

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ERIC D. WILLIAMS and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Oxnard, Calif.

*Docket No. 97-663; Submitted on the Record;  
Issued October 27, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant established that his disability commencing May 25, 1995 was causally related to his accepted work injury.

The Board has carefully reviewed the case record and finds that appellant has failed to meet his burden of proof in establishing a causal relationship between his claimed May 25, 1995 recurrence of disability and the lumbosacral strain he sustained on October 21, 1992.

Under the Federal Employees' Compensation Act,<sup>1</sup> an employee 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 recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.<sup>2</sup> As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition<sup>3</sup> or to work factors,<sup>4</sup> and supports that conclusion with sound medical reasoning.<sup>5</sup>

Section 10.121(b) provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a medical report covering the dates of examination and treatment, the history given by the employee, the findings,

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

<sup>3</sup> *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

<sup>4</sup> *Caroyn F. Allen*, 47 ECAB \_\_\_\_ (Docket No. 94-828, issued December 7, 1995).

<sup>5</sup> *Lourdes Davila*, 45 ECAB 139, 142 (1993).

the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions, and the prognosis.<sup>6</sup>

In this case, appellant's notice of traumatic injury, filed on October 31, 1992, was accepted for a lumbosacral strain, based on the December 15, 1992 report of Dr. Mark Robinson, a Board-certified orthopedic surgeon, who released appellant to full duty on December 24, 1992.

On May 25, 1995 appellant filed a notice of recurrence of disability, claiming that his disability had not ended, that he experienced pain in lifting sacks of mail and boxes after he returned to work, that he was not able to sleep on his left side, and ordinary daily activities resulted in moderate to severe pain.

On June 14, 1995 the Office of Workers' Compensation Programs asked appellant to provide factual and medical evidence in support of his claim. Appellant submitted a personal statement that the work injury was not a recurrence because it had never "abated," but was as "painful, troublesome, and disabling" as it was originally. Appellant also submitted a nurse's note dated July 9, 1995 stating that she had treated appellant for his back problems from June 1994 to May 1995 while he was in Germany, and several medical forms showing treatment for back pain.

On September 25, 1995 the Office denied the claim on the grounds that the evidence failed to establish that appellant's current back condition was causally related to the accepted work injury.

Appellant timely requested reconsideration and submitted a January 9, 1996 report from Dr. Avrom Gart, Board-certified in physical medicine and rehabilitation. Dr. Gart stated that appellant's symptoms remained essentially unchanged from those experienced following the 1992 work injury and therefore appellant's current complaints were "felt to be secondary to specific work injury ... without new injury or recurrence."

On January 26, 1996 the Office referred appellant, along with a statement of accepted facts and the medical records, to Dr. Michael D. Rosco, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated February 23, 1996, Dr. Rosco stated that appellant was not totally disabled as a result of an industrial accident and recommended further testing. In a follow-up report dated March 12, 1996, Dr. Rosco reviewed x-rays of appellant's lumbar spine and pelvis, reporting no significant orthopedic abnormalities with the exception of mild scoliosis. Dr. Rosco added that a magnetic resonance imaging (MRI) scan was nearly normal, showing a small right disc protrusion at L4-5 and L5-S1 and degenerative changes.

On March 21, 1996 the Office denied modification of its September 25, 1995 decision. The Office relied on the opinion of Dr. Rosco that appellant had fully recovered from the work injury.

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<sup>6</sup> 20 C.F.R. § 10.121(b).

Appellant again requested reconsideration on the grounds that the Office had failed to consider the results of the March 8, 1996 MRI scan and that Dr. Rosco's report contained factual errors. Appellant submitted a May 13, 1996 report from Dr. Gart.

On August 27, 1996 the Office denied appellant's request on the grounds that the medical evidence was insufficient to warrant modification of its prior decision. The Office found that the weight of the medical opinion evidence still rested with Dr. Rosco because the record contained no reasoned medical report showing that appellant still had residuals of his 1992 work injury.<sup>7</sup>

The Board finds that the medical evidence submitted by appellant is insufficient to establish the requisite causal relationship between his current back condition and the accepted work injury. Dr. Gart's supplemental report dated May 13, 1996 alluded to appellant's October 1992 lower back injury but offered no opinion on whether the left-sided neural foramina narrowing he saw on appellant's MRI scan stemmed from the earlier back strain.

In his January 9, 1996 report, Dr. Gart based his conclusion that appellant's current complaints were "secondary" to the 1992 injury on the fact that his symptoms and complaints remained essentially unchanged from those experienced at that time.<sup>8</sup> However, Dr. Gart provided insufficient medical rationale for this opinion and failed to explain why appellant would still be suffering from the residuals of a back strain sustained three years earlier.<sup>9</sup>

By contrast, Dr. Rosco concluded after reviewing the x-rays and MRI scan that appellant had fully recovered from the 1992 incident -- appellant had subjective complaints of back pain but no objective orthopedic findings. Appellant did not suffer from residuals of the work injury, based on the absence of clinical findings on physical examination and the essentially negative MRI evaluation. Appellant had no atrophy or neurologic deficit. As Dr. Rosco explained, the objective testing demonstrated that there was nothing wrong with appellant's back and that he could resume any occupation that interested him.<sup>10</sup>

On reconsideration, appellant pointed out several factual errors in Dr. Rosco's report, such as the length of time appellant was on holiday in Germany and Africa in 1993 and 1995 to

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<sup>7</sup> Appellant again requested reconsideration, but also filed an appeal with the Board on December 5, 1996. The Board and the Office do not have concurrent jurisdiction. 20 C.F.R. § 501.2(c); *Arlonia B. Taylor*, 44 ECAB 591, 597 (1993). Therefore, the Office's December 20, 1996 decision denying appellant's request for reconsideration is null and void, and the Board will not consider any evidence received by the Office subsequent to August 27, 1996 decision. *Cf. Douglas E. Billings*, 41 ECAB 880, 893 (1990) (finding that the Office had jurisdiction to issue a decision on a matter unrelated to the issue on appeal before the Board).

<sup>8</sup> *See Kimber Lee*, 45 ECAB 565, 574 (1994) (finding that a physician's rationale that appellant's condition was related to a previous lifting injury because appellant reported no similar problem prior to that accepted injury was insufficient to establish a causal relationship).

<sup>9</sup> *See William S. Wright*, 45 ECAB 498, 504 (1994) (finding that physicians' statements regarding causal relationship constitute surmise and conjecture and are thus of diminished probative value).

<sup>10</sup> *See John L. Clark*, 32 ECAB 1618, 1624 (1981) (finding that a medical opinion based on a claimant's complaint that he hurt too much to work, with no objective signs of disability being shown, was insufficient to establish a basis for compensation).

1996, the fact that he did not work in December 1992, and appellant's description of the degree of pain he experienced, but none of these mistakes is relevant to the issue of causal relationship.<sup>11</sup> Appellant's belief that his back problems never "abated" since the 1992 incident is insufficient, absent a rationalized medical opinion, to establish a causal relationship between his claimed recurrence of disability and the 1992 injury.<sup>12</sup>

The August 27 and March 21, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

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

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>11</sup> Appellant, a casual postal employee, was terminated on December 4, 1992 after being on modified duty from October 16 through December 1, 1992. His treating physician stated on December 23, 1992 that appellant was "improved," that his back "felt fine," and that he had "no complaints." Appellant was released from treatment and returned to full duty.

<sup>12</sup> See *Kathryn Haggerty*, 45 ECAB 383, 389 (1994) (finding that neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that her condition was caused by her employment is sufficient to establish a causal relationship).