

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARYL W. CASEY and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, TX

*Docket No. 03-597; Submitted on the Record;
Issued May 23, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established entitlement to compensation for wage loss during the period October 2000 through February 2002.

On March 26, 1999 appellant, then a 42-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (form CA-1). He alleged that he injured his lower back when he slipped and twisted while in the performance of duty. The reverse of the claim form indicates that appellant did not initially stop working. The Office of Workers' Compensation Programs accepted the claim for "thoracic/lumbar disc displacement (subluxation)."

The record indicates that appellant stopped working on October 7, 2000. Appellant filed claims for compensation (Form CA-7) commencing October 7, 2000. He underwent back surgery on March 1, 2002.

By decision dated February 26, 2002, the Office denied appellant's claim for compensation commencing October 7, 2000. The Office found that, although the March 1, 2002 surgery was authorized and appellant was entitled to compensation for wage loss effective March 1, 2002, the record did not establish that he was totally disabled due to the employment injury prior to the date of surgery.

In a decision dated October 7, 2002, the Office denied modification of its prior decision.

The Board finds that the case is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including that any disability or

¹ 5 U.S.C. §§ 8101-8193.

specific condition for which compensation is claimed are causally related to the employment injury.²

In this case, the Office found that the medical evidence did not establish that appellant's work stoppage in October 2000 resulted from an employment-related disability. A review of the record indicates that there are no medical reports providing a detailed discussion of appellant's disability for work and its relationship to the employment injury.³ The Office, however, failed to acknowledge that the medical record, including its own medical advisers and a second opinion physician, constituted probative evidence supporting a claim for wage-loss compensation on or after October 7, 2000.

In a report dated February 27, 2001, Dr. David W. Barnett, an attending neurosurgeon, provided a history of the March 26, 1999 injury and diagnosed a right L5-S1 disc herniation with persistent radiculopathy. Dr. Barnett indicated that appellant should undergo a computerized tomography (CT) scan before a decision on the need for surgery should be made. In a March 8, 2001 note, he indicated that appellant had been off work since October and should remain off work until the appropriate treatment was determined. By report dated April 12, 2001, Dr. Barnett noted the CT scan results and stated that appellant was a reasonable candidate for laminectomy and nerve root compression surgery.

In a report dated June 8, 2001, an Office medical adviser reviewed the medical evidence and opined, "Yes. The recommended surgical procedure is related to the accepted work-related injury." The medical adviser also opined that conservative treatment had not been given an adequate trial; he recommended referral to a second opinion physician.

In a report dated August 30, 2001, the orthopedic surgeon selected for the second opinion, Dr. Farooq Selad, diagnosed lumbar disc displacement at L4-5 and L5-S1. Dr. Selad opined, "Is the proposed surgical procedure related to the accepted work[-]related injury? Yes." He also indicated that conservative treatment had been given an adequate trial and the proposed surgery was necessary and warranted.

In a report dated January 11, 2002, a second Office medical adviser reviewed the medical evidence. The medical adviser stated that the proposed surgical procedure was supported by the history, physical examination and diagnostic tests. The medical adviser found that appellant's work-related condition should be upgraded to aggravation of lumbar degenerative disc disease and also noted that "the medical records support the claimant's total disability since November 2000."⁴

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ There are treatment notes from a chiropractor, Dr. Kenneth Hahn, but these notes do not clearly establish that the treatment is for a subluxation as demonstrated by x-ray. Section 8101(2) of the Act provides that the term "physician" ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist."

⁴ The Office accepted aggravation of lumbar degenerative disc disease.

It is not clear why the medical adviser reported disability from November, as opposed to October 2000; his report, however, is consistent with other evidence supporting the conclusion that appellant's treatment during the claimed period was for an employment-related condition and that he was disabled. In February 2001 an attending physician indicated that appellant continued to have a back condition and proposed surgery; two medical advisers and the second opinion physician agreed that the proposed surgery was for an employment-related condition. In the January 11, 2002 report, the second medical adviser discusses an employment-related condition and finds that appellant was totally disabled. There is no medical evidence opining that appellant was either not disabled or that his continuing disability was not causally related to the March 26, 1999 employment injury. While appellant has the burden of proof to establish his claim, the Office shares responsibility in the development of the evidence.⁵ It is well established that when an uncontroverted inference of causal relationship is raised, the Office is obligated to further develop the medical evidence.⁶

Accordingly, the case will be remanded to the Office for further development on the issue presented. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decisions of the Office of Workers' Compensation Programs dated October 7 and February 26, 2002 are set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
May 23, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁵ *William J. Cantrell*, 34 ECAB 1233 (1983).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).