

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

S.P., Appellant

and

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

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**Docket No. 10-2055
Issued: May 5, 2011**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 10, 2010 appellant filed a timely appeal from the June 25, 2010 merit decision of the Office of Workers' Compensation Programs denying appellant's claim for periods of disability. Pursuant to the Federal Employees' Compensation Act¹ and 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 met his burden of proof to establish that he sustained disability for intermittent periods between February 14 and June 1, 2009 due to his September 27, 2008 work injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

The Office accepted that on September 27, 2008 appellant, then a 54-year-old rural carrier associate, sustained a lumbar sprain due to attempting to open a door while pulling a cart laden with mail tubs.² He stopped work on September 29, 2008.

Appellant underwent a lumbar magnetic resonance imaging (MRI) scan test on October 3, 2008 which showed mild degenerative changes and a small disc bulges at L5-S1 and L4-L5 that mildly indented the anterior thecal sac, and borderline disc bulges at L1 through L4 without significant stenosis. On October 9, 2008 he came under the care of Dr. George Haas, a Board-certified orthopedic surgeon, who gave a history of the September 27, 2008 injury and noted that the MRI scan test showed multilevel disc degeneration. Dr. Haas diagnosed lumbar disc disease, lumbar spine pain and acute mild hip arthritis and prescribed medications and physical therapy.

Appellant returned to work with restrictions effective October 14, 2008. In an October 23, 2008 progress report, Dr. Haas noted that appellant was more than 50 percent better and diagnosed lumbosacral strain. He released appellant to unrestricted duty as of November 6, 2008.

In a February 24, 2009 statement, the employing establishment advised that appellant had been placed back on sedentary duties and challenged whether the need for such restricted work was due to the injury-related condition noting that he had been working full duties for over three months. In a February 12, 2009 form report, Dr. Haas indicated that appellant was returning for another episode of back pain which began three days prior and provided the notation, "sedentary work."³ In a February 19, 2009 progress report, he advised that appellant was 75 percent better and could return to full duties in one week.

The employing establishment confirmed that appellant had returned to full duty as of February 29, 2009, but on October 23, 2009 had brought in paperwork stating that he needed limitations again as well as a surgical consultation. In a March 23, 2009 letter, Dr. Haas advised that appellant had lumbar disc degeneration and was being referred to Dr. Daniel Husted, a Board-certified orthopedic surgeon, who noted that appellant had a 10-pound lifting limitation.

In a June 17, 2009 initial consultation report, Dr. Husted noted that trauma occurred at work on September 27, 2008 and stated that the context of the injury was a twisting movement. He diagnosed, "lumbar disc displacement, [herniated nucleus pulposus] L4-5, L5-S1 with low back pain with activity after work injury 2008."

On July 2, 2009 the Office received a Form CA-7 (claim for compensation) claiming wage loss for intermittent periods from February 9 to June 1, 2009. Appellant was off work from February 14 to 25, March 30 to April 10, April 13, April 19 to 23 and May 9 to 21, 2009.

² Appellant twisted his torso and felt a burning sensation in his lower back.

³ Dr. Haas indicated that appellant described the pain as severe and sharp with no radiation.

In an October 30, 2009 letter, the Office requested that appellant submit medical evidence establishing disability for work for the periods claimed. Appellant submitted reports, including those of Dr. Haas and Dr. Husted, which listed work restrictions and described the medical treatment he received.

In a December 28, 2009 decision, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained disability for intermittent periods between February 14 and June 1, 2009 due to his September 27, 2008 work injury.

Appellant requested a telephone hearing before an Office hearing representative. At the April 14, 2010 hearing, counsel asserted that appellant was in excellent health prior to September 27, 2008, but that after the injury his physicians diagnosed lumbar disc displacement, a more serious condition than the accepted lumbar sprain. He claimed that appellant had very significant work restrictions which were consistent with his inability to work. Appellant described his back condition and also asserted that he sustained a degenerative back condition on September 27, 2008.

Following the hearing, appellant submitted an April 14, 2010 report in which Dr. Haas indicated that he treated appellant following the September 27, 2008 work injury until Dr. Haas referred appellant to Dr. Husted in late March 2009. Dr. Haas asserted that appellant had a significant injury at work and the objective evidence showed more than a mere back strain. He stated that, based on Dr. Husted's records, appellant sustained a lumbar disc displacement which involved herniated or bulging discs at two levels. Dr. Haas stated that this type of condition would cause appellant to experience intermittent bouts of pain which would keep him from performing even light duty.

In an April 14, 2010 report, Dr. Husted confirmed that he had been treating appellant since June 2009. He gave a history of the September 27, 2008 work injury and diagnosed lumbar disc displacement based upon the history, objective testing and examination results. Dr. Husted related appellant's condition to his employment. He explained that this type of injury would involve a great deal of pain from time to time and would be consistent with appellant's claimed inability to work. Appellant had asserted that he was unable to perform his work duties for several months before the first consult in June 2009. Dr. Husted noted that appellant missed time between February and late May 2009, which was consistent with the type of injury he related to the work event on September 27, 2008.

In a June 25, 2010 decision, the Office hearing representative affirmed the Office's December 28, 2009 decision. She found that there was no rationalized medical evidence showing that appellant sustained a more serious injury on September 27, 2008 than the accepted lumbar sprain.

LEGAL PRECEDENT

An employee seeking benefits under the Act⁴ has the burden of establishing the essential elements of his claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between appellant’s diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.⁶ The Board has held that a diagnosis of “pain,” without more in the way of medical rationale, does not constitute the basis for the payment of compensation.⁷

ANALYSIS

The Office accepted, on September 27, 2008, a lumbar sprain due to attempting to open a door while pulling a cart laden with mail tubs. Appellant claimed that he sustained disability for intermittent periods between February 14 and June 1, 2009 due to his September 27, 2008 work injury.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained disability for intermittent periods between February 14 and June 1, 2009 due to his September 27, 2008 work injury.

After his September 27, 2008 work injury, appellant was released to regular duty on November 6, 2008 by Dr. Haas, an attending Board-certified orthopedic surgeon. He continued to perform his regular work until February 9, 2009. Dr. Haas was the only physician who treated appellant during the period of claimed intermittent disability (February 14 to June 1, 2009). In a February 12, 2009 report, he indicated that appellant was returning for another episode of back pain which began three days prior and he placed him back on sedentary work. In a February 19, 2009 report, Dr. Haas reported that the pain was improving and he released appellant back to full duty one week later. However, apart from identifying the presence of pain, he failed to provide objective findings showing that appellant’s condition worsened on or about February 9, 2009 such that he sustained an increase in disability. Dr. Haas again placed appellant on restrictions as of March 23, 2009, and noted decreased range of motion with spasm. He diagnosed lumbar disc

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

⁷ *Robert Broome*, 55 ECAB 339 (2004).

degeneration, but this condition has not been accepted as related to the September 27, 2008 work event. On appeal counsel argued that the reports of Dr. Haas show that appellant actually sustained a more serious condition on September 27, 2008 than was accepted by the Office. However, he did not provide a rationalized opinion that appellant sustained a more serious condition on September 27, 2008, such as a degenerative lumbar condition or herniated lumbar disc.

The Board notes that appellant did not visit Dr. Husted, a Board-certified orthopedic surgeon, until June 17, 2009. This is after the period of disability claimed by appellant in the present case. Although Dr. Haas produced an April 14, 2010 report stating that Dr. Husted's diagnosis of lumbar disc displacement would have caused intermittent bouts of pain which would have kept appellant from performing even light duty, he failed to provide any objective findings to show that appellant sustained a material worsening and did not address each intermittent period of disability claimed. In addition, Dr. Haas did not establish that appellant was totally disabled from all work when he examined appellant in February and March 2009 as he only provided a number of work restrictions. Because he apparently did not examine appellant after March 23, 2009, his opinion on appellant's work capacity after that date would be considered speculative. Dr. Husted's opinion that appellant had been disabled for several months prior to his first evaluation is of little probative value as it was based solely on appellant's reports of his own inability to work. He did not examine appellant until four months after the first claimed date of disability and he also based his opinion concerning work capacity on appellant's subjective reports of pain. Although appellant has claimed that he suffered a more serious injury on September 27, 2008 than a sprain, the medical evidence does not objectively establish that he had increased disability or was unable to work for intermittent periods from February 14 to June 1, 2009 as alleged.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained disability for intermittent periods between February 14 and June 1, 2009 due to his September 27, 2008 work injury.

ORDER

IT IS HEREBY ORDERED THAT the June 25, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board