

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAY D. ROLLMAN and DEPARTMENT OF TRANSPORTATION,  
FEDERAL AVIATION ADMINISTRATION, Oklahoma City, Okla.

*Docket No. 97-1308; Submitted on the Record;  
Issued March 3, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
MICHAEL E. GROOM

The issue is whether appellant has established that he has a current back condition causally related to his accepted employment injury.

On March 10, 1993 appellant filed an occupational disease claim alleging that he sustained disc disease in his back which he attributed to his transfer in May 1992 to a position which required climbing numerous stairs. The Office of Workers' Compensation Programs accepted appellant's claim for a temporary aggravation of degenerative disc disease. The employing establishment modified appellant's employment on December 16, 1992, in accordance with his physician's restrictions.<sup>1</sup>

Appellant voluntarily retired from the employing establishment on May 3, 1994. On February 9, 1995 appellant filed a claim for compensation on the account of a traumatic injury or occupational disease (Form CA-7).

By decision dated September 7, 1995, the Office denied appellant's claim on the grounds that the evidence did not establish a causal relationship between his injury and the claimed condition or disability. In a decision dated July 30, 1996 and finalized August 2, 1996, an Office hearing representative affirmed the Office's September 7, 1995 decision. In merit decisions dated September 26 and December 30, 1996, the Office denied modification of its prior decision.

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

The Board has held that where employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the period of disability related to the

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<sup>1</sup> The Office accepted that appellant sustained lumbar strain due to a traumatic injury on October 24, 1989. By decisions dated January 20 and November 24, 1993, the Office denied appellant's claim for a November 18, 1992 recurrence of disability causally related to the October 24, 1989 employment injury.

aggravation.<sup>2</sup> Where the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased. This is true even though the employee is found medically disqualified to continue in such employment because of the effect which the employment factors might have on the underlying condition. Under such circumstances, the disqualification for continued employment is due to the underlying condition, without any contribution by the employment.<sup>3</sup>

In the present case, appellant submitted numerous reports from his attending physician, Dr. Tonya C. Washburn, a Board-certified physiatrist. In a report dated February 9, 1995, Dr. Washburn diagnosed severe cervical and lumbar degenerative disc disease and a disc herniation of L3-4 and L4-5 by a magnetic resonance imaging study (MRI). She related that he was not a candidate for surgery due to his obesity and opined that he was disabled from work. In a report dated April 11, 1995, Dr. Washburn diagnosed disabling cervical and lumbar degenerative disc disease which she found had been aggravated by sitting, standing and walking stairs during his employment. In a report dated November 27, 1995, Dr. Washburn discussed appellant's 1989 employment-related lifting injury and noted that x-rays contemporaneous with the injury showed significant degenerative changes at L4-5 and L5-S1. She stated that appellant's job exacerbated the condition and that he was currently unable to work. In a report dated May 8, 1995, Dr. Washburn opined:

“[Appellant] has had severe cervical and lumbar degenerative disc disease. I initially felt that he could not go up and down flights of stairs and his job accommodated this and put him in a job on the first floor; however, it required prolonged sitting which he is not capable of doing. He is not capable of sitting or standing for greater than 10 [to] 20 minute intervals without frequent change of positions so I do not feel that he could continue that job either.”

In a report dated June 28, 1996, Dr. Washburn attributed appellant's disc herniation to his 1989 lifting injury and stated that he exacerbated his disc problem in 1992 going up and down stairs.<sup>4</sup> She found that he was permanently disabled due to his disc herniation.

In a report dated November 7, 1996, Dr. Washburn stated:

“[Appellant] has known significant lumbar degenerative dis[c] disease with intermittent radicular components. Previous work[-]related injuries are consistent with injury or damage to the disks which I do believe was initially exacerbated by the stairs and continues to deteriorate at this time.”

While appellant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.<sup>5</sup> When an uncontroverted inference

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<sup>2</sup> *Thomas N. Martinez*, 41 ECAB 1006 (1990).

<sup>3</sup> *Ronald M. Meyer*, 35 ECAB 358 (1980).

<sup>4</sup> The Office did not accept that appellant sustained a disc herniation due to his 1989 employment injury. Appellant has the burden of establishing his claim for conditions not accepted by the Office by the submission of rationalized medical opinion evidence.

<sup>5</sup> *Dennis J. Lasanen*, 43 ECAB 549 (1992).

of causal relationship is raised, the Office is obligated to request further information from an employee's attending physician.<sup>6</sup> In the instant case, while Dr. Washburn's reports are insufficient to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that he was disabled beginning May 3, 1994 due to his accepted employment-related aggravation of his preexisting degenerative disc disease, they constitute sufficient evidence in support of appellant's claim to require further development of the record by the Office.<sup>7</sup> The Board notes that there is no medical evidence of record refuting a causal relationship between appellant's current back condition and his employment injury. Accordingly, the Office should prepare a statement of accepted facts and send appellant, if necessary, to a physician in the appropriate field of medicine for a reasoned opinion on whether appellant has any residual disability due to his employment-related temporary aggravation of his degenerative disc disease such that he could not perform his modified employment effective May 3, 1994. After such further development as the Office deems necessary, it shall issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated December 30, September 29 and July 30, 1996 and finalized August 2, 1996 are set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.  
March 3, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

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<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *See Horace Langhorne*, 29 ECAB 820 (1978).