

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL R. JONES and U.S. POSTAL SERVICE,
POST OFFICE, Washington, D.C.

*Docket No. 97-2235; Submitted on the Record;
Issued June 17, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a recurrence of disability on September 28, 1995 as a result of his accepted injury.

On April 22, 1987 appellant, then a 33-year-old letter carrier, alleged that on April 21, 1987 he injured his back while in the performance of duty. Appellant stopped work on April 22 and returned to work on April 28, 1987. The Office of Workers' Compensation Programs accepted appellant's claim for lumbar musculoskeletal strain on May 20, 1987.

On September 28, 1995 appellant filed a claim for recurrence of disability alleging that his "original injury never went away."

On November 18, 1995 the Office denied appellant's claim. On October 1, 1996 appellant requested a review of the written record. In support of his request, appellant submitted medical reports from Dr. Daniel R. Ignacio, Board-certified in physical medicine and rehabilitation. In a June 21, 1996 report, he stated that appellant had been symptomatic since his April 21, 1987 work-related injury, that he had aggravated it on September 28, 1995 and that his lumbar disc syndrome was causally related to his work. In an electromyographic (EMG) report dated the same day, Dr. Ignacio stated that appellant had S1 and bilateral L5 radiculopathies. In a July 25, 1996 medical report, he stated that appellant had lumbar disc syndrome, lumbar radiculopathy, lumbar facet joint dysfunction post traumatic. He noted that appellant's condition was causally related to his April 21, 1987 work-related injury and aggravated by the September 28, 1995 work incident.

In a decision dated and finalized on April 30, 1997, the hearing representative denied appellant's request for reconsideration.

The Board finds that this case is not in posture for a decision as further development of the evidence is necessary.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.² This burden included the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concluded that the condition is causally related to employment factors and supports that conclusion with sound medical reasoning.³ However, proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to benefits, the Office shares the responsibility in the development of evidence. It has the obligation to see that justice is done.⁴

In the Office's April 30, 1997 decision, the hearing representative rejected Dr. Ignacio's reports because they did not address the causal relationship between appellant's condition and factors of his employment.⁵ The Office hearing representative found that his reports were not rationalized because he failed to determine whether appellant's work-related injury caused his September 28, 1997 aggravation, or whether appellant's light-duty position caused the aggravation. However, the Board notes that Dr. Ignacio determined that appellant had been symptomatic since his April 21, 1987 work-related injury, that he had aggravated it on September 28, 1995, that his lumbar disc syndrome was causally related to his work and provided an EMG to support appellant's S1 and bilateral L5 radiculopathies. Although these reports do not contain rationale sufficient to discharge appellant's burden of proof by the weight of reliable, substantial and probative evidence that he sustained recurrence of disability on September 28, 1997 causally related to his work-related injury, they consist of substantial,

¹ *Ruthie M. Evans*, 41 ECAB 416 (1990); *Joe D. Cameron*, 41 ECAB 153 (1989).

² *Victor J. Woodhams*, 41 ECAB 345 (1989).

³ *Id.*

⁴ *Isidore J. Gennino*, 35 ECAB 442 (1983).

⁵ The Board notes that Dr. Ignacio was not sent a statement of accepted facts.

uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship that is sufficient to require further development of the record by the Office.⁶

Consequently, the April 30, 1997 decision of the Office is hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

On remand, the Office shall prepare and submit a statement of accepted facts to Dr. Ignacio and request his reasoned opinion on the relationship between appellant's condition and the accepted factors of employment. The Office shall then review his medical opinion and refer it together with the case record to an Office medical adviser for review. After such further development as is deemed necessary, the Office shall issue a *de novo* decision addressing appellant's claim for compensation.

The April 30, 1997 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
June 17, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁶ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).