report dated October 30, 1998 prepared by Dr. Kerr; a doctor's report of first injury or illness dated November 2, 1998,

prepared by Dr. Kerr and a narrative statement dated November 17, 1998. The duty status report indicated that appellant was experiencing back spasms and noted appellant fell in July 1997. Dr. Kerr indicated appellant could work full-time subject to restrictions. He indicated appellant was partially disabled from October 23 to December 1, 1998. The medical report prepared by Dr. Kerr indicated appellant's onset of injury was October 23, 1998. Dr. Kerr noted appellant was carrying heavy sacks of mail for the previous three months which caused lumbar pain and spasm, however, there was no acute injury. He noted appellant was treated in July 1997 for lumbar spasm. Appellant's narrative statement noted that since his fall in July 1997 he had been experiencing back spasms and since that time he has been on light duty.

By letter dated January 15, 1999, the Office requested detailed medical evidence from appellant, stating that the information submitted was insufficient to establish a recurrence of disability on the above date. The Office also requested specific medical information from Dr. Kerr regarding appellant's condition.¹

By decision dated February 23, 1999, the Office denied appellant's claim for recurrence of disability on the grounds that he did not submit medical evidence to establish that he had sustained a recurrence of disability on October 23, 1998 which was causally related to the accepted employment injury sustained July 19, 1997.

The Board finds that the evidence fails to establish that appellant sustained a recurrence of disability on October 23, 1998 as a result of his July 19, 1997 employment injury.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing March 30, 1990 and his October 26, 1987 employment injury.² This burden includes that necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.³

In support of his claim, appellant submitted a duty status report from Dr. Kerr dated October 30, 1998, which indicated a date of injury of October 23, 1998. The report also noted appellant was experiencing back spasms, and fell in July 1997. Appellant was placed on limited duty from October 23 to December 1, 1998. The note did not indicate how the injury occurred other than to mention that appellant fell in July 1997 nor did it specifically relate his current condition to his accepted employment injury. Rather, Dr. Kerr indicated that the injury occurred on October 23, 1998 and did not specifically mention that it was a recurrence of the earlier injury of July 19, 1997 or otherwise provide medical reasoning explaining why any current condition or disability was due to the July 1997 employment injury or to any other employment factors.

Also submitted was a report of the first injury or illness dated November 2, 1998 prepared by Dr. Kerr who indicated that the date of onset of the illness was October 23, 1998.

¹ The letter was returned to the Office because appellant had relocated and the forwarding address had expired. The Office reissued the letter on February 2, 1999.

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

³ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

He indicated that appellant was carrying heavy sacks of mail for the three prior months which caused lumbar pain and spasm. Dr. Kerr noted that in July 1997 appellant was treated for lumbar spasm. He did not explain how or why this condition was a recurrence of the earlier injury or how it was employment related.

Dr. Kerr did not specifically indicate in either report that appellant had a recurrence of his July 19, 1997 employment injury nor did he otherwise explain how any of appellant's current symptoms and diagnoses were related to the July 19, 1997 employment injury. In fact he treated appellant's condition as a new injury.

The Office specifically advised appellant of the type of medical evidence necessary to establish his claim for recurrence. The Office also requested specific medical information from Dr. Kerr regarding appellant's condition. No additional evidence was submitted.⁴

Appellant has not met his burden of proof in establishing that he sustained a recurrence of disability attributable to his July 19, 1997 employment injury.

The decision of the Office of Workers' Compensation Programs dated February 23, 1999 is hereby affirmed.

Dated, Washington, DC
October 11, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

⁴ With appellant's request for an appeal, appellant submitted additional medical evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from having the Office consider this evidence as part of a reconsideration request.