

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARSHALL L. COLE and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Cleveland, OH

*Docket No. 00-2778; Submitted on the Record;
Issued August 2, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant established that he sustained a recurrence of disability commencing January 22, 2000, causally related to his accepted December 9, 1998 lumbar strain.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to establish that he sustained a recurrence of disability commencing January 22, 2000, causally related to his accepted December 9, 1998 lumbar strain.

On January 20, 1999 appellant, then a 37-year-old postal worker, filed a claim alleging that on December 9, 1998, while bending to retrieve some mail, he sustained a recurrence of disability, causally related to an April 28, 1995 back injury. As appellant had identified a specific event on December 9, 1998 as the cause of his back spasms, the Office of Workers' Compensation Programs developed appellant's claim as a new claim for a traumatic injury. On March 7, 2000 appellant filed another claim for a recurrence of disability, causally related to the December 9, 1998 injury. Appellant indicated on his claim form that on January 21, 2000, while performing his light-duty work, he began to experience shooting pains in his lower back and had to take a break. The pains did not subside with rest, however, and appellant stopped work from January 22 to March 3, 2000, when he returned to work. By letter dated April 12, 2000, the Office accepted appellant's claim for a December 9, 1998 lumbar strain.¹ With respect to appellant's claim for a January 21, 2000 recurrence of disability, however, the Office requested that appellant submit additional factual and medical evidence, including a narrative medical report containing a physician's rationalized opinion as to whether or not appellant's need for medical care on January 21, 2000 was due to a new aggravation or injury, or whether it was a spontaneous recurrence of the accepted December 9, 1998 lumbar strain. No response was received from appellant. In a decision dated June 21, 2000, the Office denied appellant's claim,

¹ The record indicates that the Office's development letter was originally sent to an incorrect address. On May 16, 2000, however, a copy of the letter was sent to appellant's correct address, and appellant was given additional time to respond.

finding that the evidence of record failed to establish a causal relationship between the accepted condition and the claimed recurrence of January 21, 2000.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the accepted employment injury and supports that conclusion with sound medical reasoning.²

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 to establish 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 injury-related condition or a change in the nature and extent of the light-duty job requirements.³ In support of his recurrence of disability claim appellant submitted a January 26, 2000 disability slip, and treatment notes from Veterans Administration (VA) medical center personnel dated January 26 and January 27, 2000. In a January 26, 2000 note, a VA medical center physician indicated that appellant had a history of chronic back pain and had presented complaining of muscle spasms of the low back. The physician noted that appellant was employed by the employing establishment, listed a diagnosis of acute flare up of muscular back pain, and prescribed medication and rest. The physician did not give an opinion as to the cause of appellant's back pain or its possible relationship, if any, to either his employment or prior employment injuries. A progress note dated January 27, 2000, completed by a physician's assistant, indicates that appellant presented with an acute exacerbation of chronic low back pain, which he experienced after getting up from the bed the other night. The notes indicates that appellant reported that the pain worsened on January 21, 2000, while he was working, necessitating that he take a break, and then became acute on January 24, 2000. The treatment note contains a diagnosis of chronic low back pain and indicates that further testing was scheduled. This treatment note is of no probative value, however, as a physician's assistant is not a "physician" as defined by section 8101(2) of the Federal Employees' Compensation Act.⁴ However, even if fully credited, it would be insufficient to establish appellant's recurrence of disability claim, as it contains no opinion as to the causal relationship, if any, between appellant's diagnosed condition and his prior accepted injury.

By letter dated April 12, 2000, the Office advised appellant of the specific type of evidence needed to establish his recurrence of disability claim; however, no medical evidence was submitted providing a rationalized medical opinion based on a complete and accurate factual

² *Lourdes Davila*, 45 ECAB 139 (1993); *Louise G. Malloy*, 45 ECAB 613 (1994).

³ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ *John D. Williams*, 37 ECAB 238 (1985).

and medical history, explaining how a claimed recurrence of disability on January 21, 2000 was causally related to appellant's accepted December 9, 1998 lumbar strain. Therefore, the Board finds that appellant failed to meet his burden of proof to establish that he sustained a recurrence of disability on January 21, 2000.

The decision of the Office of Workers' Compensation Programs dated June 21, 2000, holding that appellant did not establish that he sustained a recurrence of disability on January 21, 2000 is hereby affirmed.

Dated, Washington, DC
August 2, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member