

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VINCENT PARKER and U.S. POSTAL SERVICE,
OAKLAND STATION, Pittsburgh, PA

*Docket No. 03-2014; Submitted on the Record;
Issued March 1, 2004*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on December 15, 1999 causally related to his August 6, 1992 injury.

This is the second appeal in this case before the Board. On August 7, 1992 appellant, then a 34-year-old letter carrier, sustained a lumbar strain and herniated disc. He returned to limited duty on August 10, 1992. He had an accepted recurrence of disability from July 10, 1993 to August 28, 1993. Subsequent claims for recurrences of total disability were claimed for periods beginning May 5, 1995 and February 27, 1997 and were denied by Office of Workers' Compensation Programs' decisions dated August 10, 1995 and June 27, 1997. On February 28, 2000 appellant filed another claim for a recurrence of disability beginning December 15, 1999 and this claim was denied in a November 30, 2000 Office decision.

In a decision dated August 12, 2002, the Board found that appellant failed to establish that he sustained a recurrence of disability on December 15, 1999 causally related to his accepted injury of August 6, 1992. The facts of the case as set forth in the Board's decision are hereby incorporated by reference.¹

On September 9, 2002 appellant requested reconsideration before the Office.

In a decision dated October 9, 2002, the Office modified its prior decision to note medical benefits for treatment for the accepted work injury. However, the Office again found that the medical evidence of record did not support that the claimant sustained a recurrence of total disability as of December 15, 1999.

By letter dated October 23, 2002, appellant requested reconsideration of the denial of wage-loss compensation for the period from December 21, 1999 through February 1, 2000.

¹ *Vincent Parker*, Docket No. 02-809 (issued August 12, 2002).

Appellant submitted a note by Dr. Nita Rai-Gohel, a Board-certified internist, dated January 31, 2000, indicating that appellant was restricted from lifting over 10 pounds due to a back injury. Appellant also submitted notes from Allegheny University Medical Practices indicating that he was unable to work from December 21, 1999 to February 1, 2000.

By decision dated January 27, 2003, Office denied modification of the October 9, 2002 decision, finding that the evidence submitted was insufficient to support a recurrence of the August 6, 1992 injury beginning December 21, 1999.

By letter dated April 7, 2003, appellant again requested reconsideration and submitted a February 21, 2003 note from Dr. Rai-Gohel who stated:

“This is regarding a work excuse given to my patient on December 21, 1999, through January 20, 2000 for exacerbation of his back pain. The patient was working as a letter carrier and was driving a postal vehicle, but after several weeks of working and sitting, he had excruciating lower back discomfort and underwent three to four months of physical therapy at that time. He was given steroids and prednisone at the time and was diagnosed as having a herniated disc in 1995. He went back to work in a limited[-]duty capacity, but he does get exacerbations of back pain. He started having pain again prior to December 1999, but presented to my office in December 1999 with severe pain in his back. He had severe tenderness in his lower back as well as right-sided radicular pain with a positive straight leg test as well as diminished patellar and ankle reflexes. At that time, he was referred back to Dr. Mark Fye, who is at Allegheny General Hospital, and had been following him in the past for chronic back pain. He had an MRI [magnetic resonance imaging] [scan] on May 19, 2000, which showed degenerative changes in L4-5 and L5-S1 with bulging disc and central right-sided disc herniations at L5-S1.

“I had given him a work excuse in December 1999 on the basis of severe back pain with some neurologic compromise at that time. He was released back to work in January 2000.”

Appellant also submitted reports from Dr. Riccardo Marinelli, an internist, that had been previously considered. Appellant submitted a March 28, 2003 report from Dr. Marinelli, who noted that appellant continued to experience bilateral low back pain and bilateral lower extremity pain affecting the left side more than the right. Dr. Marinelli indicated that he would like to perform an MRI scan. An MRI scan was performed on August 8, 2003 and interpreted by Dr. Stuart L. Silverman, a Board-certified psychiatrist and neurologist, as showing degenerative changes at T11-12, central and left-sided disc bulge at L4-5 and small focal right-sided disc herniations at L5-S1 slightly displacing the right S1 nerve root. Appellant underwent a left L5 selective nerve root block under fluoroscopic guidance, performed by Dr. Marinelli on April 24, 2003.

By decision dated July 8, 2003, the Office denied modification of its prior decisions.

The Board finds that appellant has not established a recurrence of disability on or after December 15, 1999 causally related to his August 6, 1992 injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.²

Causal relationship is a medical issue³ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes 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. The opinion of the physician 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.⁴

The Board finds that appellant has failed to provide medical evidence sufficient to establish a recurrence of disability on or after December 15, 1999. None of the physicians of record relate any recurrence to the initial injury of August 6, 1992. The notes from Allegheny University Medical Practices, while indicating that appellant was unable to work from December 21, 1999 to February 1, 2000, do not give a reason for this period of total disability. Dr. Rai-Gohel's note of February 21, 2003 is also insufficient as it fails to mention the original injury, thereby failing to link appellant's disabling period of back pain to the accepted injury of August 6, 1992. The Board further notes that there is no indication that Dr. Rai-Gohel was aware that appellant was working in a light-duty capacity for six years. Dr. Marinelli's reports indicate that appellant continued to experience low back pain and lower extremity pain, but do not indicate that appellant was unable to perform his restricted duties. The medical evidence indicates that appellant has underlying degenerative changes in his lumbar spine, but the evidence of record is insufficient to establish his accepted injury as causing disability for the claimed. The Board notes that there is no evidence of record that appellant's job duties changed. His termination in March 2000 was for reasons unrelated to the accepted injury. Accordingly, appellant did not meet his burden of proof to show a recurrence of total disability.

² *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The decisions of the Office of Workers' Compensation Programs dated July 8 and January 27, 2003 and October 9, 2002 are hereby affirmed.

Dated, Washington, DC
March 1, 2004

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member