

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EULISH C. BYRD and U.S. POSTAL SERVICE,  
POST OFFICE, Austin, Tex.

*Docket No. 97-540; Submitted on the Record;  
Issued November 13, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of total disability in June 1995 due to his March 11, 1983 employment injury.

The Board finds that the case is not in posture for decision.

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.<sup>1</sup> With respect to his medical condition, an employee must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.<sup>2</sup> However, it is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office of Workers' Compensation Programs shares responsibility in the development of the evidence.<sup>3</sup>

In the present case, the Office accepted that on March 11, 1983 appellant sustained an acute lumbosacral strain and herniated nucleus pulposus at L4-5. The Office authorized the performance of a bilateral L4 discectomy in March 1985. Appellant returned to work in a light-duty position and claimed that his work stoppage in June 1995 was due to a recurrence of

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<sup>1</sup> *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>2</sup> *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>3</sup> *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

disability caused by his March 11, 1983 employment injury. By decision dated February 26, 1996, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability in June 1995 due to his March 11, 1983 employment injury.

In support of his claim, appellant submitted a January 25, 1996 report of Dr. William P. Taylor, a Board-certified orthopedic surgeon, who treated him since the time of his March 11, 1983 injury.<sup>4</sup> Dr. Taylor indicated that appellant reported a return of back and right leg symptoms in early June 1995 without any precipitating events. He noted that appellant had a magnetic resonance imaging test on July 6, 1995 which showed no significant pathology other than his prior operation at L4 and stated that "for this reason it is felt that his present complaints are related to his injuries sustained in March 1983."<sup>5</sup> The Board notes that while Dr. Taylor's report is not completely rationalized, it indicates that appellant sustained an employment-related recurrence of disability and is not contradicted by any substantial medical or factual evidence of record. Therefore, while this report is not sufficient to meet appellant's burden of proof to establish his claim, it raises an uncontroverted inference between appellant's claimed recurrence of disability and his March 11, 1983 employment injury and is sufficient to require the Office to further develop the medical evidence and the case record.<sup>6</sup>

Accordingly, the case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained an employment-related recurrence of disability in June 1995 due to his March 11, 1983 employment injury. The Office should prepare a statement of accepted facts and obtain a medical opinion on this matter. After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.

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<sup>4</sup> It is unclear whether the Office considered Dr. Taylor's report at the time of its February 26, 1996 decision, but the report was stamped as received by the Office on February 16, 1996.

<sup>5</sup> In a report dated April 11, 1996, Dr. Taylor indicated that appellant would require surgical intervention for his back problem.

<sup>6</sup> See *Robert A. Redmond*, 40 ECAB 796, 801 (1989).

The decision of the Office of Workers' Compensation Programs dated February 26, 1996 is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.<sup>7</sup>

Dated, Washington, D.C.  
November 13, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> By decision dated October 29, 1996, the Office denied appellant's request for merit review of his claim. Given the Board's disposition of the merit issue of the present case, it is not necessary for the Board to address the Office's October 29, 1996 decision.