

**United States Department of Labor
Employees' Compensation Appeals Board**

JAIME H. MAROTTA, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Francisco, CA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 04-687
Issued: May 24, 2004**

Appearances:
Jaime H. Marotta, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On January 15, 2004 appellant filed a timely appeal from the merit decisions of the Office of Workers' Compensation Programs dated January 16 and December 10, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant established that he sustained a recurrence of disability, due to the December 18, 2000 employment injury, from December 13 to 17, 2001.

FACTUAL HISTORY

The Office accepted appellant's claim for a lumbar strain arising from a December 18, 2000 employment injury. Appellant had been performing light-duty work at the time of the December 18, 2000 employment injury because he had carpal tunnel syndrome, which the Office accepted as work related in a separate claim. Appellant stated that he received a job offer for modified distribution clerk dated June 22, 2001 but stated that it was "on paper only" and he was not doing that job.

On December 20, 2001 appellant filed a claim for total disability from December 13 through December 17, 2001. The only medical evidence which did not predate the period claimed for disability was the report dated February 25, 2002 from appellant's treating physician, Dr. Robert J. Harrison, a Board-certified internist and occupational medicine specialist. In his report, Dr. Harrison considered appellant's history of injury, including that appellant had an accepted claim for carpal tunnel syndrome since October 21, 1994 and had injured his back at work on December 18, 2000. He stated that he had been treating appellant since July 30, 2001, and appellant continued to note pain over the thoracic and cervical spine areas since December 18, 2000. Dr. Harrison performed a physical examination which showed a positive Spurling maneuver and diagnosed cervical back pain with residual due to the December 18, 2000 employment injury. He stated that appellant had a chronic condition which "flares up at any time." Dr. Harrison stated that he would like to obtain a magnetic resonance imaging (MRI) scan to determine if appellant had cervical disc disease.

By decision dated March 29, 2002, the Office denied appellant's claim, stating that the medical evidence did not establish that his current condition was causally related to the accepted work-related injury.

By letter dated April 22, 2002, appellant requested an oral hearing before an Office hearing representative which was held on November 20, 2002. At the hearing, appellant's legal representative summarized appellant's medical treatment and stated that they were trying to obtain an MRI scan but the Office stated that the case was closed. The legal representative also stated that the doctors felt the cervical spine condition was affecting the lumbar area. Appellant emphasized that he took time off from work from December 13 through 17, 2001 because his back was hurting "really bad." Appellant stated that at that time his work consisted of stamping mail, fixing damaged mail and canceling mail. Appellant testified that he did not recall that anything happened on December 13, 2001; his back just hurt more. In response to the question whether he stopped work due to his back, not his neck, he answered that he had "something going on" between his hand, neck and back. Appellant stated that he felt he often exceeded his limitations in his job. Appellant described the symptoms since his back injury in December 2000, stating that he had limited ability to grip and difficulty lifting heavy objects or bending.

Appellant submitted a report dated January 15, 2002 from Dr. Robert E. Markison, a general surgeon. In his report, Dr. Markison referred to the date of injury as October 31, 1994 and referred to claim No. 13-1067412, which represents appellant's claim for carpal tunnel syndrome. There is no reference in the report to the claimed period of disability from December 13 to 17, 2001. Dr. Markison stated that he did not "doubt" that the letter sorter machine operation appellant performed for an extended time frame from 1984 to 1996 caused some wear and tear. He performed a physical examination and diagnosed probable C7 radiculopathy. Dr. Markison stated that x-rays of the cervical spine should be obtained and in time possibly cervical MRI scans.

In a report dated May 23, 2003, Dr. Harrison stated that appellant was under his care for an injury involving the lower back but since the initial consultation in July 2001, appellant had noted pain in his thoracic and cervical spines since the December 18, 2000 employment injury. Dr. Harrison stated that appellant developed cervical spine disease as a result of the back injury

and that he agreed with Dr. Markison that appellant should undergo a cervical MRI scan to provide objective evidence of that disorder.

By decision dated January 16, 2003, the Office hearing representative affirmed the Office's March 29, 2002 decision.

By letter dated November 10, 2003, appellant requested reconsideration of the Office's decision. Appellant stated that in a new claim, No. 13-2075448, the Office accepted his claim for a cervical condition. Appellant submitted a form, "Attending Physician's Supplemental or Final Report" dated February 13, 2003, from Dr. Harrison. He released appellant to modified work from February 12 to July 1, 2003 and diagnosed cervical radiculopathy.

In a merit decision dated December 10, 2003, the Office denied appellant's request for reconsideration. The Office indicated that it had accepted appellant's claim for cervical radiculopathy on April 22, 2003. The Office found that the medical evidence did not establish how appellant's total disability from December 13 to 17, 2001 was causally related to the December 18, 2000 employment injury or his accepted cervical condition.

LEGAL PRECEDENT

An individual who claims a recurrence of disability, due to an accepted employment-related injury, has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.¹ 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.² As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements or a change in the nature and extent of the injury-related condition.³ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and supports that conclusion with sound medical reasoning.⁴ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or an appellant's unsupported belief of causal relation.⁵

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

² *George DePasquale*, 39 ECAB 295, 304 (1987); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *Id.*

⁴ *See Nicolea Brusco*, 33 ECAB 1138 (1982).

⁵ *See William S. Wright*, 45 ECAB 498, 503 (1994).

ANALYSIS

In his December 20, 2001 report, appellant's treating physician, Dr. Harrison, considered appellant's history of injury, performed a physical examination and diagnosed cervical back pain with residual due to the December 18, 2000 employment injury. He stated that appellant had a chronic condition which "flares up at any time." In his May 23, 2003 report, Dr. Harrison noted that appellant had pain in his thoracic and cervical spines since the December 18, 2002 employment injury and that appellant developed cervical spine disease as a result of the back injury. Although Dr. Harrison opined that appellant had cervical back pain with residuals and developed cervical spine disease due to the December 18, 2000 employment injury, he provided no rationalized medical opinion explaining the causal relationship between appellant's neck condition and his accepted condition of lumbar strain. He stated that appellant's condition "flares up at any time" but did not specifically address whether it flared up from December 13 to 17, 2001. The Board has held that a medical opinion not fortified by medical rationale is of little probative value.⁶

In his January 15, 2002 report, Dr. Markison who evaluated appellant on that date for his carpal tunnel syndrome, stated that he did not doubt that appellant's work as a letter machine operator for an extended period of time caused some wear and tear. He diagnosed probable C7 radiculopathy. Dr. Markison did not provide a medical rationale explaining how appellant's "probable C7 radiculopathy," which is a tentative diagnosis, resulted from the December 18, 2000 employment injury. His opinion is therefore also of diminished probative value.⁷ Dr. Harrison's and Dr. Markison's opinions do not show that appellant had a change in the nature and extent of his accepted back condition and appellant has not shown that there was change in the nature and extent of his job requirements.

CONCLUSION

The Board finds that appellant did not establish that he sustained a recurrence of disability, due to the December 18, 2000 employment injury, from December 13 to 17, 2001. None of the medical evidence established a causal relationship between appellant's current condition and the December 18, 2000 employment back injury.

⁶ *Caroline Thomas*, 51 ECAB 451, 456 n. 10 (2000); *Annie L. Billingsley*, 50 ECAB 210, 213 n.20 (1998).

⁷ *Annie L. Billingsley*, *supra* note 6; *Jennifer L. Sharp*, 48 ECAB 209, 212 (1996).

ORDER

IT IS HEREBY ORDERED THAT the December 10 and January 16, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 24, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member