

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD W. SCOTT and U.S. POSTAL SERVICE,
POST OFFICE, Omaha, NE

*Docket No. 01-322; Submitted on the Record;
Issued November 9, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on or about May 18, 1999.

On November 3, 1998 appellant, then a 44-year-old letter carrier, filed a claim for compensation benefits alleging that he sustained an injury to his lower back, when, delivering mail, he slipped on wet leaves. The Office of Workers' Compensation Programs accepted appellant's claim for lumbar strain and paid him appropriate compensation benefits. Appellant did not stop work.¹

Accompanying appellant's claim was a duty status report dated November 2, 1998 prepared by Dr. L. Wolpert, an osteopath and treatment notes dated November 2 through 6, 1998 prepared by Dr. Witt, an internist. The duty status report noted that appellant sustained an acute lumbar strain. Dr. Wolpert noted appellant could return to work subject to restrictions. The treatment notes dated November 2 to 6, 1998 prepared by Dr. Witt indicated that appellant was being treated for an acute lumbar strain as a result of a fall appellant sustained at work.

Thereafter, appellant submitted various medical records including chiropractic notes, physical therapy notes and a progress note from Dr. Jonathan E. Fuller, an internist, dated May 18, 1999. The physical therapy notes dating from November to December 1998 indicate that appellant was undergoing treatment for significant right hip pain sustained in an injury at work on November 2, 1998. Dr. Fuller indicated a history of appellant's injury and noted that appellant was doing reasonably well until his reinjury in the beginning of May 1999. Appellant indicated that he "put his back out." Dr. Fuller noted appellant's symptomatology of pain in the left side of the low back radiating down the left hip to the buttock. He indicated that he reviewed

¹ Appellant was terminated from employment on December 5, 1998 as he failed to progress to minimum performance standards during his 90-day probationary period. He thereafter accepted a position as a heavy equipment mechanic in the private sector.

radiographs of the lumbar spine revealing disc space narrowing at L4-5; and a magnetic resonance imaging (MRI) scan revealing a central disc herniation at L4-5. Dr. Fuller diagnosed appellant with an L4-5 disc herniation.

In a letter dated June 11, 1999, the Office notified appellant that he may have sustained a recurrence of injury as noted by Dr. Fuller in his treatment note dated May 18, 1999. The Office requested that appellant submit additional factual and medical evidence in support of his claim.

In support of his claim, appellant submitted two treatment notes from Dr. Fuller dated June 3 and 29, 1999. The June 3, 1999 note indicated that appellant was feeling markedly better and had no further leg pain, however, still experienced some back pain. Dr. Fuller recommended physical therapy and noted that appellant was close to maximum medical improvement. The June 29, 1999 note documented appellant's complaints of pain radiating across his low back into the left buttock and thigh. Dr. Fuller noted that upon physical examination appellant's forward flexion was limited; extension was full without pain; the lower extremity motor examination revealed 5/5 strength in all muscle groups; and straight leg raises in the sitting position was positive bilaterally for low back pain and leg pain. He diagnosed appellant with degenerative disc disease with central disc herniation pain.

By decision dated August 13, 1999, the Office denied appellant's claim for recurrence of disability on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or about May 18, 1999 which was causally related to the accepted employment injury sustained on November 2, 1998.

Appellant requested reconsideration of the Office decision dated August 13, 1999 and submitted various medical records including a medical report from Dr. Jeffrey L. Edwards, a Board-certified anesthesiologist, dated April 29, 1999; an MRI scan dated April 30, 1999; and a report from Dr. Fuller dated February 8, 2000. Dr. Edwards' report noted a history of appellant's injury in November 1998 and indicated that appellant injured his buttocks, primarily the right side. He noted that since that time appellant experienced an exacerbation on the left side beginning a week earlier. Dr. Edwards indicated appellant's symptomatology as left-sided numbness. He noted upon physical examination appellant had full range of motion in extension; flexion was quite painful; there was tenderness with lateral extension; weakness in the dorsiflexion; and straight leg lift was bilaterally positive. Dr. Edwards diagnosed appellant with left L4-5 radiculitis with probable disc herniation. The MRI scan indicated a moderately large paramedian L4-5 herniation of the nucleus pulposus. Dr. Fuller indicated that appellant injured his back in November 1998 and suffered an exacerbation of his condition in April 1999. He noted that there was not a second injury but an exacerbation of his original injury in that the pain became more severe. Dr. Fuller further noted, "the back pain for which I saw him in May 1999 was sustained as a result of a fall in November 1998."

By decision dated September 1, 2000, the Office affirmed the August 13, 1999 decision on the grounds that appellant did not submit sufficient medical evidence to establish a causal relationship between his claimed recurrence of disability and his November 2, 1998 employment injury.

The Board finds that the evidence fails to establish that appellant sustained a recurrence of disability on or after May 18, 1999 as a result of his November 2, 1998 employment injury.

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.² This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.³ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁴

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁵ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁶ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁷

The Office accepts that appellant sustained an injury in the performance of duty on November 2, 1998. It therefore remains for appellant to establish that his claimed recurrent condition is causally related to that injury.

The medical record in this case lacks a well-reasoned narrative report from appellant's physicians relating appellant's claimed recurrent condition to the November 2, 1998 employment injury.

Dr. Fuller, in his note dated May 18, 1999, indicated that appellant was doing reasonably well until his reinjury in the beginning of May 1999. He diagnosed appellant with an L4-5 disc herniation. The June 3 and 29, 1999 notes revealed appellant still experienced some back pain radiating across his low back into the left buttock and thigh and diagnosed appellant with degenerative disc disease with central disc herniation pain. Dr. Fuller's February 8, 2000

² *Robert H. St. Onge*, 43 ECAB 1169 (1992).

³ Section 10.121(b) of the Code of Federal Regulations provides that, when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The physicians report should include the dates of examination and treatment, the history given by the employee, the findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions and the prognosis. 20 C.F.R. § 10.121(b).

⁴ See *Robert H. St. Onge*, *supra* note 2.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁶ For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, *supra* note 2; *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 738 (1986).

⁷ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

treatment note indicated that appellant injured his back in November 1998 and suffered an exacerbation of his condition in April 1999; however, this was not a second injury but an exacerbation of his original injury. He further noted, “the back pain for which I saw him in May 1999 was sustained as a result of a fall in November 1998.” While Dr. Fuller somewhat supported causal relationship in these report’s he provided no medical reasoning or rationale to support such opinion. There is no “bridging evidence” which would relate the L4-5 herniated disc condition to the accepted employment injury. Dr. Fuller makes no mention of “bridging evidence.” That is, he does not explain, how over five months following the accepted lumbar strain, it was exacerbated by appellant’s employment factors to result in an L4-5 herniated disc condition. The Office never accepted that appellant sustained an L4-5 herniated disc condition as a result of his November 2, 1998 work injury and there is no medical evidence to support such a conclusion.⁸ The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁹

Other treatment records from Dr. Edwards dated April 29, 1999 noted that appellant experienced an exacerbation of his November 2, 1998 injury on the left side of his back in April 1999. Dr. Edwards diagnosed appellant with left L4-5 radiculitis with probable disc herniation. Although he provided some support for causal relationship, he did not provide a rationalized medical opinion explaining how the November 2, 1998 work incident caused or contributed to the L4-5 herniated disc disease for which appellant sought treatment on and after May 18, 1999. Additionally, as noted above, Dr. Edwards provided no “bridging evidence” which would relate the L4-5 radiculitis with probable herniated disc to the accepted employment injury. Other medical reports submitted by appellant did not specifically address causal relationship between his accepted condition and his claimed recurrence of disability or condition.

The remainder of the medical evidence fails to support that appellant sustained a recurrence of disability or a medical condition beginning on or about May 18, 1999 causally related to the accepted employment injury of November 2, 1998.

For these reasons, appellant has not met his burden of proof in establishing that he sustained a recurrence of disability or a medical condition beginning on or about May 18, 1999 causally related to his accepted November 2, 1998 employment injury.

⁸ See *Arthur N. Meyers*, 23 ECAB 111, 113 (1971) (where the Board found a physician’s opinion to be of diminished probative value where the physician’s opinion in support of causal relationship was based on a history of injury that was not corroborated by the contemporaneous medical history contained in the case record).

⁹ See *Theron J. Barham*, 34 ECAB 1070 (1983).

The September 1, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
November 9, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member