U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of DAVID A. PETERSON and U.S. POSTAL SERVICE,
POST OFFICE, Saint Paul, Minn.

*Docket No. 97-960; Submitted on the Record;*
*Issued March 2, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that his disability commencing March 3, 1996 is causally related to his June 1, 1984 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not established that his disability commencing March 3, 1996 is causally related to his June 1, 1984 employment injury.

On June 1, 1984 appellant, a mail clerk, injured his back when he threw a heavy mail sack the wrong way. The Office of Workers' Compensation Programs accepted his claim for back spasm, coccygodynia, herniated nucleus pulposus L5-S1 with left spinal stenosis. Appellant had a recurrence of disability on December 14, 1994 when he stopped work and returned to a light-duty job on February 10, 1995. Appellant filed another claim for a recurrence of disability commencing March 3, 1996 stating that he was walking to his car to go to work when he slipped on ice but did not fall and felt some stiffness. Appellant states that when he got to work the pain intensified and after 1½ hours he could no longer work due to the pain. He stated that he had had back problems for 12 years and had flare-ups once in a while when the pain was very bad. Appellant returned to a four-hour workday on May 8, 1996 and to an eight-hour workday with restrictions on June 7, 1996. Appellant's treating physician, Dr. Thomas C. Jetzer, a Board-certified family and preventive medicine practitioner, released appellant to return to full-time duties with restrictions on July 17, 1996.

By letter dated June 4, 1996, the Office requested additional information from appellant including a narrative report from his treating physician explaining the connection between his current condition and the June 1, 1984 employment injury.

Appellant submitted the following medical evidence.

In his March 6, 1996 report, Dr. Jetzer stated that appellant slipped on ice in his driveway and twisted his back where he had hurt it before and since that incident was unable to work. He diagnosed recurrence of back pain, job aggravation but preexisting degenerative disc disease.

In his March 11, 1996 report, Dr. Charles V. Burton, a Board-certified neurological surgeon with a specialty in physiatry, noted that appellant was doing well until "10 days ago" when he slipped on some ice and in a contortion-type move to stay upright had an onset of low back and left leg pain. He diagnosed exacerbation of previous spinal stenosis at the left L5-S1 level.

In his report dated April 4, 1996, Dr. Burton opined that appellant's "April 3, 1996" injury at home "simply aggravated existing significant spinal disease which [was] related to a work injury which occurred on January 6, 1994."

In his May 29, 1996 report, Dr. Edgardo R. Yutangco, a specialist in occupational medicine, noted that appellant had a 12-year history of a low back problem and on March 3, 1996 slipped on ice and aggravated his back. He diagnosed chronic low back pain and returned appellant to work with restrictions.

In his June 12, 1996 report, Dr. Jetzer opined that appellant had a spinal stenosis and degenerative disc disease with radiculopathy since his June 1, 1984 employment injury and had persistent pain since the injury. He stated that appellant's condition had been continually aggravated by his work consisting of bending, lifting and twisting at the employing establishment, that appellant's condition had waxed and waned and had never fully resolved and, for the most part, required restrictions. Dr. Jetzer stated that there were objective findings on examination by Dr. Burton. He concluded that appellant's condition was a continuation of the previous existing injury which had never fully resolved.

By decision dated July 12, 1996, the Office denied the claim, stating that the evidence of record failed to establish that the claimed medical condition or disability was causally related to the June 1, 1984 employment injury.

It is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.[1] An aggravation of the original injury is compensable if it is the direct and natural result of a compensable primary injury but is not compensable if it is due to an independent nonindustrial cause.[2]

Although appellant requested compensation for an alleged recurrence of disability, the actual issue in this case is whether appellant's disability commencing March 3, 1996 is a direct and natural result of the June 1, 1984 employment injury. Dr. Jetzer, Dr. Burton and

[1] *See Robert W. Meeson*, 44 ECAB 834, 838; Larson, *The Law of Workers' Compensation* § 13.00.

[2] *Meeson*, *supra* note 1; Larson at § 13.11.

Dr. Yutangco opined that the March 3, 1996 incident of appellant's slipping on the ice aggravated either his preexisting degenerative disc disease or spinal stenosis. Although in his June 12, 1996 report, Dr. Jetzer opined that appellant's back condition was a continuation of the previous existing injury which had never fully resolved, he did not address the March 3, 1996 ice incident. Where the physicians of record do address the March 3, 1996 ice incident, they attribute appellant's disability commencing March 3, 1996 to that incident and state that it aggravated or exacerbated appellant's preexisting back condition. The medical evidence therefore establishes that appellant's disability commencing March 3, 1996 resulted from a cause other than his employment, and therefore appellant's alleged recurrence of disability, which is actually an aggravation of a preexisting work-related condition by an independent nonindustrial cause, is not compensable under the Federal Employees' Compensation Act.

The decision of the Office of Workers' Compensation Programs dated July 12, 1996 is hereby affirmed.

Dated, Washington, D.C.
March 2, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member