

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GABRIEL REGA and U.S. POSTAL SERVICE,
NEWARK MAIN POST OFFICE, Newark, N.J.

*Docket No. 95-2762; Submitted on the Record;
Issued February 19, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that he had a recurrence of disability beginning January 28, 1994, that was causally related to his March 12, 1969 employment injury.

On March 12, 1969 appellant, then a 31-year-old automotive mechanic, was driving an employing establishment vehicle when it swerved and collided with a parked car. On May 19, 1971 appellant underwent surgery, for nerve root entrapment at L5-S1, secondary to an old herniated disc and unstable facette. Dr. Samuel Critides, a Board-certified neurosurgeon, performed a hemilaminectomy at L5-S1 with a facetectomy with lysis of the nerve root. The Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral sprain, L5-S1 nerve root compression with disc protrusion and chronic lumbosacral syndrome. Appellant worked intermittently from the time of the injury, through February 16, 1972 when he stopped working. The Office paid temporary total disability compensation, for the periods appellant did not work and paid compensation for a loss of wage-earning capacity for the periods appellant was assigned to a different position. Appellant returned to work in a light-duty position on February 4, 1984, which included the duty of delivery of mail, maximum of 10 letters at a time, to the offices within the employing establishment and the possibility of delivering mail directly to mail pouches. He was also informed that he could perform copying and other office duties. Appellant was restricted to working no more than four hours a day with no lifting over 10 pounds and no repeated bending, squatting, climbing, kneeling or twisting. The Office paid appellant compensation for a 54 percent loss of wage-earning capacity.¹

On March 7, 1994 appellant filed a claim for a recurrence of disability effective January 28, 1994. He stated that his recurrence was due to a transfer to a new position, that did not adhere to his work limitations, which thus contributed to greater lower back pain. The employing establishment indicated that the light-duty position appellant had held for years had

¹ Appellant's work hours increased at one point to six hours a day but were subsequently reduced to four hours a day.

been abolished effective January 22, 1994 and appellant had accepted a new position with the concurrence of his physician. The new position was for verifying box mail, four hours a day and required intermittent sitting and walking for up to four hours a day, intermittent lifting of up to four hours a day and intermittent bending, squatting, climbing, kneeling, twisting and standing for four hours a day. In a January 31, 1994 letter, the employing establishment indicated that the duties of the position would consist of manual handling of letters and flats while sitting at a large table with no lifting over 10 pounds.²

In a May 4, 1994 decision, the Office rejected appellant's claim on the grounds that the evidence of record failed to demonstrate a causal relationship between the employment injury and appellant's claimed disability. In a February 7, 1995 decision, an Office hearing representative affirmed the May 4, 1994 decision of the Office, finding that appellant had not met his burden of proof, in seeking modification of his loss of wage-earning capacity determination.

The Board finds that appellant has not met his burden of proof in establishing that his recurrence of disability was causally related to his originally accepted employment injury.

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.³ The record shows that appellant had a change in the nature and extent of his light-duty job requirements in that his light-duty assignment was changed on January 24, 1994. However, appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.⁴

In a February 18, 1994 report, Dr. O.P. Ricciardelli, a Board-certified orthopedic surgeon and appellant's treating physician, indicated that he had reviewed appellant's job description and felt that the restrictions and physical requirements described in the January 31, 1994 letter were satisfactory. He added, however, that appellant would be best served by working in a clerk status than in a box mail verification status. Dr. Ricciardelli noted that appellant had explained his duties as a clerk and commented that it would seem that these duties would be better suited for appellant's physical limitations. In an April 6, 1994 report, Dr. Ricciardelli stated that the

² At the December 15, 1994 hearing, before an Office hearing representative, appellant indicated that, although the offer of the new job was dated January 31, 1994, the duties he performed in the period January 24 through January 28, 1994 were the duties described in the employing establishment's January 31, 1994 letter describing the new position.

³ *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ *Dominic M. DeScala*, 37 ECAB 369 (1986).

physical requirements of the box mail verification position would require standing in one position for four hours. He noted that the January 31, 1994 letter, had indicated that appellant would be able to change positions. Dr. Ricciardelli stated that, because of appellant's back condition, he would not be able to perform the duties of the position, because the work would require approximately four hours of constant standing. He indicated that, if this be the case, appellant's back condition would not tolerate prolonged standing because it would cause him recurrent episodes of pain and would be detrimental to his back condition. This opinion of Dr. Ricciardelli, however, has little probative value because it is based on inaccurate information. The position described in the January 31, 1994 letter, did not require prolonged standing for up to four hours. In his testimony at the hearing, appellant did not describe his position as requiring him to stand for four hours but to sit at the edge of his chair for four hours. Therefore, Dr. Ricciardelli's opinion that appellant's new position would aggravate his employment-related back condition is insufficient to show that the new position caused a recurrence of disability because Dr. Ricciardelli's opinion was based on the statement that appellant would be standing for four hours at a time, a statement that is not supported by the record.

In a June 10, 1994 report, Dr. Ricciardelli stated that appellant had been unable to work since January 28, 1994 due to increasing back pain. However, he did not discuss the cause of appellant's back pain. In a June 13, 1994 report, Dr. Ricciardelli, referred to appellant's original 1969 injury and indicated that appellant developed a herniated lumbar disc which required surgery. He stated that appellant was unable to completely resolve his back problems following surgery and had intermittent episodes of recurrent back pain, associated with a permanent restriction in duties, because of his inability to work a full eight-hour day. He concluded that appellant's final diagnosis was a herniated lumbar disc, at the L5-S1 level with signs of recurrence of disc symptomatology. He indicated that appellant's prognosis was guarded and it was not anticipated that he would regain complete return of back function nor have complete relief of painful symptomatology. Dr. Ricciardelli, therefore, gave a general overview of appellant's condition due to the original employment injury. He did not, however, specifically relate appellant's recurrence of disability beginning January 28, 1994, to the accepted conditions arising out of the original employment injury. He did not explain how appellant's recurrence of disability would be caused by the effects of an injury that occurred 25 years previously. His report, therefore, has little probative value and is insufficient to establish that the recurrence of appellant's disability beginning January 28, 1994, was causally related to his March 12, 1969 employment injury.

The decision of the Office of Workers' Compensation Programs, dated February 7, 1995, is hereby affirmed.

Dated, Washington, D.C.
February 19, 1998

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member