

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD G. MARABELLO and U.S. POSTAL SERVICE,
POST OFFICE, Bristol, R.I.

*Docket No. 95-3028; Submitted on the Record;
Issued May 21, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on November 12, 1992 causally related to his accepted June 7, 1986 employment injury; and (2) whether the refusal of the Office of Workers' Compensation Programs, by its July 27, 1995 decision, to reopen appellant's case for further consideration of the merits of his claim under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On June 7, 1986 appellant, then a 32-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on that day he "twisted back when dog jumped out of shrubs." On the reverse side of the form, the employing establishment indicated that appellant lost no time from work, and incurred no medical expenses.

The Office accepted appellant's claim for a subluxation of the spine on September 3, 1986. Subsequently, the Office accepted a disc herniation at L4-5. On October 7, 1987 the Office received a notice of employee's recurrence of disability and claim for pay/compensation, (Form CA-2a) dated September 24, 1987, on which appellant stated that on July 2, 1987 he pulled a back muscle while lifting a box of flats and the muscle pull aggravated his disc problem which required him to resume taking medication to relieve the pain.

On February 26, 1993 the Office received a notice of recurrence of disability and claim for continuation pay/compensation (Form CA-2a) dated September 23, 1993,¹ indicating the date of the original injury as June 7, 1986 and date of recurrence as November 12, 1992. Appellant stated that he was never 100 percent pain free and "about 8 [to] 10 months ago I noticed my usual morning soreness was not wearing off. The pain gradually became greater until I decided to seek medical attention on November 12, 1992 from Dr. Lucas. The area of pain and other

¹ Appellant mistakenly used 1953 as the year he signed the claim form as the surrounding evidence demonstrates that 1993 was the year.

symptoms were the same as the original injury on June 7, 1986.” Appellant claimed no lost time from work and noted that his duties had not been modified. Submitted with the CA-2a form was a November 12, 1992 report by Dr. Lucas. Dr. Lucas stated that he previously treated appellant in 1986 and 1987. Dr. Lucas went on to say:

“[Appellant] injured his back while delivering mail, he had twisted to avoid a dog. CAT [computerized axial tomography] scan at that time showed a definite herniation at the L4-5. He was treated with a program of exercise and states he did very well.... He has noticed some increasing pain over the last several months across his back. He occasionally gets discomfort into his right leg. He does feel somewhat better lying down, has been taking anti-inflammatory medication, initially Dolobid but does have trouble with his stomach, ulcers, presently has been on Relefen.

“X-rays today show narrowing and some degenerative changes at L4-5, slight change at L5-S1, otherwise unremarkable.”

Dr. Lucas diagnosed degenerative disc at L4-5, with probabl[e] posterior facet arthralgia and recommended facet injection and a progressive exercise program.

By letter dated March 8, 1993, the Office requested detailed factual and medical information from appellant, specifically, a description of his condition from his return to duty to the present, his reasons for believing that his present condition is a result of the original injury, a description of all treatment received from the claimed condition from March 15, 1987 to November 12, 1992, regular duties performed from June 7, 1986 to February 9, 1993, any other injuries sustained between June 7, 1986 and November 12, 1992, information regarding the June 2, 1987 claim for recurrence of disability and a medical report from his attending physician.

By letter dated March 23, 1993, appellant responded to the Office’s March 8, 1993 request for information. Appellant stated that after his initial injury “I have never been 100 percent pain free.” He went on to say that his pain became increasingly greater and that is what prompted him to seek medical attention from Dr. Lucas on November 12, 1992. He stated that his present condition is a direct result of his initial injury because he has always had some degree of pain since that time. He further stated that he continued to perform his regular duties since his initial injury and that he has sustained no other injuries since his initial injury. Appellant also stated that he is seeking compensation for all medical expenses incurred. With his letter, appellant submitted a July 2, 1987 report by a Dr. deMedeiros. Dr. deMedeiros stated that appellant “works as postal worker. Lifted small carton at work. [complains of] - low back pain intensity since yesterday.” Dr. deMedeiros reported the findings of his examination of pain in the lumbosacral region upon forward bending and lumbosacral discomfort and diagnosed lumbosacral sprain.

By decision dated April 8, 1993, the Office denied appellant’s claims for recurrences of disability on July 2, 1987 and November 12, 1992 on the grounds that the evidence of record failed to demonstrate a causal relationship between the claimed condition and the June 7, 1986 accepted employment injury.

By letter dated May 10, 1993, appellant requested reconsideration of the Office's April 8, 1993 decision. In support he submitted an April 23, 1993 report by Dr. Lucas and resubmitted the doctor's November 12, 1992 report. Dr. Lucas concluded in his April 23, 1993 report that appellant's present symptoms of back pain "are directly related to his previous injury at the L4-5 level in 1986."

By decision dated September 3, 1993, after a merit review, the Office granted modification of its April 8, 1993 decision as it pertained to the July 2, 1987 recurrence, finding "that claimant's recurrence/new injury of July 2, 1987 be accepted." The Office denied modification of the April 8, 1993 decision as it pertained to the alleged November 12, 1992 recurrence of disability finding that the evidence submitted was insufficient to warrant modification of the prior decision because there was insufficient medical evidence to accept that appellant's November 12, 1992 back pain was causally related to the June 7, 1986 employment injury.

By letter dated January 24, 1994, appellant requested reconsideration of that portion of the Office's September 3, 1993 decision denying modification of the prior decision pertaining to the November 12, 1992 alleged recurrence of disability. In support, appellant submitted a November 22, 1993 report by Dr. Lucas, who stated that appellant has had back pain off and on since 1986 following an injury that occurred while working as a mailman. He went on to say that appellant was diagnosed with a herniated disc at the L4-5 level in 1986 and his most recent examination revealed no neurologic deficit, some restriction of spinal mobility and showed signs of degenerative change present. Dr. Lucas further stated, "it is my feeling since [appellant] has had continued symptoms referable to his back at the level of L4-5 dating back to 1986 that his present symptoms of lower back pain are directly related to the injury." The doctor also stated that he did not anticipate that appellant would have significant problems with his lower back in the future, "with the exception of discomfort off and on due to the degenerative nature of the disc directly related to the herniation of 1986."

By decision dated October 18, 1994, the Office, after a merit review, denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision.

By letter dated April 24, 1995, appellant requested reconsideration of the Office's October 18, 1994 decision. In support appellant submitted a March 10, 1995 report by Dr. Lucas, who stated, "it is my feeling based upon patient's history and examination, dating back to 1986, that [appellant] sustained a herniated disc at the L4-5 level. He has had persistent back problems since that time and at the present time shows degenerative changes at the L4-5. These degenerative changes are causing his present symptoms and are directly related to the injury of the disc that occurred in 1986. The degeneration of the disc is a direct result or sequelae of the herniation. This area is a relatively unstable segment of his spine and predisposes to recurrent episodes of injury and pain."

By decision dated July 27, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant review of the prior decision, as it "is essentially repetitive of evidence previously considered."

The Board has carefully reviewed the entire case record and finds that this case is not in posture for decision on appeal and must be remanded for further development of the evidence.

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 accepted employment injury and supports that conclusion with sound medical reasoning.²

In his claim for recurrence of disability commencing November 12, 1992 appellant reported that he was never 100 percent pain free and “about 8 [to] 10 months ago I noticed my usual morning soreness was not wearing off. The pain gradually became greater until I decided to seek medical attention on November 12, 1992 from Dr. Lucas. The area of pain and other symptoms were the same as the original injury on June 7, 1986.”

Appellant submitted office notes dated November 12, 1992 and reports dated April 23 and November 22, 1993. In the office notes Dr. Lucas noted he saw appellant for low back pain that increases with activity. Dr. Lucas provided a history of the accepted employment injury in 1986 and diagnosed degenerative disc at L4-5. In the April 23, 1993 report, Dr. Lucas stated that he saw appellant on November 12, 1992 for back pain and that appellant had injured his back in 1986 diagnosed at that time as herniated disc L4-5 level. “It is my feeling that [appellant’s] present symptoms of back pain are directly related to his previous injury at the L4-5 level in 1986.”

In the November 22, 1993 report, Dr. Lucas stated that “[appellant] has had back pain off and on since 1986 following an injury that occurred while working as a mailman.” He went on to say that appellant was diagnosed with a herniated disc at L4-5 in 1986 and has had off and on pain at this level. Dr. Lucas stated, “it is my feeling since [appellant] has had continued symptoms referable to his back at the level of L4-5 dating back to 1986 that his present symptoms of lower back pain are causally related to the injury.” Dr. Lucas also stated “I do not expect that [appellant] is going to have any significant problems with his lower back in the future, with the exception of discomfort off and on due to the degenerative nature of the disc directly related to the herniation of 1986.”

Dr. Lucas gave a history of appellant’s 1986 initial injury and causally related appellant’s recurrence of disability on November 12, 1992 to the 1986 injury providing slight rationale. While Dr. Lucas’ reports are not sufficient to establish appellant’s claim, as they are not fully rationalized, the Board finds these reports, given the absence of evidence to the contrary, are sufficient to require further development of the evidence.”³

² *Lourdes Davila*, 45 ECAB 139 (1993); *Louise G. Malloy*, 45 ECAB 613 (1994).

³ 20 C.F.R. § 10.110(b); *see John J. Carlone*, 41 ECAB 354 (1989).

On remand, the Office should further develop the evidence by providing Dr. Lucas with a statement of accepted facts and requesting that he submit a rationalized medical opinion on whether appellant's back pain commencing November 12, 1992 was causally related to his June 7, 1986 accepted employment-related injury. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated July 27, 1995 and October 18, 1994, are set aside and the case is remanded for further action consistent with this decision.⁴

Dated, Washington, D.C.

May 21, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

⁴ In view of the Board's decision on the first issue, it is unnecessary for the Board to address the second issue in this case.