

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT L. JACKSON and U.S. POSTAL SERVICE,
POST OFFICE, Washington, DC

*Docket No. 02-1540; Submitted on the Record;
Issued January 24, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on September 1 through December 27, 2001 as a result of his November 16, 2000 employment injury.

Appellant, then a 48-year-old letter carrier, timely filed a claim for a lifting injury which occurred on November 16, 2000 during the performance of his federal duties. The Office of Workers' Compensation Programs approved the claim for aggravation of L4-5, L5-S1 osteoarthritis. Appellant was paid appropriate compensation. He returned to light-duty work with restrictions on July 11, 2001. He stopped work on August 31, 2001.

Appellant subsequently filed CA-7 claim for compensation forms for the period September 1, 2001 to January 7, 2002. The record consisted of office notes and Form CA-20 attending physician's reports from Dr. Peter S. Trent, an orthopedic surgeon, and Dr. Hampton J. Jackson, Jr., an orthopedic surgeon. In a Form CA-20 report dated November 6, 2001, Dr. Trent diagnosed a lumbar disc syndrome and advised that appellant was partially disabled from July 9, 2001. He advised that appellant was to avoid bending, stooping, heavy lifting, prolonged standing or walking. The record further reflects that Dr. Jackson advised appellant that he had a lumbar sprain/strain from his November 16, 2000 work injury and was totally disabled from performing his work duties from December 10, 2001 onward.

In a letter dated December 10, 2001, the Office informed appellant of the type of medical evidence necessary to establish that he is disabled to perform his work duties as a letter carrier and advised that all periods of disability claimed must be supported by medical evidence. The Office further noted that on a Form CA-20 dated November 16, 2001 Dr. Trent, appellant's attending physician, indicated that he was only partially disabled effective July 9, 2001 to the present. The Office stated that Dr. Trent must provide an additional medical report clarifying the extent and duration of disability.

No new evidence was received.

By decision dated January 23, 2002, the Office denied appellant's claim for compensation for the period September 1 through December 27, 2001 on the basis that the medical evidence failed to establish that appellant was disabled for work due to the injury of November 16, 2000.

In a letter dated January 28, 2002, appellant requested reconsideration. In support thereof, he submitted a December 10, 2001 medical report from Dr. Jackson, which the Office received on January 28, 2002. Dr. Jackson stated that appellant was referred by Dr. Trent for an evaluation. He noted appellant's back was out again and that it had been like that, since his injury of November 16, 2000. Dr. Jackson opined that appellant's evaluation revealed strong evidence of a lumbar disc injury. A positive straight leg raise, positive Lasegue's sign, point tenderness at L4-5 and L5-S1 and a left S1 radiculopathy clinically were noted. Dr. Jackson recommended that appellant undergo an electromyogram (EMG)/nerve conduction velocity (NCV) of the lower extremities as well as a magnetic resonance imaging (MRI) scan. He further advised that appellant should not work before the results of the studies were obtained and recommended physical therapy.

An MRI of the lumbar spine dated December 19, 2001 noted degenerative facet disease at L5-S1 without evidence of spondylolisthesis and questionable right-sided foraminal protrusion at L3-4. It noted that, if appellant has specific clinical signs of a right L3 radiculopathy, this finding may be significant.

In an office note dated December 21, 2001, Dr. Jackson continued to opine that appellant was not fit for any gainful employment. No improvement over appellant's clinical examination 10 days ago was noted.

A January 2, 2002 report of an EMG/NCV testing revealed abnormal electrodiagnostic EMG findings consistent with left S1 and bilateral L5 radiculopathy secondary to S1 and bilateral L5 lumbar radiculopathies.

A December 14, 2001 Form CA-20 report from Dr. Trent continued to opine that appellant was partially disabled from July 9, 2001 due to lumbar disc syndrome.

In a decision dated February 19, 2002, the Office reviewed the merits of appellant's claim and denied modification of its prior decision.¹

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability on or about September 1 through December 27, 2001 as a result of his November 16, 2000 employment injury.

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record

¹ The Board notes that the record contains new evidence which was received after the Office's decision of February 19, 2002. The Board's jurisdiction on appeal is limited to a review of the evidence which was in the case record before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). Therefore, the Board is precluded from reviewing this evidence.

establishes that he can perform the limited-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 to show that he cannot perform such limited-duty work. 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 limited-duty job requirements.²

In this case, appellant made no attempt to establish a change in the nature and extent of his limited-duty job requirements. Nor did he attempt to obtain a clarification report from Dr. Trent as to why he was partially disabled from July 9, 2001 onwards, even after Dr. Hamilton had rendered him totally disabled from December 10, 2001. Instead, appellant submitted the December 10, 2001 report from Dr. Jackson. This report, however, lacks sufficient medical rationale. Dr. Hamilton reported that appellant suffered a lumbar disc injury as a result of the work injury of November 16, 2000 and noted point tenderness at L4-5 and L5-S1 along with a left S1 radiculopathy. He failed to discuss how these new conditions were related to the accepted work injury of November 16, 2000, which the Office had accepted for aggravation of L4-5, L5-S1 osteoarthritis or how such conditions could develop either from the accepted conditions or appellant's limited-duty job requirements. This needs to be addressed as Dr. Trent continued to opine appellant was partially disabled and could perform his limited-duty job requirements even after Dr. Hamilton rendered appellant totally disabled.

Medical conclusions unsupported by rationale are of little probative value.³ Because the record fails to establish either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements, appellant has not met his burden of proof to establish that he sustained a recurrence of disability from the period September 1, 2001 onwards as a result of his November 16, 2000 employment injury.

² *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

The February 19 and January 23, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
January 24, 2003

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member