

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONNARD G. WASSERMAN and U.S. POSTAL SERVICE,
POST OFFICE, Lincoln, Nebr.

*Docket No. 97-686; Oral Argument Held February 4, 1998;
Issued April 27, 1998*

Appearances: *Beth Regier Foerster, Esq.*, for appellant; *Catherine P. Carter, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue are: (1) whether appellant has met his burden of proof to establish that he sustained a recurrence of disability on April 20, 1995 causally related to his November 8, 1994 employment injury; and (2) whether appellant has established that he sustained a back condition causally related to factors of his federal employment.

On November 10, 1994 appellant, then a 45-year-old special delivery carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 8, 1994 he experienced pain in his lower back in the course of his federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for lumbar strain.

On April 24, 1995 appellant filed a notice of recurrence of disability alleging that on April 20, 1995 he sustained a recurrence of disability causally related to his accepted November 8, 1994 employment injury. Appellant related that he experienced pain in his lower back in the same place as his original employment injury "while putting on my uniform to go to work."

The record indicates that appellant previously filed an occupational disease claim, assigned Office File Number A11-117371, which the Office accepted for low back strain. The Office combined appellant's April 20, 1994 recurrence of disability claim, assigned Office File Number A11-137400, with his prior occupational disease claim under Office File Number A11-117371.

By letter dated June 27, 1995, the Office requested that appellant provide additional medical and factual information regarding his claimed recurrence of disability.

In a statement received by the Office on July 4, 1995, appellant related:

“My injury of November 8, 1994 recurred on April 20, 1995 when I was getting dressed for work. I was putting my left leg into my uniform slacks. This occurred about 8:30 a.m. I felt a sharp pain in my lower back. The pain felt the same and was in the same location as it was on November 8, 1994. Immediately after this happened I could [not] straighten up or walk or get dressed.”

A magnetic resonance imaging (MRI) study performed on May 26, 1995 revealed a disc herniation at L3-4, central disc bulging at L4-5 and L5-S1, and lumbar disc degeneration.

In a report dated June 12, 1995, Dr. David Diamont, a Board-certified physiatrist and appellant’s attending physician, noted appellant’s history of a November 8, 1994 employment injury which had since resolved. Dr. Diamont stated that appellant related that on April 29, 1995 he “was getting dressed and developed low back pain and pain into the left leg.” The physician diagnosed left L4 radiculitis with back and leg pain.

In a report dated July 6, 1995, Dr. Diamont discussed appellant’s November 1994 employment injury and found that he had a herniated disc at L3-4 causing L4 radiculitis. Dr. Diamont stated:

“I cannot say he has any preexisting conditions for the same body part - his injury in November 1994 certainly could have been a precursor to his recurrent injury in April 1995. The temporal relation to his pain developing on April 24, 1995 does seem to be work related.”

Dr. Diamont found that appellant could return to limited-duty employment.

In a statement dated July 22, 1995, appellant discussed his prior back injuries which he attributed to his federal employment. Appellant stated:

“I believe the wear and tear and strain on my back during the years as a [m]ailhandler are the main contributing factors to my recurrent low back problems including the pain which recurred April 20, 1995.”

Appellant included a description of his employment duties during the course of his federal employment.

By decision dated August 7, 1995, the Office denied appellant’s claim on the grounds that the evidence was insufficient to establish that he sustained a recurrence of disability on April 20, 1995 causally related to his November 8, 1994 employment injury.

By letter dated August 31, 1995, appellant requested a hearing before an Office hearing representative.

In a report dated September 21, 1995, Dr. Diamont stated that he was previously unaware of appellant’s “extensive history of low back pain.” Dr. Diamont found that appellant’s employment duties “could predispose to injury to the lumbar intervertebral disc,” and described

the mechanism by which this could occur. He stated that he could not definitively state that appellant's employment duties caused his L3-4 intervertebral disc herniation but he did "believe that repetitive torsional and compressive loads on the spine do cause strain on the intervertebral disc which could predispose to extrusion of nucleus pulposus and thus radiculitis."

At the hearing, held on July 10, 1996, appellant testified that he believed that events over more than one day caused his back condition. He attributed his back problems to lifting over a period of years during his employment.

In progress notes dated November 1994 to May 24, 1995, a physician treated appellant for lumbosacral strain with referred left leg pain. Appellant further submitted physical therapy reports and a description of his employment duties.

By decision dated September 16, 1996, an Office hearing representative affirmed the Office's August 7, 1995 decision after finding that appellant did not establish a recurrence of disability on April 20, 1995 causally related to his November 8, 1995 employment injury.

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability on April 20, 1995 causally related to his November 8, 1994 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.¹ This burden of proof 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.² Causal relationship is a medical issue and can be established only by medical evidence.³

In the present case, the Office accepted that appellant sustained lumbar strain on November 8, 1994 which resolved on December 1, 1994. Appellant resumed his regular employment duties until April 20, 1995, when he alleged that he sustained a recurrence of disability. Appellant, however, has not submitted sufficient medical evidence to establish that he sustained a recurrence of disability on April 20, 1995 causally related to his November 8, 1994 employment injury.

In a report dated June 12, 1995, Dr. Diamont, a Board-certified physiatrist and appellant's attending physician, stated that appellant related that on April 20, 1995 he "was getting dressed and developed low back pain and pain into the left leg." He diagnosed left L4 radiculitis with back and leg pain. Dr. Diamont, however, did not relate the diagnosed condition

¹ *Dennis J. Lasanen*, 43 ECAB 549 (1992).

² *Stephen T. Perkins*, 40 ECAB 1193 (1989).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

to the November 8, 1994 employment injury, and thus his opinion does not meet appellant's burden of proof.

In a report dated July 6, 1995, Dr. Diamont diagnosed a herniated disc at L3-4 which caused L4 radiculitis. He opined that appellant's "injury in November 1994 certainly could have been a precursor to his recurrent injury in April 1995." However, the Board has held that medical reports from a physician who supported causal relationship only by noting that the employment injury "could have" caused the diagnosed condition, without any explanatory rationale, are speculative and inconclusive in nature and, therefore, of diminished probative value.⁴

In a report dated September 21, 1995, Dr. Diamont noted that he was previously unaware of appellant's history of low back pain and suggested that his herniated disc was due to employment duties. As Dr. Diamont does not relate the diagnosed condition to the November 8, 1994 employment injury, his opinion is of little probative value in establishing appellant's recurrence of disability claim.

The Board further finds that the case is not in posture for decision with respect to the issue of whether appellant has established that he sustained an employment-related back condition.

The Board notes that prior to filing his claim for a recurrence of disability on or after April 20, 1995 due to the accepted employment injury, appellant filed an occupational disease claim which the Office accepted for low back strain. The Office later combined appellant's recurrence of disability file with the accepted occupational disease file, assigning them both Office File No. A11-117371.

In his statement dated July 22, 1995, appellant attributed his condition to "the wear and tear and strain on my back during the years as a [m]ailhandler." At the hearing, appellant described his employment duties and related his back problems to lifting over the course of years. Moreover, appellant submitted medical evidence which suggested that employment factors may have caused or contributed to his herniated disc.⁵ The Office, however, did not consider the issue of whether appellant currently had an occupational disease due to his federal employment.

Proceedings under the Federal Employees' Compensation Act⁶ are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence

⁴ *Connie Johns*, 44 ECAB 560 (1993).

⁵ In his September 21, 1995 report, Dr. Diamont found that appellant's employment duties "could predispose to injury to the lumbar intervertebral disc," and described the mechanism by which this could occur. He stated that he could not definitively state that appellant's employment duties caused his L3-4 intervertebral disc herniation but he did "believe that repetitive torsional and compressive loads on the spine do cause strain on the intervertebral disc which could predispose to extrusion of nucleus pulposus and thus radiculitis."

⁶ 5 U.S.C. §§ 8101-8193.

to see that justice is done.⁷ Consequently, the case must be remanded to the Office for further development, as deemed necessary by the Office, and a *de novo* decision on the issue of whether appellant sustained an employment-related back condition on or after April 20, 1995.

The decision of the Office of Workers' Compensation Programs dated September 16, 1996 is hereby affirmed with respect to the denial of appellant's claim for a recurrence of disability and the case is remanded for further proceedings consistent with this decision of the Board.

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

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁷ *William J. Cantrell*, 34 ECAB 1223 (1983).