

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MERLE H. WYLIE and U.S. POSTAL SERVICE,
POST OFFICE, Washington, DC

*Docket No. 97-2328; Submitted on the Record;
Issued July 23, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a recurrence of disability on or after September 13, 1993 causally related to his accepted December 9, 1977 employment injury.

On December 9, 1977 appellant filed a traumatic injury claim alleging that he injured his back while he was dumping mail. The Office of Workers' Compensation Programs accepted appellant's claim for degenerative disc disease, HNP L5-S1 and paid compensation.¹ Appellant returned to light-duty work on March 28, 1979.

On December 14, 1993 appellant filed a claim for a recurrence of disability on August, 1993 causally related to his December 9, 1977 employment injury.² In support of his recurrence claim, appellant submitted progress notes by Dr. Rida N. Azer, appellant's attending Board-certified orthopedic surgeon, from January 23, 1978 to January 15, 1988 and September 13, 1993 and a December 21, 1993 progress note by Dr. Charles H. Emich, a Board-certified orthopedic surgeon.

By decision dated August 25, 1994,³ the Office denied appellant's claim finding that the evidence did not establish a causal relationship between the injury and the claimed condition or disability. The Office indicated that the medical evidence was insufficient to establish the claim.

Appellant, through a representative, requested an oral hearing and submitted a March 22, 1995 progress note from Dr. Azer and March 22, 1995 electrodiagnostic test results by Dr. Ingrid

¹ Appellant had filed a traumatic injury claim alleging that he injured his back while dumping large hampers of mail. The Office accepted that appellant sustained a back injury.

² Appellant retired from the employing establishment in December 1985.

³ The date appears to have been originally August 17, 1994 and then "25" was handwritten over the "17."

Gheen, Board-certified in physical medicine and rehabilitation. A hearing was held on February 16, 1995.

By decision dated April 25, 1995, the hearing representative affirmed the Office's decision denying appellant's recurrence claim.⁴

By decision dated April 7, 1997, the Office denied appellant's request for reconsideration.

The Board has duly reviewed the case record and finds that appellant has failed to establish that he sustained a recurrence of disability causally related to his December 9, 1977 work injury.

When an employee who is disabled from the job he or she held when injured because of employment-related residuals returns to a light-duty position, or the medical evidence of record establishes that he or she can perform the light-duty job, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability that prevents him or her from performing such light duty.⁵

As part of this burden, the employee must show a material 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.⁶ Thus, 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 condition⁷ and supports that conclusion with sound medical reasoning.⁸

In the present case, the Office accepted that appellant sustained degenerative disc disease, HNP L5-S1 on December 9, 1977. Appellant returned to light-duty work on March 28, 1979 and he retired in December 1985. He then claimed a recurrence of disability on or after September 13, 1993 due to his December 9, 1977 employment injury.

Appellant submitted progress notes from Dr. Azer and Dr. Emich as well as electrodiagnostic test results by Dr. Gheen. Dr. Azer in his September 13, 1993 progress notes detailed his findings on physical and the x-rays showing degenerative changes in both hips. In a March 22, 1995 progress report, Dr. Azer indicated that appellant still had pain in his lumbar area and noted x-ray results. Dr. Emich in December 21, 1993 progress notes, noted that appellant was still experiencing pain in his back and radiating to his left leg and foot. The results of the electrodiagnostic test by Dr. Gheen noted peripheral neuropathy probably due to

⁴ On December 23, 1996 the Board dismissed an appeal by appellant at his request.

⁵ *Richard E. Konnen*, 47 ECAB 388 (1996).

⁶ *Mary A. Howard*, 45 ECAB 646, 651 (1994), quoting *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁷ *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

⁸ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

appellant's diabetes mellitus. Dr. Gheen also noted "a left S1 radiculopathy with signs of active denervation in the S1 myotome." Neither Dr. Azer nor Drs. Emich or Gheen offer an opinion as to whether appellant has any current condition or disability causally related to his December 9, 1977 employment injury, their opinions are insufficient to meet appellant's burden of proof.

The Board notes that appellant contended that his pain symptoms were due to his accepted December 9, 1977 employment injury and submitted progress notes from January 1978 to January 1988 and then a progress note dated September 13, 1993. However, the medical evidence is not based on bridging symptoms between December 9, 1977 and his claimed recurrence of disability beginning on or after September 13, 1993.⁹

Consequently, appellant has not met his burden of proof in establishing causal relationship as he did not submit sufficient rationalized medical evidence demonstrating that his condition on or after September 13, 1993 was causally related to his accepted December 9, 1977 degenerative disc disease, HNP L5-S1.

The decision of the Office of Workers' Compensation Programs dated April 7, 1997 is hereby affirmed.

Dated, Washington, D.C.
July 23, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁹ For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 748 (1986).