

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RAYFIELD HILL and U.S. POSTAL SERVICE,  
POST OFFICE, Cleveland, OH

*Docket No. 03-638; Submitted on the Record;  
Issued May 15, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a recurrence of disability on April 17, 2001 causally related to his work injury of November 18, 1988; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On November 18, 1988 appellant, then a 38-year-old postal worker,<sup>1</sup> filed a notice of traumatic injury and claim for continuation of pay/compensation, alleging that he hurt his lower back when he lifted a sack of mail. Claim number 09-0327226 was assigned to the case. Appellant stopped work the same day. By letter dated December 9, 1988, the Office accepted that appellant sustained an employment-related lumbosacral strain. Appellant received appropriate pay for time lost from work. The record further reflects that appellant was appropriately compensated for recurrent disabilities commencing on November 13, August 24, September 7, October 3 and December 15, 1989 and February 21, August 2, October 31 and 1990 and March 5, 1991 and returned to limited-duty work following each of the recurrences.<sup>2</sup>

On June 9, 1993 appellant was involved in a motor vehicle accident during the performance of his duties. Claim number 09-378448 was assigned to the case. The Office accepted the conditions of cervical and back strain, left elbow strain, left wrist strain and right leg contusion as a result of the June 9, 1993 injury. Appropriate medical and compensation benefits were authorized. Appellant was released to full duty under this claim effective

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<sup>1</sup> On the claim form, appellant's occupation is listed as "collections," but on several duty status form reports, his occupation is listed as "carrier."

<sup>2</sup> In a decision dated November 28, 1990, the Board, in Docket No. 90-1648, had remanded the case to the Office for a *de novo* review concerning the issue of whether appellant had sustained a recurrence of disability from November 13 to 30, 1989 causally related to his November 18, 1988 employment injury.

August 2, 1993. Appellant's case file was subsequently retired to the Federal Records Center due to inactivity.

The record reflects that the Office accepted a July 21, 1995 occupational claim for the conditions of bilateral shoulder impingement syndrome as well as a right rotator cuff partial tear and authorized bilateral shoulder arthroscopies. Claim number 09-0432544 was assigned to the case.

In a March 28, 2001 letter, appellant requested that claim number 09-0327226, date of injury November 18, 1988 be reopened. Medical evidence was submitted with his request.

On April 17, 2001 appellant stopped working full-time limited-duty capacity and reduced his hours to four hours per day. By CA-7 forms, appellant claimed compensation for lost time from work commencing April 17, 2001 to the present.

In an April 30, 2001 letter, appellant requested that Claim number 09-0378448, date of injury June 9, 1993, be reopened. Medical evidence was submitted. By decision dated October 17, 2001, the Office denied appellant's claim for a recurrence of disability/ongoing medical complaints as being due to the accepted work-related injury of June 9, 1993.

By decision dated December 7, 2001, the Office denied appellant's recurrence claim in Claim number 09-0432544, finding that none of the medical evidence of file explained how the accepted work-related bilateral shoulder conditions worsened in April 2001 necessitating appellant's partial disability from work. The Office further noted that the medical rationale provided for appellant's partial disability was his cervical and lumbosacral conditions, which had not been accepted as work related.

By letter dated December 26, 2001, appellant advised that he wished to claim compensation for his work-related cervical and lumbosacral conditions. CA-7 forms claiming compensation were submitted commencing from April 17, 2001 and continuing. In a letter dated February 12, 2002, the Office advised that it appears that appellant was claiming disability for work beginning April 17, 2001. The Office noted that the injuries appellant had sustained since the original November 18, 1988 injury and noted that appellant had returned to limited duty in 1991 and incurred all his subsequent injuries thereafter. The Office advised appellant of the factual and medical evidence needed to support his recurrence claim for partial disability beginning April 17, 2001. Appellant submitted the requested medical and factual evidence.

By decision dated March 13, 2002, the Office denied the claim, finding the medical evidence insufficient to establish that appellant sustained a recurrence of disability on April 17, 2001 causally related to his November 18, 1988 injury.

On August 5, 2002 appellant requested reconsideration and submitted additional medical evidence. By decision dated October 25, 2002, the Office denied appellant's request for reconsideration. The Office found the evidence to be cumulative and repetitive and noted that no new substantial evidence or medical reasoning had been provided to alter the prior decision.

The Board's jurisdiction to consider and decide appeals from a final decision of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>3</sup> As appellant filed the appeal with the Board on January 4, 2003, the only decisions before the Board are the Office's March 13 and October 25, 2002 decisions, denying appellant's recurrence claim of April 17, 2001 and his subsequent request for reconsideration.<sup>4</sup>

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability on April 17, 2001 causally related to his work injury of November 18, 1988.

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>5</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>6</sup> Causal relationship is a medical issue<sup>7</sup> and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup>

In the present case, appellant has not shown that his alleged April 17, 2001 recurrence of disability was due to a change in the nature and extent of the light-duty job requirements. Appellant advised in his letter of February 25, 2002 that his work activities after returning to work in 1991 was as a collection driver which consisted of collecting mail in buildings and mail boxes. He advised his work activities changed in September 1997 when he was working a limited-duty assignment due to his bilateral shoulder impingement for which he underwent

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<sup>3</sup> *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>4</sup> These decisions concern Claim number 09-0327226 pertaining to the November 18, 1988 traumatic injury.

<sup>5</sup> *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>6</sup> *Frances B. Evans*, 32 ECAB 60 (1980).

<sup>7</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>8</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

surgery on January 7 and May 13, 1998. From February 26, 2000 to the present, appellant advised that he has had a permanent rehabilitation job which consists of answering the telephone, zip code look up and lobby greeter. As appellant advised he was in a permanent rehabilitation job from February 26, 2000 onward, the record does not establish that the claimed April 17, 2001 recurrence of disability was caused by a change in the nature or extent of the light-duty job requirements.

Appellant has also failed to establish through medical evidence that he was disabled from his light-duty position due to a change in the nature or extent of his accepted employment-related injuries. As noted, this claim will focus on the accepted lumbosacral strain which occurred on November 18, 1988. In support of his claim, appellant submitted a magnetic resonance imaging (MRI) report dated February 27, 2001 noting degenerative changes at L4-5 and L5-S1, a December 12, 2001 medical report from Dr. Zenos Vangelos, an osteopathic physician, reports regarding facet injections for degenerative lumbar disc, two claims for compensation for partial days on January 28 to February 11, 2002 and copies of medical records and correspondence concerning a neck injury, case file number 09-378448, medical records from 1991 and 1995 and copies of prior correspondence from this claim.

The only report that discusses the cause of appellant's condition is the December 12, 2001 medical report in which Dr. Vangelos advised that he had been treating appellant since 1988 for his chronic lumbosacral strain. He opined that, although the accident of 1993 had aggravated the symptoms, appellant's current symptoms were the result of the 1988 injury. The Board finds that, while Dr. Vangelos indicated that appellant's current back symptoms arose from the 1988 work injury, his report is insufficient to support appellant's claim for a recurrence of disability as he did not provide any medical rationale for how appellant's symptoms in 2001 relate to a lumbosacral strain that occurred more than 20 years previously or provide an explanation as to why appellant can no longer work his limited-duty position as a result of the accepted 1988 work injury.

As appellant has failed to establish that he had a change in the nature or extent of his modified duties and did not submit a rationalized medical report based on a complete factual and medical background establishing a change in the nature or extent of his employment injury such that beginning April 17, 2001 he could no longer perform his full-time light-duty job, the Board finds that he has failed to discharge his burden of proof.<sup>9</sup>

The Board further finds that the Office did not abuse its discretion in denying appellant's request for further merit review on October 25, 2002.

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.<sup>10</sup> Section 10.608 provides that when an application for review of the

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<sup>9</sup> *Alberta S. Williamson*, 47 ECAB 569 (1996).

<sup>10</sup> 20 C.F.R § 10.606(b).

merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>11</sup> The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.<sup>12</sup>

In support of his August 5, 2002 reconsideration request, appellant submitted several copies of documents previously contained in the record which, therefore, are duplicative. This included a medical report dated June 19, 1992 from Dr. Vangelos and copies of Dr. Vangelos' December 12, 2001 report and the February 27, 2001 MRI. This information was previously considered by the Office in its decision dated March 13, 2002 and found to be insufficient. The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.<sup>13</sup>

New to the record, however, are medical reports dated October 16, 2001 and April 8, 2002 from Dr. Dan Shamir, a Board-certified physical medicine and rehabilitation specialist. In his October 16, 2001 report, he noted that appellant had been under his care since February 8, 1999. Dr. Shamir advised that appellant was working with restrictions due to his chronic bilateral wrist and shoulder pain. Appellant was noted to have sensory changes in his hands as well as low back pain. The results of the February 27, 2001 MRI of the lumbosacral spine as well as a March 16, 2001 MRI of the cervical spine were discussed. Dr. Shamir stated that appellant's restrictions were modified after the April 16, 2001 visit to working only four hours per day while maintaining his other restrictions due to changes in both appellant's cervical herniated disc as well as his lumbar sacral herniated discs. In his April 8, 2002 report, Dr. Shamir noted that appellant had been involved in a motor vehicle accident in which he injured his neck and upper back since he last saw him. He diagnosed an L4-5 and L5-S1 herniated nucleus pulposus and a broad based disc protrusion at C6-7. Dr. Shamir reiterated that appellant's restrictions were modified on April 16, 2001 due to changes in both his cervical herniated disc as well as his L5 herniated disc and noted that appellant related his original low back injury to November 1988 while he was lifting a sack from a CO-OP rack.

The Board finds that, although Dr. Shamir related that some of the April 16, 2001 changes in work restrictions were due in part to appellant's back condition, no medical opinion was offered regarding causation. Dr. Shamir merely repeated appellant's belief pertaining to causation.

Furthermore, the Office has not accepted that the herniated discs are employment related. Dr. Shamir's reports are therefore irrelevant to whether appellant sustained a recurrence of disability on April 17, 2001 causally related to the November 18, 1988 employment injury.

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<sup>11</sup> 20 C.F.R. § 10.608.

<sup>12</sup> See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

<sup>13</sup> *Paul Kovash*, 49 ECAB 350 (1998).

Appellant additionally submitted a postoperative report dated January 30, 2002 and a July 15, 2002 medical report from Dr. Vangelos in which he advised that appellant's chart was reviewed and that he concurred with Dr. Shamir's findings in regard to appellant's herniated disc being part of the original back injury. As noted above, Dr. Shamir merely states appellant's belief regarding the cause of his current back condition. The Board thus finds that the reports submitted by Dr. Vangelos in support of appellant's reconsideration request are cumulative in nature and are insufficient to warrant merit review.<sup>14</sup>

Since appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office, he did not establish that the Office abused its discretion in denying his request for reconsideration.

The October 25 and March 13, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
May 15, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>14</sup> *Id.*