

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RASHEED A. RAHMAN and U.S. POSTAL SERVICE,
POST OFFICE, Charlotte, NC

*Docket No. 02-1621; Submitted on the Record;
Issued April 16, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on or about August 31, 1998; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

On July 2, 1996 appellant, then a 39-year-old distribution clerk, filed a claim for compensation benefits alleging that he sustained an injury to his lower back on July 1, 1996, when, pushing a cart filled with catalogs. The Office accepted that appellant sustained an employment-related lumbar strain and paid him appropriate compensation benefits. Appellant did not stop work.¹

Appellant submitted a report from Dr. Michael Cohen, a chiropractor dated November 13, 1996; several reports from Dr. Jonathan Hines, a Board-certified internist, dated February 25, 1997 to February 18, 1998; and two magnetic resonance imaging (MRI) scans dated January 29 and April 2, 1998. Dr. Cohen's report noted that appellant's current position was aggravating his injury sustained on July 4, 1996 and he recommended a transfer to a position which did not involve lifting and bending. Dr. Hines reports note a history of appellant's work-related injury as well as the injury sustained due to an automobile accident in 1996. He diagnosed appellant with chronic lumbosacral back pain and long-standing arthritis for which he was partially disabled. The MRI scan of the lumbosacral spine dated January 29, 1998 revealed a moderate size central to right paracentral L5-S1 herniation. The MRI scan of the cervical spine dated April 2, 1998 revealed a disc osteophyte at the C4-5 level, mild central right paracentral C6-7 protrusion and mild C5-6 posterior spondylosis.

¹ In a letter dated November 18, 1996, appellant indicated that he was involved in a nonwork-related automobile accident.

By letter dated July 31, 1998, the Office requested detailed factual and medical evidence from appellant to support his claim for recurrence of disability. The Office also requested information from the employing establishment.

On August 31, 1998 appellant filed a Form CA-2a, notice of recurrence of disability. He indicated a recurrence of back pain intermittently occurring since the employment-related injury of July 1, 1996.²

Appellant submitted a report from Dr. Raja G. Bhat, a Board-certified internist, dated August 20, 1998; and a report from Dr. Cohen. Dr. Bhat's report noted that he first treated appellant on March 4, 1998 for residuals of a low back injury on July 1, 1996. He noted that appellant also sustained a back and neck strain as a result of an automobile accident on July 4, 1998. Dr. Bhat diagnosed appellant with a herniated disc at L5-S1. He indicated that appellant would not be able to return to his job as a mailhandler. Dr. Bhat noted the causation of the low back injury could reasonably be stated to be due to the injury that occurred on July 1, 1996. He further noted that there may have been some aggravation caused by the automobile accident. Dr. Cohen noted treating appellant for a low back injury as a result of an automobile accident sustained on July 4, 1996. He diagnosed appellant with cervical subluxation complex, cervical radiculitis, headache, cervical spine-related and lumbar subluxation complex.

By decision dated September 11, 1998, 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 August 31, 1998 which was causally related to the accepted employment injury sustained on July 1, 1996.

On December 18, 1998 appellant requested reconsideration of the decision dated September 11, 1998. He did not submit any evidence in support of his claim.

By decision dated April 8, 1999, the Office denied appellant's request for a merit review on the grounds that appellant neither raised substantive legal questions nor included new and relevant evidence in support of his claim.

By letter dated June 6, 1999, appellant requested reconsideration of the Office's April 8, 1999 decision. He submitted additional evidence including new reports from Dr. Hines dated January 16, 1997; Dr. Bhat dated December 22, 1998; and Dr. James W. Markworth, a Board-certified orthopedist, dated May 25, 1999. Dr. Hines' report of January 16, 1997 noted treating appellant for injuries sustained after an automobile accident on July 4, 1996. He diagnosed appellant with degenerative arthropathy of the lumbosacral spine and status post motor vehicle accident on July 4, 1996. Dr. Bhat's report of December 22, 1998 noted that appellant's work injury caused his lumbar disc problems. He noted that appellant pushed and turned a cart which caused a twisting strain to the lumbar spine. Dr. Markworth's report noted that the injury appellant sustained at work while pushing a cart caused his disc herniation and his pain pattern. He diagnosed appellant with a herniated nucleus pulposus at L5-S1 on the right and cervical disc degeneration with herniation.

² The record reflects that on June 22, 1998 appellant was terminated from his position for failure to meet the requirements of his position.

In a decision dated October 14, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence failed to support appellant's present condition was casually related to the work-related injury of July 1, 1996.

In an undated letter, appellant requested reconsideration of the Office's October 14, 1999 decision. He submitted a medical report from Dr. Markworth dated November 10, 1999. Dr. Markworth's report of November 10, 1999 noted that the motor vehicle accident appellant was involved in on July 4, 1996 was of no consequence in appellant's symptoms because his condition predated the car accident. He opined that appellant's initial injury which was associated with the onset of his symptomatology was the proximate cause of his disc herniation.

By decision dated February 11, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of the Office decision dated September 11, 1998.

By letter dated January 8, 2001, appellant requested reconsideration of the Office's decision dated February 11, 2000. He submitted a medical report from Dr. Robert F. Wilfong, a Board-certified neurologist, dated October 18, 2000; and Dr. Mark D. Foster, a Board-certified orthopedist, dated August 16, 2000. Dr. Wilfong's report of October 18, 2000 noted a history of appellant's work-related injury noting that appellant's story was consistent with a back strain. He noted persistent back problems were often caused by pushing and pulling activities. Dr. Foster's report indicated that appellant was treated for an onset of neck pain after a work incident and has occurred in a persistent pattern since that time. He noted that appellant sustained a neck and back strain in an automobile accident shortly after his work injury. Dr. Foster diagnosed appellant with neck pain/cervicalgia; osteoarthritis primarily involving other specific sites, lumbar pain and disc herniation without radiculopathy. He indicated that because of the temporal relationship between the onset of appellant's symptoms and the reported work injury that this was more than likely a cause and effect relationship. Dr. Foster noted it was not possible for him to say what the impact of the automobile accident may or may not have had on appellant's symptoms. He stated that appellant was at maximum medical improvement and sustained no permanent partial impairment. Dr. Foster found no objective evidence upon which to base any permanent or temporary job restrictions.

In a decision dated October 23, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of the Office decision dated February 11, 2000.

In a letter dated January 25, 2002, appellant requested reconsideration of the Office's decision dated October 23, 2001. He submitted duplicative information including an x-ray dated July 3, 1996; work absence forms dated August 16 and September 13, 1996; a report from Dr. Cohen dated November 13, 1996; a letter from the employment establishment dated June 1, 1998; and a letter from the Office dated June 2, 1998.

In a decision dated February 22, 2002, the Office denied appellant's request for a merit review on the grounds that appellant neither raised substantive legal questions nor included new and relevant evidence in support of his claim.

The Board finds that the evidence fails to establish that appellant sustained a recurrence of disability on or after August 31, 1998 as a result of his July 1, 1996 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.³ 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.⁴ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁵

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁶ 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.⁷ 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.⁸

The Office accepts that appellant sustained an injury in the performance of duty on July 1, 1996. 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 July 1, 1996 employment injury. Dr. Bhat's report noted that he first treated appellant on March 4, 1998 for residuals of a low back injury on July 1, 1996. He noted that appellant also sustained a back and neck strain as a result of an automobile accident on July 4, 1996. Dr. Bhat diagnosed appellant with a herniated disc at L5-S1. His report of December 22, 1998 noted that appellant's work injury caused his lumbar disc problems. Dr. Bhat noted that appellant pushed and turned a cart which caused a twisting strain to the lumbar spine. However, none of his reports, most contemporaneous with the recurrence of injury noted a specific date of a recurrence of disability nor did they provide medical reasoning or rationale to support causal relationship of appellant's

³ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁴ See 20 C.F.R. § 10.104(b). The employee should arrange for the submittal of a detailed medical report from the attending physician as described on Form CA-2a. The employee should also submit or arrange for the submittal of, similar medical reports for any examination and/or treatment received after returning to work following the original injury.

⁵ See *Robert H. St. Onge*, *supra* note 3.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁷ For the importance of bridging information in establishing a claim for a recurrence of disability. See *Robert H. St. Onge*, *supra* note 3; *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 738 (1986).

⁸ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

current condition to the July 1, 1996 work injury. The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence.⁹ Additionally, Dr. Bhat only offered speculative support for causal relationship by opining that “causation of the low back injury could reasonably be stated to be due to the injury ... that occurred on July 1, 1996” and noted that “there may have been some aggravation caused by the auto accident.” The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.¹⁰

Dr. Markworth’s report of May 25, 1999 noted that the injury appellant sustained at work while pushing a cart caused his disc herniation and his pain pattern. He diagnosed appellant with a herniated nucleus pulposus at L5-S1 on the right and cervical disc degeneration with herniation. Dr. Markworth’s report of November 10, 1999 opined that appellant’s initial injury which was associated with the onset of his symptomatology was the proximate cause of his disc herniation. However, as noted above, there was no mention of a specific date of recurrence of disability. Additionally, none of Dr. Markworth’s reports provide “bridging evidence” which would relate the lumbar and cervical herniations back to the accepted employment injuries. He makes no mention of “bridging evidence.” That is, he does not explain, how, after over two years following the accepted lumbar strain, it was exacerbated by appellant’s employment factors to result in herniated lumbar and cervical discs. The Office never accepted that appellant sustained herniated lumbar and cervical discs as a result of his July 1, 1996 work injury and there is no medical evidence to support such a conclusion.¹¹ The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹²

Likewise, neither Dr. Wilfong’s report nor Dr. Foster’s reports mention a specific date of recurrence of disability. Dr. Wilfong’s report of October 18, 2000 noted a history of appellant’s work-related injury noting that appellant’s story was consistent with a back strain. He noted persistent back problems were often caused by pushing and pulling activities. Although Dr. Wilfong’s opinion somewhat supports causal relationship in a conclusory statement, he provided no medical reasoning or rationale to support such statement. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹³ Dr. Foster’s report of August 16, 2000 indicated that appellant was treated for an onset of neck pain after a work incident and has occurred in a persistent pattern since that time. He noted that appellant sustained a neck and back strain in an automobile accident shortly after his work injury. Dr. Foster diagnosed appellant with neck pain/cervicalgia; osteoarthritis primary involving other specific sites, lumbar pain and disc herniation without radiculopathy. However,

⁹ The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence; see *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

¹⁰ Speculative and equivocal medical opinions regarding causal relationship have no probative value; see *Alberta S. Williamson*, 47 ECAB 569 (1996); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Paul E. Davis*, 30 ECAB 461 (1979).

¹¹ See *Arthur N. Meyers*, *supra* note 9.

¹² See *Theron J. Barham*, 34 ECAB 1070 (1983).

¹³ *Id.*

these reports are vague regarding the time of the onset of the claimed recurrence of disability and are unrationalized regarding how the 1996 employment injury would have caused a particular period of disability beginning in August 1998.¹⁴ Dr. Foster further indicated that because of the temporal relationship between the onset of appellant's symptoms and the reported work injury that this is "more than likely" a cause and effect relationship. He noted that it was not possible for him to say what the impact of the automobile accident may or may not have had on appellant's symptoms. Dr. Foster couched his opinion in speculative terms and he did not reference any particular employment factors as causing appellant's condition.¹⁵ Therefore, these reports are insufficient to meet appellant's burden of proof.

Other medical reports submitted by appellant did not specifically address causal relationship between his accepted condition and his claimed recurrence of disability or condition.

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 August 31, 1998 causally related to his accepted July 1, 1996 employment injury.

The Board further finds that the Office properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

Under section 8128(a) of the Federal Employees' Compensation Act,¹⁶ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,¹⁷ which provides that a claimant may obtain review of the merits if her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the Office; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [Office].”

¹⁴ See *Theron J. Barham*, *supra* note 12.

¹⁵ See *Leonard J. O'Keefe*, 14 ECAB 42, 28 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

¹⁶ 5 U.S.C. § 8128(a).

¹⁷ 20 C.F.R. § 10.606(b)(2) (1999).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.¹⁸

In support of his request for reconsideration on January 25, 2002, appellant submitted duplicative information including an x-ray dated July 3, 1996; work absence forms dated August 16 and September 13, 1996; a report from Dr. Cohen dated November 13, 1996; a letter from the employment establishment dated June 1, 1998; and a letter from the Office dated June 2, 1998. This evidence was duplicative of evidence already contained in the record,¹⁹ and was previously considered by the Office and found deficient. Therefore, the Office in its decision dated February 22, 2002 properly determined that this evidence did not constitute a basis for reopening the case for a merit review under 20 C.F.R. § 10.606(b)(2). Appellant's claim for recurrence was denied based on a failure to provide rationalized medical evidence to support a causal relationship between appellant's condition and the July 1, 1996 employment-related injury. The duplicate medical records are of no value in establishing the claimed recurrence of disability of August 31, 1998 since they predate the time of the claimed recurrent condition. Appellant has not shown that the Office erroneously applied or interpreted a point of law; he has not advanced a point of law or fact not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office.

It is for the above reasons, that the February 22, 2002 and October 23, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
April 16, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁸ 20 C.F.R. § 10.608(b).

¹⁹ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; *see Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).