

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SIDNEY A. SIMONEAUX and U.S. POSTAL SERVICE,
MAIN POST OFFICE, New Orleans, LA

*Docket No. 02-1975; Submitted on the Record;
Issued January 6, 2003*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability causally related to his accepted work injury.

Appellant's claim filed on February 21, 1989 was accepted for a lumbar strain after appellant, then a 46-year-old mail clerk, collided with a coworker pushing a heavily-laden cart and hurt his back.

On August 9, 1990 the employing establishment offered appellant a modified clerking position, which was approved by his treating physician, Dr. Douglas A. Swift, a Board-certified neurologist. Appellant accepted the job and returned to work for four hours a day, which was later reduced to two hours. Following further vocational rehabilitation efforts, the Office of Workers' Compensation Programs referred appellant to Dr. Robert A. Steiner, a Board-certified orthopedic surgeon, for a second opinion evaluation.

Based on his July 15 and December 23, 1992 reports, the Office issued a notice of proposed termination of compensation on January 7, 1993. On February 8, 1993 the Office terminated compensation, effective March 7, 1993.

On March 14, 2001 appellant filed a notice of recurrence of disability, alleging that he was in constant pain because of his back and had undergone surgery for a ruptured disc. The Office denied the claim on August 21, 2001 after appellant failed to submit any medical or factual information in response to the Office's inquiry.

On October 11, 2001 the Office denied appellant's request for reconsideration as insufficient to warrant review of its prior decision. Appellant again requested reconsideration, noting that he had submitted almost 100 pages of medical evidence. On February 7, 2002 the Office denied modification of its prior decision on the grounds that the medical evidence failed to establish that appellant's ruptured disc was causally related to the 1989 injury.

The Board finds that appellant has failed to meet his burden of proof to establish a recurrence of disability causally related to his accepted work injury.

A recurrence of disability is defined as a spontaneous material change, demonstrated by objective findings, in the previous employment-related injury or condition without an intervening injury or new exposure to factors causing the original injury or condition.¹ A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted employment injury.² To meet this burden of proof, a claimant must furnish 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 the employment injury and supports that conclusion with sound medical reasoning.³

Causal relationship is a medical issue,⁴ and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁵ The physician's opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

In this case, the Office terminated appellant's disability compensation on the grounds that his accepted work injury -- a lumbar strain -- had resolved. Dr. Swift stated in a January 23, 1992 report that appellant's range of motion and neurological status of his back remained unchanged. Dr. Steiner stated in his July and December 1992 reports that appellant had no objective findings of a lumbar strain, that he had preexisting degenerative disc disease and that appellant's psychological overlay made an assessment of aggravation of this condition difficult. On March 19, 1993 Dr. Swift released appellant to regular work with lifting and standing restrictions.⁷

In requesting reconsideration of the Office's denial of his recurrence of disability claim, appellant submitted reports from Dr. John F. Schumacher, a neurologist, who performed a lumbar discectomy at L4-5 on March 16, 2001. Dr. Schumacher initially examined appellant on

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b.(1)(a) (May 1997).

² *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

³ *Helen K. Holt*, 50 ECAB 279, 282 (1999).

⁴ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

⁵ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

⁶ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

⁷ A March 9, 1993 report from Dr. Keith E. Larkin, a Board-certified orthopedic surgeon, stated that appellant had degenerative disc disease but could return to light duty, with no lifting more than 20 pounds and no bending.

February 7, 2001. He noted that appellant had been symptomatic for two to three months and an magnetic resonance imaging (MRI) scan dated January 16, 2001 showed a herniated disc at L4-5. Dr. Schumacher repeated appellant's allegations that he had a back injury eight or nine years ago, that he had been told he had two ruptured discs and that he felt his current problem was related to his old injury.

An October 28, 1987 x-ray was interpreted as showing extensive disc narrowing and sclerosis at the L5-S1 level with no other bony abnormality. A March 27, 1989 MRI scan of the lumbar spine was interpreted as showing herniated discs at L3-4 and L4-5, with mild impingement, but this condition was not accepted by the Office as work related.

A September 18, 1990 x-ray showed marked narrowing of the L5-S1 disc and chronic degenerative disc disease. An October 4, 1995 x-ray showed no change from the 1990 film. A June 25, 1997 x-ray noted that the changes at L5-S1 were more pronounced but that otherwise the spine was unremarkable. An August 18, 2000 film repeated the narrowing findings at L5-S1. Finally, the January 16, 2001 MRI scan showed the disc herniation at L4-5, with degenerative narrowing at L5-S1 and mild bulging.

None of this evidence addresses the issue of whether appellant's disc herniation in 2001 was causally related to the accepted lumbar strain in 1989. Dr. Schumacher offered no opinion on the cause of appellant's herniated disc except to relate appellant's belief that his present condition stemmed from an unspecified "old injury." While appellant had treatment for his back pain between 1993 when his compensation was terminated and 2001, none of the chart notes or diagnostic testing during that time showed that appellant had what he termed "ruptured discs." Therefore, Dr. Schumacher's reports are insufficient to meet appellant's burden of proof.⁸

Dr. David Grossman, Board certified in internal medicine, stated in a June 22, 2001 report that appellant originally injured his back after jumping from a helicopter during the Vietnam War and that a subsequent work injury made his back pain worse. He opined that appellant's current condition was probably related to the previous injury, largely on the basis of appellant's history.

Dr. Grossman's opinion is completely speculative and based on appellant's belief, not on any medical rationale. As such, his opinion is insufficient to establish the requisite causal relationship.⁹ Inasmuch as appellant failed to submit a rationalized medical report linking his current back condition to the 1989 work injury, the Board finds that he has failed to meet his burden of proof to establish a causal relationship.

⁸ See *Carmen Gould*, 50 ECAB 504, 508 (1999) (finding that a physician's opinion that failed to explain the relationship between appellant's current back condition and the accepted lumbar sprain was insufficient to establish causation and thus failed to meet appellant's burden of proof).

⁹ See *Linda I. Sprague*, 48 ECAB 386, 390 (1997) (finding that physicians' opinions regarding the cause of appellant's herniated discs were based on appellant's suppositions and not on a review of the medical history and were, therefore, speculative and of diminished probative value).

The February 7, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
January 6, 2003

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member