

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN P. GRAFF, SR. and U.S. POSTAL SERVICE,  
POST OFFICE, Providence, R.I.

*Docket No. 97-1841; Submitted on the Record;  
Issued March 24, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a recurrence of disability on or about February 14, 1996 that was causally related to his accepted September 10, 1984 employment injuries of low back strain and herniated lumbar disc at the L5 to S1 level.

On September 10, 1984 appellant, then a 34-year-old mail handler, filed a notice of traumatic injury and claim alleging that he was injured while loading a small hamper onto a spar belt. The Office of Workers' Compensation Programs accepted appellant's claim for low back strain. On November 16, 1984 appellant filed a claim for recurrence of disability beginning November 15, 1984 and stopped work. The Office accepted this claim for low back strain. On February 13, 1985 appellant returned to limited-duty work. On March 18, 1986 appellant filed a recurrence of disability beginning that night. Appellant was still engaged in limited-duty work with no lifting or excessive and repetitive bending. On April 17, 1986 this claim was denied. On July 17, 1989 appellant filed another claim for recurrence of disability which the Office denied on the grounds that the evidence established that appellant should remain on limited-duty work rather than establishing total disability. On February 14, 1996 appellant filed an additional claim for recurrence of disability but did not indicate the date of recurrence. In a decision dated May 21, 1996, the Office denied appellant's claim on the grounds that evidence did not establish a causal relationship between the claimed condition and the accepted employment injuries. By decision dated February 5, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification for the prior decision.

The Board has duly reviewed the entire case record on appeal and finds that appellant had not established that he sustained a recurrence of disability on or about February 14, 1996 that was causally related to his accepted employment injuries.

Where appellant claims recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative

evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.<sup>1</sup> This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>2</sup> When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position, or medical evidence of record establishes that he can perform the work of a light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of the burden, the employee must show a 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.<sup>3</sup>

In the present case, appellant has not submitted sufficient evidence to establish either that there was a change in the nature and extent of his disability or the nature and extent of his light-duty position. Both appellant and the employing establishment submitted letters indicating that appellant had been advised to file a claim for recurrence so that he could receive medical benefits to allow his physician to fill in a duty status form to substantiate his continued limited-duty status at work. Appellant submitted medical reports by Dr. Edward Spindell, a Board-certified orthopedic surgeon and his treating physician. In a report dated February 22, 1996, Dr. Spindell provided a complete medical history and noted that appellant was being seen as “he was obtaining a new position.” He noted that he performed a lumbar discectomy on May 10, 1984 and indicated that appellant’s original low back surgery was related to the job injury in the early 1980’s. He concluded that appellant demonstrated moderate residuals from that injury and surgery consisting of loss of flexibility and lumbar rigidity with no evidence of acute radiculopathy or acute mechanical findings in the low back and that the history and physical findings were causally related to his original injury in 1984. Dr. Spindell also indicated that appellant was highly recommended for the new position described which was described as “does not require any heavy lifting or repetitive bending.” In a report dated March 5, 1996, Dr. Spindell noted that he had not seen appellant in over five years and, therefore, had to elicit a complete history and perform a complete examination, as he culled his records after five years. Neither of the reports provided by Dr. Spindell is sufficient to establish that appellant sustained a recurrence of disability as he did not indicate that appellant was totally disabled or that his condition had substantially change in either nature or extent. In addition, the job that was “highly recommended” for appellant by Dr. Spindell is substantially the same as the limited-duty position he was performing.<sup>4</sup> Therefore, appellant has not met his burden of proof in establishing that he sustained a recurrence of disability on or about February 14, 1996.

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<sup>1</sup> *John E. Blount*, 30 ECAB 1374 (1979).

<sup>2</sup> *Frances B. Evans*, 32 ECAB 60 (1980).

<sup>3</sup> *Jackie B. Wilson*, 39 ECAB 915 (1988); *Terry R. Hedman*, 38 ECAB 22 (1986).

<sup>4</sup> It is also noted that, while Dr. Spindell related appellant’s back surgery and residuals of that surgery to appellant employment injuries, the surgery dated May 10, 1984 actually predates appellant’s date of injury. Thus, it appears that Dr. Spindell’s report is not based on an accurate factual history.

The decisions of the Office of Workers' Compensation Programs dated February 5, 1997 and May 21, 1996 are hereby affirmed.

Dated, Washington, D.C.  
March 24, 1999

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member