

**United States Department of Labor
Employees' Compensation Appeals Board**

JERRY D. CARR, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Antonio, TX, Employer**

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**Docket No. 04-415
Issued: August 20, 2004**

Appearances:
Jerry D. Carr, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 8, 2003 appellant filed a timely appeal of the October 15, 2003 merit decision of the Office of Workers' Compensation Programs, which denied his claim for recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim.¹

ISSUE

The issue is whether appellant established that he sustained a recurrence of disability on May 27, 2003, causally related to his February 8, 2000 employment injury.

¹ The record on appeal includes evidence the Office received after it issued the October 15, 2003 decision. The Board may not consider evidence that was not before the Office at the time it rendered its final decision. 20 C.F.R. § 501.2.

FACTUAL HISTORY

On February 8, 2000 appellant, then a 40-year-old letter carrier, sustained a traumatic injury to his low back while in the performance of duty. Appellant stopped work on February 9, 2000. The Office accepted the claim for lumbar strain and aggravation of preexisting degenerative disc disease.² Appellant received appropriate wage-loss compensation and the Office placed him on the periodic compensation rolls effective August 13, 2000. Additionally, the Office authorized a laminectomy at L3-4 and L4-5 with fusion, which appellant underwent on September 20, 2000.³ Appellant returned to limited-duty work on September 22, 2001. He sustained another traumatic injury on July 30, 2002, which the Office ultimately accepted for aggravation of preexisting lumbar sprain and left wrist sprain (A16-2043277).⁴ The Office combined the records for the prior back injuries in 1998 and 2000 with the record from the July 30, 2002 injury.

On June 10, 2003 appellant filed a claim (Form CA-7) for compensation for total disability beginning May 27, 2003. Additionally, on June 12, 2003 appellant filed a claim for intermittent wage loss during the period January 27 to April 30, 2003.

The employing establishment challenged appellant's entitlement to wage-loss compensation on the basis that the medical evidence did not establish that appellant was disabled during the period claimed. The employing establishment noted, among other things, that although appellant was released to perform limited-duty work on May 25, 2003, he did not return to work even though limited duty was available for him.

The evidence submitted included a May 23, 2003 return to work form from Dr. Geibel, appellant's surgeon, stating that appellant had been treated for low back pain that day and was able to return to work May 25, 2003. Dr. Geibel also provided a similarly dated duty status report (Form CA-17) that indicated effective May 25, 2003 appellant was able to perform eight hours of limited-duty work consisting of "mounted duties only."

In a May 28, 2003 attending physician's report, Dr. Raymond L. Brewer, a Board-certified anesthesiologist specializing in pain management, also indicated that appellant could perform mounted deliveries only. However, in a June 9, 2003 duty status report, Dr. Brewer indicated that appellant was disabled since May 25, 2003 due to his employment-related back condition. In addition to his back condition, appellant was diagnosed with depression and hypertension. Appellant underwent a functional capacity evaluation on June 16, 2003 and

² Appellant sustained a prior back injury on September 26, 1998, which the Office accepted for sciatica (A16-032287). The record also established preexisting degenerative disc disease with a disc herniation at L4-5.

³ Dr. Paul T. Geibel, a Board-certified orthopedic surgeon, performed the authorized surgery.

⁴ Appellant alleged that he injured his left wrist, right knee and low back on July 30, 2002 when he reacted to mail falling from his truck. The Office, however, denied the claim by decision dated October 8, 2002. Appellant requested reconsideration and the Office denied modification on January 13, 2003. He appealed the denial to the Board. In a decision dated May 14, 2003, the Board set aside the January 13, 2003 decision and remanded the claim for further development of the medical record. Docket No. 03-897. On October 22, 2003 the Office accepted the claim for aggravation of preexisting lumbar sprain and left wrist sprain.

Dr. Brewer subsequently recommended that appellant participate in a work hardening program. He also recommended a psychological evaluation with biofeedback.

On June 30, 2003 the Office approved the requested work hardening program and psychological services. Additionally, on July 7, 2003 the Office referred appellant for vocational rehabilitation services.

On July 28, 2003 the Office awarded compensation for a total of 24 hours of lost wages due to attending medical appointments on April 29, May 30, June 9, June 10 and June 23, 2003. The Office noted that there was insufficient medical evidence to establish work-related disability for the additional dates claimed. In a separate letter also dated July 28, 2003, the Office advised appellant of the need for additional factual and medical evidence to support his claimed recurrence of disability beginning May 27, 2003.

Appellant responded on August 21, 2003. Additionally, the Office received on August 28, 2003 an August 11, 2003 report from Dr. Barbara J. Woods, a psychologist, who diagnosed pain disorder associated with both psychological factors and a general medical condition. She also diagnosed major depressive disorder and post-traumatic stress disorder. Dr. Woods noted that appellant's prognosis for a return to work was guarded and she recommended a treatment program including biofeedback-assisted individual psychotherapy to alleviate the psychological problems associated with appellant's February 8, 2000 traumatic injury.

The Office also received on September 2, 2003 a May 23, 2003 narrative report from Dr. Geibel, who explained that appellant continued to report back pain and spasms and he was currently undergoing pain management with Dr. Brewer. Dr. Geibel also reported radicular pain to the cervical spine due to underlying spondylosis. He recommended continued physical therapy and a home exercise program and advised that appellant remain at light duties, with no repetitive bending, twisting or lifting more than 25 to 30 pounds.

On September 12, 2003 the Office received an August 26, 2003 report from Dr. Brewer, who diagnosed chronic low back pain, post-laminectomy syndrome, left lumbar radiculopathy at L4-5, epidural fibrosis at the L4 nerve root and hypertension. He explained that appellant's persistent symptoms precluded his participation as a mail carrier in the job description to which he was previously relegated. Dr. Brewer also noted that, given appellant's degree of disability, he represented a safety threat for reinjury.

On September 2, 2003 appellant began participating full time in an eight-week work hardening program. As a result, the Office awarded wage-loss compensation and placed appellant on the periodic compensation rolls effective September 7, 2003.

By decision dated October 15, 2003, the Office denied appellant's claim for recurrence of disability beginning May 27, 2003. The Office explained that the medical evidence initially provided did not establish that the claimed recurrence resulted from the accepted work injury. Additionally, the Office stated that it advised appellant of the deficiencies in his claim on July 28, 2003 and provided him an opportunity to respond, but "No further evidence was received."

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.⁶ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.⁷ The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁸

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position, or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the employment-related condition or a change in the nature and extent of the light-duty job requirements.⁹

ANALYSIS

On July 28, 2003 the Office requested additional factual and medical evidence in support of appellant's claimed recurrence of disability beginning May 27, 2003. As previously outlined, appellant provided a written response as well as additional medical reports from Drs. Brewer, Geibel and Woods. The Office erroneously stated in its October 15 2003 decision that "No further evidence was received." The Board's jurisdiction over a case is limited to reviewing that evidence which was before the Office at the time of its final decision.¹⁰ Inasmuch as the Board's decisions are final as to the subject matter appealed, it is crucial that all relevant evidence that was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.¹¹ As the Office failed to address all the relevant evidenced before it at

⁵ 20 C.F.R. § 10.5(x).

⁶ 20 C.F.R. § 10.104(b) (1999); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁷ See *Helen K. Holt*, *supra* note 6.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁹ *Barry C. Peterson*, 52 ECAB 120, 125 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹⁰ 20 C.F.R. § 501.2(c).

¹¹ 20 C.F.R. § 501.6(c); see *William A. Couch*, 41 ECAB 548, 553 (1990).

the time of its October 15, 2003 decision, the case is remanded for a proper review of the evidence and issuance of an appropriate final decision.¹²

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further consideration consistent with this decision.

Issued: August 20, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹² Whether the Office receives relevant evidence on the date of the decision or several days prior, such evidence must be reviewed by the Office. *Willard McKennon*, 51 ECAB 145 (1999).