

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JEFFREY S. CHANEY and U.S. POSTAL SERVICE,  
POST OFFICE, Cincinnati, OH

*Docket No. 02-05; Submitted on the Record;  
Issued July 9, 2002*

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DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability causally related to his March 30, 1992 injury.

On March 30, 1992 appellant, then a 34-year-old letter carrier, sustained an injury in the performance of his federal duties when a glass door fell on him. He stopped work on April 9, 1992 and returned to restricted duty on April 25, 1992 and to full duty on May 16, 1992. Appellant had intermittent absences from work throughout 1992. The claim was accepted for lumbosacral strain and a herniated disc at L4-5 that led to surgery. Appellant was off work following the surgery from March to July 6, 1993 when he returned to restricted duty working four to five hours per day. On July 29, 1993 he increased his work to eight hours a day with restrictions.

On February 5 and July 15, 1994 and January 13, 1998 appellant filed claims for back injuries that were accepted. There was no time off from work except for seven days following the claim in 1998.

On August 6, 1998 appellant filed a recurrence of disability claim and stopped work until October 5, 1998, when he returned four hours per day with restrictions that included no squatting, kneeling or climbing and no lifting more than 10 pounds. On August 20, 1999 appellant filed another recurrence of disability claim that was denied on October 22, 1999 due to insufficient medical evidence. On October 25, 1999 the Office of Workers' Compensation Programs completed a loss of wage-earning capacity determination finding appellant's restricted, part-time job represented his wage-earning capacity. That determination was based on a March 18, 1999 report from Dr. Robert Sheridan, a Board-certified orthopedic surgeon, who was a second opinion referral. Among Dr. Sheridan's objective findings were loss of lordosis, a scar on the low back, paravertebral spasm, limited motion, an absent ankle jerk, atrophy in the calf and thigh, muscle weakness and S1 hypesthesia. During his physical examination, he also found that appellant had no loss of hip motion.

On March 29, 2000 appellant filed a claim for recurrence of disability effective March 17, 2000, explaining that he stopped work because “the pain was just unbearable, pain in lower back, radiating through buttocks. This is an aggravation of prior back condition that is yet to stop.”

In support of the claim, appellant submitted results of a magnetic resonance imaging (MRI) scan conducted on April 5, 2000 for his treating physician, Dr. Christopher Diatte. The MRI scan showed a small right paracentral disc protrusion or herniation of L3-4.

In an April 27, 2000 report, Dr. Diatte stated:

“March 20, 2000 [appellant] came in with a recent exacerbation of low back pain from a workers’ comp[ensation] injury from 1992. He was quite uncomfortable and given a shot for the pain.... Objective findings: back pain unresponsive to prophylactic treatment with pain medication, right sciatica with pain radiating into the right leg with numbness and tingling, lumbar disc herniation L3-4, lumbar degenerative arthritis with changes. From March 20, 2000 he was not released to work even at his modified job with light duty.”

In an April 28, 2000 letter, the Office stated that Dr. Diatte’s report was insufficient to establish that appellant sustained a recurrence of disability. A description of appellant’s job duties were faxed to Dr. Diatte and he was asked to explain in detail what physical requirements of the job appellant could no longer perform as well as objective findings as to how his condition worsened to the point he could no longer perform the physical requirements of the job.

In a May 18, 2000 report, Dr. Diatte responded:

“March 20, 2000 [appellant] came in with a recent exacerbation of lumbosacral strain, lumbar disc protrusion L5-S1, lumbar disc bulge L2-3, lumbar degenerative arthritis, right sciatica, causal effect of the original workers’ comp[ensation] injury from 1992.

“Objective findings upon examination, decreased range of motion, elevated blood pressure, increased pulse rate, perspiration.

“[Appellant] is not released to work. He is unable to perform the following physical functions of the modified clerk position: sitting at a desk even with the freedom to stand as needed, lifting supplies even if they weigh less than 10 pounds, walking about the facility to perform duties as described in the job description. The medication [appellant] is taking for the exacerbation may impair mental and physical abilities. The exacerbation has resulted in excretory function incontinence.”

Appellant also submitted April 25, 2000 treatment notes from Dr. Sandy Ongkiko that noted appellant’s medical history and that an MRI scan showed a small paracentral disc protrusion at the L3-4 level.

In a May 24, 2000 decision, the Office denied appellant's claim finding that he had not established a recurrence of total disability. The Office found that the evidence did not establish that appellant's job duties materially changed or his medical condition worsened to the point that he could not do his limited-duty job four hours a day.

In a May 31, 2000 letter, appellant requested a hearing. At the hearing, appellant testified that he had good and bad days (in terms of the pain) and on March 17, 2000 he was having a bad day; the pain was so bad he could not work. Appellant testified that he stayed off work even though he had no leave and therefore went unpaid.

Appellant's representative argued that appellant experienced a "remission" of his prior disabling condition and that was consistent with a recurrence or exacerbation. He argued that Dr. Diatte provided objective evidence when he found in his May 18, 2000 report that appellant was experiencing back pain, right sciatica, lack of motion, elevated blood pressure and perspiration.

In support of his claim, appellant submitted progress reports from Drs. Diatte and Ongkiko; but most were either already in the record or covering periods beyond the dates in question at the hearing. In his April 18, 2000 progress note, Dr. Diatte's did find limited range of motion with flexion of 45 degrees, extension of 10 degrees, right left lateral bending of 10 degrees and straight leg raising negative.

In a July 16, 2000 decision, the hearing representative found that appellant "failed to submit medical evidence showing that he became totally disabled for his limited-duty job for the period in question."

The Board finds this case is not in posture for decision.

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.<sup>1</sup>

However, it is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>2</sup>

In support of his claim, appellant submitted medical evidence from Dr. Diatte, who examined him on March 20, 2000 for an exacerbation of low back pain which the physician

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<sup>1</sup> *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>2</sup> *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

related to the accepted 1992 injury. Dr. Diatte submitted evidence which set forth appellant's physical findings on examination and opined that appellant's condition worsened such that he could not perform his light-duty position.

While none of Dr. Diatte's reports are fully rationalized as to why appellant could no longer perform his limited-duty job, they constitute evidence that appellant could not do the limited job due to residuals related to the accepted back condition. These reports are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not sufficient to meet appellant's burden of proof to establish his claim, they raise an uncontroverted inference of causal relation and are sufficient to require further development of the claim.<sup>3</sup>

The case will be remanded to the Office for further evidentiary development on whether appellant sustained a recurrence of total disability for the period in question. The Office should prepare a statement of accepted facts and obtain a medical opinion on this matter. After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.

The decision dated July 16, 2000 of the Office of Workers' Compensation Programs is set aside and the case remanded for further development.

Dated, Washington, DC  
July 9, 2002

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>3</sup> See *Robert A. Redmond*, 40 ECAB 796, 801 (1989).