

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EUGENE R. BLACK and U.S. POSTAL SERVICE,
EDMOND POST OFFICE, Edmond, Okla.

*Docket No. 96-1785; Submitted on the Record;
Issued April 27, 1998*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability on or after May 12, 1995 causally related to his accepted December 12, 1992 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to establish that he sustained a recurrence of disability on or after May 12, 1995 causally related to his accepted December 12, 1992 employment injury.

On May 26, 1995 appellant, then a letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 12, 1992 he sustained a lower back injury while lifting a tray from a canvas hamper.¹ Appellant did not stop work. Appellant's claim was accompanied by a May 26, 1995 statement, explaining that he was again filing his claim for compensation for the December 12, 1992 employment injury, because the employing establishment had lost his documents. Appellant's claim was also accompanied by a duty status report (Form CA-17) dated December 16, 1992 and a Form CA-1 dated December 16, 1992, acknowledging receipt of notice of the December 12, 1992 employment injury, by the employing establishment.

By letter dated August 17, 1995, the Office of Workers' Compensation Programs advised appellant to submit additional factual and medical evidence supportive of his claim. In an August 22, 1995 response, appellant provided factual evidence.

On October 3, 1995 appellant filed a claim (Form CA-2a) alleging that on May 12, 1995, he sustained a recurrence of disability of the December 12, 1992 injury. Appellant alleged that he experienced soreness and weakness in his back. Appellant stopped work on May 12, 1995

¹ Appellant filed Forms CA-1 for a March 1987 rib injury, a July 1994 dog bite injury, an August 1994 insect bite injury and a September 1994 left ankle and hip injury.

and returned to work on June 21, 1995. Appellant's claim was accompanied by medical evidence.

By letter dated October 31, 1995, the Office advised appellant to submit additional medical evidence supportive of his recurrence claim.

By letter dated November 2, 1995, appellant submitted medical evidence in response to the Office's letter.

By decision dated February 26, 1996, the Office denied appellant's recurrence claim. In an accompanying memorandum, the Office found the evidence of record sufficient to establish that the December 12, 1992 incident occurred at the time, place and in the manner alleged and that appellant sustained a lumbosacral strain. The Office, however, found the medical evidence of record insufficient to establish that appellant's current back condition was causally related to the December 12, 1992 employment injury.

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. This burden includes the necessity of furnishing medical evidence from a qualified 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.²

In this case, appellant has not submitted rationalized medical evidence sufficient to establish that he sustained a recurrence of disability on or after May 12, 1995 causally related to the December 12, 1992 employment injury. In support of his recurrence claim, appellant submitted a May 12, 1995 disability certificate of Dr. Paul D. Patzkowsky, a general practitioner, indicating that appellant had an acute left lumbosacral strain and that appellant could return to work on May 16, 1995. Appellant also submitted Dr. Patzkowsky's May 17, 1995 disability certificate revealing that appellant had a ruptured lumbar disc and that appellant could return to work on June 1, 1995. These certificates are insufficient to establish appellant's burden inasmuch as they merely provided diagnoses of appellant's condition and failed to discuss whether or how the diagnosed conditions were caused by the December 12, 1992 employment injury.³

Further, appellant submitted Dr. Patzkowsky's appointment form scheduling magnetic resonance imaging (MRI) on May 16, 1995 at 10:00 am. Additionally, appellant submitted Dr. Patzkowsky's Forms CA-17 dated June 20 and September 26, 1995, providing a diagnosis of low back syndrome and appellant's physical restrictions. Dr. Patzkowsky's appointment form and Forms CA-17 are insufficient to establish appellant's burden because they do not address a

² *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

³ *Daniel Deparini*, 44 ECAB 657 (1993).

causal relationship between appellant's current back condition and the December 12, 1992 employment injury.

Appellant also submitted Dr. Patzkowsky's October 3, 1995 medical report, which revealed a history of the December 12, 1992 employment injury and a review of medical records. Dr. Patzkowsky noted that since the December 12, 1992 employment injury, appellant has had exacerbations and remissions of pain and spasms. Dr. Patzkowsky further noted that MRI indicated that appellant had a post-posterior central disc herniation, with cephalad extrusion of L5-S1 and posterior disc bulging, with slight indentation on the subarachnoid spaces at L2-3, L3-4 and L4-5. Dr. Patzkowsky also noted that appellant was referred to Dr. Dan Stough, a Board-certified neurosurgeon, who placed appellant in a low back conditioning program for six weeks. Dr. Patzkowsky opined that appellant should continue light-duty work, as previously described and noted appellant's medical treatment. Dr. Patzkowsky's report is insufficient, to establish appellant's burden because it failed to provide any medical rationale explaining how and why appellant's current back condition was caused by the December 12, 1992 employment injury.

In response to the Office's October 31, 1995 letter, requesting additional medical evidence supportive of his recurrence claim, appellant submitted medical bills. In further response, appellant submitted a June 16, 1995 medical report of Diana Hogue, a physical therapist, which was initialed by Dr. Patzkowsky. This report revealed the results of appellant's performance of various exercises and appellant's medical treatment. Additionally, appellant submitted Dr. Stough's June 19, 1995 medical report, revealing appellant's physical therapy treatment, with Ms. Hogue, that appellant was released to return to work on June 20, 1995 and that appellant was being released from his care. Appellant also submitted the May 16, 1995 MRI test results of Dr. H.D. Davidson, a Board-certified radiologist. Appellant further submitted treatment notes dated May 12, 1995, regarding his complaints of back pain and medical treatment.⁴ These medical bills and reports, test results and treatment notes, are insufficient to establish appellant's burden, because they do not address causal relation.

In addition, appellant submitted Dr. Stough's May 23, 1995 medical report, to Dr. Patzkowsky indicating a history of the December 12, 1992 employment injury and that 10 to 12 days prior to the appointment, appellant had a severe flare-up of his back condition, resulting in radiation into the left lower extremity. Dr. Stough also indicated a history of appellant's medical treatment. Further, Dr. Stough indicated his findings on physical examination and a review of a lumbar MRI scan. He opined that appellant had an altered signal of the four lower lumbar discs consistent with degenerative changes. Dr. Stough further opined that appellant had a small disc protrusion at L3-4, L4-5 and L5-S1. He noted that at L5-S1, the disc appeared to protrude upward just slightly. Dr. Stough recommended that appellant be placed in a low back conditioning program for four to six weeks and that appellant should not work. Dr. Stough's medical report is insufficient to establish appellant's burden because it did not provide any

⁴ Although unsigned, it appears that the May 12, 1995 treatment notes were written by Dr. Patzkowsky inasmuch as the notes indicated that appellant was scheduled for an MRI on May 16th at 10:00 am and the record reveals that Dr. Patzkowsky scheduled appellant for such testing on that same date and at that same time.

medical rationale explaining how and why appellant's current back condition was causally related to the December 12, 1992 employment injury.

The Office received Dr. Patzkowsky's Forms CA-17 dated November 2, 1995 and February 15, 1996 providing that appellant had low back pain and appellant's physical restrictions. Dr. Patzkowsky's Forms CA-17 are insufficient to establish appellant's burden because they do not address causal relation.

Although the Office advised appellant of the type of medical evidence needed to establish his claim for a recurrence of disability, appellant failed to submit medical evidence responsive to the request. Accordingly, the Board finds that appellant has not established that he sustained a recurrence of disability on or after May 12, 1995 causally related to the December 12, 1992 employment injury.

The February 26, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
April 27, 1998

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member