

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LARRY F. NICHOLS and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Detroit, MI

*Docket No. 02-2309; Submitted on the Record;  
Issued January 28, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether appellant sustained a recurrence of total disability beginning September 2, 2001 causally related to his December 29, 1983 employment injury.

On December 29, 1983 appellant, then a 41-year-old automotive mechanic, filed a claim for a traumatic injury to his right hip and leg sustained on December 29, 1983 by lifting truck tires.

The Office of Workers' Compensation Programs accepted that appellant sustained a lumbosacral strain with right lumbosacral radiculitis and sciatica, and later accepted that appellant also sustained a herniated lumbar disc.

On August 14, 1991 appellant obtained a position as a teacher with the Dallas Independent School District. By decision dated June 30, 1992, the Office reduced appellant's compensation, which was being paid on the basis of total disability, based on his actual earnings as a secondary school teacher, effective August 14, 1991.

In a letter dated November 28, 2001, appellant stated that he had been totally disabled and had not worked since September 2, 2001.<sup>1</sup> Appellant submitted a November 8, 2001 report from Dr. Sullivan R. Bryant, an osteopath, indicating that he stopped work on September 2, 2001, that he was totally disabled beginning that date and that his symptoms first appeared or accident occurred on December 29, 1983. Appellant also submitted a copy of his November 10, 2001 request to the Dallas Independent School District for a long-term leave of absence due to a serious health condition.

Appellant also submitted several reports from Dr. Mohammed Khalid, a treating physician. In a report dated May 21, 2001, Dr. Khalid stated that appellant was experiencing

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<sup>1</sup> By letter dated September 10, 2001, the Office advised appellant that it had received his claim form for a recurrence of disability (Form CA-2a). This form does not appear in the case record.

increased low back pain and found it difficult to continue as a teacher. In a report dated June 7, 2001, Dr. Khalid stated that nerve conduction studies and an electromyogram showed significant peripheral neuropathy of both lower extremities and denervation in the distal muscles of the lower extremities which was secondary to his peripheral neuropathy or to a lumbar radicular process. Dr. Khalid ordered a magnetic resonance imaging (MRI) study, which was performed on June 11, 2001 and showed chronic degenerative disc disease with narrowing at L5-S1, and no evidence of nerve root compression. In a report dated July 26, 2001, Dr. Khalid stated that he was not sure whether appellant could return to work as a teacher, as he had degenerative changes of the lumbar spine causing back and lower extremity discomfort. In a report dated August 21, 2001, Dr. Khalid stated that appellant's back symptoms had progressively worsened the last several years, that physical therapy had provided some temporary relief, and that appellant was planning to retire. In a report dated December 11, 2001, Dr. Khalid stated that appellant was not able to function as a teacher, as he got extremely tired and his back pain started to act up. Dr. Khalid concluded that appellant was unable to keep up with the physical demands of his job. In a report dated January 14, 2002, Dr. Khalid stated that appellant had back pain and symptoms of a pinched nerve and that he was totally disabled since September 21, 2001. In a report dated January 15, 2002, Dr. Khalid diagnosed back pain with radiculopathy and stated that appellant was permanently disabled and only able to do sedentary work.

By decision dated April 4, 2002, the Office found that the evidence failed to establish that the claimed recurrence was causally related to the accepted injury.

The Board finds that appellant has not established that he sustained a recurrence of total disability beginning September 2, 2001 causally related to his December 29, 1983 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 the substantial, reliable and probative evidence that the subsequent disability for which she claims compensation is causally related to the accepted injury.<sup>2</sup> 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 and supports that conclusion with sound medical reasoning.<sup>3</sup>

None of the medical reports appellant submitted in support of his claim for a recurrence of disability beginning September 2, 2001 attributed his disability to his December 29, 1983 employment injury. In his November 8, 2001 report, Dr. Bryant indicated that appellant was totally disabled beginning September 2001, but did not address the cause of this total disability. Dr. Khalid's reports did not attribute appellant's disability beginning September 2001 to his December 29, 1983 employment injury, instead indicating that his disability was due to the degenerative changes in his lumbar spine, which have not been shown to be related to appellant's December 29, 1983 employment injury. Appellant has not met his burden of proof.

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<sup>2</sup> *John E. Blount*, 30 ECAB 1374 (1974).

<sup>3</sup> *Frances B. Evans*, 32 ECAB 60 (1980).

The April 4, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
January 28, 2003

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member