

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TYRUS C. JONES, SR. and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, New Orleans, La.

*Docket No. 96-697; Submitted on the Record;  
Issued April 24, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has established that he was unable to work from April 6 until August 1, 1995 due to his accepted injury.

On January 20, 1995 appellant, then a 37-year-old mail clerk (modified), filed a notice of traumatic injury, claiming that he hit his head and felt his neck snap when he ran into a low-hanging light fixture at work. Appellant was treated by Dr. James C. Butler, a Board-certified orthopedic surgeon who stated that appellant could return to his light-duty position effective February 6, 1995. In a clinical note dated February 13, 1995, Dr. Butler stated that appellant's complaints of increasing neck pain and numbness radiating to the left arm constituted a new injury because of previous complaints concerned his right arm.

The Office of Workers' Compensation Programs accepted a neck strain and head contusion and paid appropriate compensation. Subsequently, Dr. Butler recommended a magnetic resonance imaging (MRI) scan of appellant's cervical spine, which revealed "possibly mild" herniation at C3-4, left paracentral herniation at C5-7, and fusion of the C5-6 vertebral segments. Dr. Butler stated that appellant could return to work on April 4, 1995.

On June 7, 1995 the Office denied appellant's claim for wage-loss compensation from April 1, 1995 onward on the grounds that the medical evidence failed to establish that appellant was unable to work. The Office noted that the clinical notes from Dr. Butler did not support appellant's assertion that he was disabled for work due to pain; rather, these notes released appellant to work on February 6, March 31 and April 4, 1995.

Appellant timely requested reconsideration and submitted further medical evidence from Dr. Butler as well as a personal statement pointing out that the employing establishment would not allow appellant to work while taking pain medication.<sup>1</sup>

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<sup>1</sup> Appellant submitted a February 21, 1991 agreement between himself and the employing establishment

In a June 19, 1995 report, Dr. Butler stated that appellant had a disc herniation at a level other than where he had previous surgery, which could have been caused by the January 1995 incident itself, or the prior degeneration of the disc could have been injured and aggravated by the work incident. Dr. Butler added that appellant had been unable to work since April 10, 1995 and would be disabled until he underwent physical therapy for his neck and left shoulder area. In a July 31, 1995 note, Dr. Butler indicated that while appellant had neck pain and frequent headaches, he planned to return to work for six hours a day on August 1, 1995.

On September 20, 1995 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of the prior decision. The Office noted that Dr. Butler's opinion was equivocal and did not explain why appellant was unable to work.

The Board finds that appellant has failed to meet his burden of proof in establishing that the January 1995 incident disabled him from performing his light-duty job.

When an employee, who is disabled from the job he held when injured, 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 of establishing by the weight of the reliable, probative, and substantial evidence that he cannot perform such light duty.<sup>2</sup> 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>3</sup>

In this case, appellant has submitted no evidence that the light-duty work he was doing in 1993 changed in any manner. Further, Dr. Butler initially released appellant to return to his modified work assignment on February 6, 1995 and then changed that to February 27, 1995. Appellant did return to work but only for a few hours. After reviewing the results of the MRI scan, Dr. Butler indicated that appellant could return to work on April 3, 1995. The record indicates that appellant worked for a few hours on April 3, 4 and 5, 1995 but then did not work at all until August 1, 1995.

Dr. Butler's reports dated May 8, June 14 and 19, and July 31, 1995 indicated that appellant was unable to return to work but provided no rationale for this conclusion.<sup>4</sup> In none of his reports did Dr. Butler explain why appellant was incapable of continuing his limited-duty

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concerning his consumption of medication while at work and a January 10, 1991 memorandum stating that if he had to take medication while scheduled to work, he should notify his supervisor and end his tour of duty.

<sup>2</sup> *Richard E. Konnen*, 47 ECAB \_\_\_\_ (Docket No. 94-1158, issued February 16, 1996).

<sup>3</sup> *Gus N. Rodes*, 47 ECAB \_\_\_\_ (Docket No. 93-950, issued February 14, 1995).

<sup>4</sup> See *Ruth S. Johnson*, 46 ECAB 237, 242 (1994) (finding that a causation opinion that consists only of checking "yes" to a form question has little probative value and is thus insufficient to establish causal relationship).

work. Nor did Dr. Butler document any significant change in appellant's condition that would preclude him from working.<sup>5</sup>

Further, Dr. Butler's opinion on the cause of appellant's disc herniation at C6-7 was equivocal -- the physician stated that the herniation could have been caused by the January 1995 incident or that appellant's underlying degenerative disc disease could have been aggravated by the work injury.<sup>6</sup> Dr. Butler was not specific in connecting the work injury to appellant's current cervical condition. Nor did he offer any medical explanation of how the January 1995 incident resulted in a disc herniation at C6-7. For these reasons, the Board finds that appellant has failed to meet his burden of proof in establishing his entitlement to compensation from April 6 until August 1, 1995.

The September 20 and June 7, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.  
April 24, 1998

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>5</sup> On May 24, 1985 appellant filed a notice of traumatic injury to his back and right ankle after he fell on steps while delivering the mail. Dr. Butler has been his treating physician since then. On February 4, 1991 appellant received a schedule award of \$11,935.45 for an 11 percent permanent impairment of his right arm.

<sup>6</sup> See *William S. Wright*, 45 ECAB 498, 504 (1994) (finding that physicians' statements regarding causal relationship constitute surmise and conjecture and are thus of diminished probative value).