

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

J.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
West Palm Beach, FL, Employer**

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**Docket No. 08-864
Issued: August 25, 2008**

Appearances:

*Ronald S. Webster, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 1, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 27, 2007 merit decision denying a claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an employment-related disability on or after November 2, 2004.

FACTUAL HISTORY

On August 11, 2000 appellant, then a 50-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on August 10, 2000 he sustained an injury while lifting and carrying sacks of mail. The Office accepted the claim for a low back strain. Appellant returned to a light-duty position.

In a report dated December 5, 2000, Dr. Merrill Reuter, the treating orthopedic surgeon, indicated that a November 21, 2000 magnetic resonance imaging (MRI) scan showed disc desiccation and degenerative disc disease at L1-2, L4-5 and T11-12. Appellant continued to receive intermittent treatment from Dr. Reuter. By report dated August 3, 2004, Dr. Reuter indicated that he had not seen appellant since November 2002 and he recommended a lumbar MRI scan. On November 2, 2004 he indicated that appellant was having back pain and he placed appellant off work for two to three weeks. Dr. Reuter reported on November 8, 2004 that a November 3, 2004 MRI scan showed an L1-2 right disc herniation and L4-5 left disc herniation with extrusion and an L5-S1 disc bulge. He opined that appellant should remain off work. On February 8, 2005 Dr. Reuter reported electrodiagnostic studies showed evidence of chronic radiculopathy of the right L5 nerve root. In a duty status report (Form CA-17) dated June 17, 2005, he indicated appellant should work light duty at four hours per day.

Appellant underwent a computerized tomography scan dated June 29, 2005, which revealed an L5-S1 disc herniation. By report dated August 9, 2005, Dr. Reuter opined that the incident of August 10, 2000 was responsible for appellant's ongoing symptoms and required surgical intervention. In a report dated September 8, 2005, an Office medical adviser opined that the proposed discectomy surgery was not causally related to the employment injury. The record indicates appellant stopped working on September 3, 2006. He filed claims for intermittent compensation from November 2, 2004 to June 20, 2005 and for September 4, 2006 and continuing. There is also a claim for compensation dated March 7, 2005 for a period commencing March 14, 2005.

By decision dated March 27, 2007, the Office denied the claim for compensation commencing September 4, 2006. By decision dated April 26, 2007, the Office denied compensation commencing March 14, 2005. In a decision dated May 1, 2007, the Office denied compensation from November 2, 2004 to June 20, 2005.

Appellant requested a hearing before an Office hearing representative, which was held on October 22, 2007. He submitted a June 20, 2007 deposition of Dr. Reuter. In his deposition, Dr. Reuter noted appellant's job duties included pushing, pulling and lifting. On June 29, 2005 he diagnosed concordant L5-S1 disc herniation and "this was the likely source of [appellant's] pain." Dr. Reuter was asked whether, when he first treated appellant on September 7, 2000 and noted appellant had a history of low back problems, he felt appellant was having a mid and low back problem as a result of his job-related history. He responded, "That's my understanding." Dr. Reuter opined that the L5-S1 disc herniation was causally related to the August 10, 2000 lifting episode, "because it [i]s common for lifting injuries to result in low back disc abnormality."

By decision dated December 27, 2007, the hearing representative affirmed the March 27, April 26 and May 1, 2007 Office decisions.

LEGAL PRECEDENT

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 establishes that light duty can be performed, the employee has the burden to establish by the weight of

reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, 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.¹

ANALYSIS

The claim filed in this case was for a traumatic injury on August 10, 2000 with respect to lifting and carrying sacks of mail and the accepted injury was a low back strain. To the extent that appellant is claiming that an L5-S1 disc herniation or other condition is related to the employment incident on August 10, 2000, it is his burden of proof to establish the diagnosed condition as employment related.² Moreover, it is appellant's burden to establish a period of disability for the light-duty job causally related to the employment injury.

Dr. Reuter has diagnosed degenerative disc disease, chronic radiculopathy, as well as disc herniations at L1-2, L4-5 and L5-S1. He did not, however, provide a rationalized medical opinion addressing the causal relationship with the August 10, 2000 employment injury. Rationalized medical opinion evidence is an opinion, based on a complete factual and medical background, which is supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the employment.³ In the June 20, 2007 deposition, Dr. Reuter opined that an L5-S1 disc herniation was employment related. He did not, however, explain how the herniated discs first diagnosed in 2005 related back to the 2000 injury with a complete factual and medical background. Dr. Reuter referred to general job duties of pushing and pulling, although the claim in this case was based on activities on August 10, 2000. He acknowledged that the diagnosis of L5-S1 disc herniation was not made until June 29, 2005, without clearly explaining why this supported causal relationship with an August 10, 2000 employment incident when the November 21, 2000 and November 3, 2004 MRI scans apparently did not document an L5-S1 disc herniation. Dr. Reuter made a general statement that lifting injuries commonly cause disc abnormalities, without providing a rationalized opinion under the specific factual and medical history presented in this case.

The Board therefore finds that appellant has not established an additional diagnosed condition as employment related. With regard to the claimed periods of disability, appellant must, as noted above, establish a change in the nature and extent of an employment-related injury resulting in disability for work. Dr. Reuter did not discuss disability for the light-duty job. He placed appellant off work as of November 2, 2004 due to back pain, without providing further explanation or discussing causal relationship with employment. The record does not contain probative medical evidence establishing an employment-related disability for a specific period on or after November 2, 2004. Appellant did not meet his burden of proof in this case to establish a change in the nature and extent of an employment-related condition, or a change in the nature and extent of the light-duty job requirements.

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

² A claimant has the burden of proof to establish that any specific condition is causally related to the employment injury. *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Roy L. Humphrey*, 57 ECAB 238 (2005).

CONCLUSION

Appellant did not submit sufficient medical evidence to establish a period of employment-related disability on or after November 2, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 27, May 1, April 26 and March 27, 2007 are affirmed.

Issued: August 25, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board