

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL RINGLER and U.S. POSTAL SERVICE,
POST OFFICE, Gaithersburg, MD

*Docket No. 96-1165; Oral Argument Held September 15, 1999;
Issued November 30, 1999*

Appearances: *Richard S. O'Connor, Esq.*, for appellant; *Sheldon G. Turley, Jr., Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of disability as of August 14, 1992 causally related to his accepted May 19, 1987 lower back injury.

On May 19, 1987 appellant, a 32-year-old mailhandler, injured his lower back while picking up a tray of mail. Appellant stopped work and filed a claim on June 1, 1987, which the Office of Workers' Compensation Programs accepted for acute lumbosacral strain by letter dated July 30, 1987.¹

Appellant was released to return to light duty by his treating physician, Dr. Sheldon R. Mandel, a Board-certified orthopedic surgeon, on August 10, 1987, with restrictions on sitting, walking, lifting, kneeling, pushing/pulling, reaching above the shoulders and bending.²

On August 17, 1992 appellant filed a Form CA-2, claim for recurrence of disability, alleging that on August 14, 1992 he experienced an exacerbation of his lower back pain, which he indicated had been constant since the occurrence of the May 19, 1987 employment injury.

Appellant subsequently submitted several reports, forms and progress notes from Dr. Mandel, his treating physician, who stated in an August 18, 1992 progress note that appellant had a chronic lumbar disc problem with intractable symptoms. Dr. Mandel stated that because

¹ The Office subsequently expanded the accepted condition to include a temporary aggravation of preexisting degenerative disc disease.

² During the next four years, appellant intermittently went off work for brief periods and filed claims due to residuals from his back conditions, for which the Office paid compensation. He began working on limited duty labeling letters and forms on January 26, 1988.

he had tried unsuccessfully to return appellant to work at the employing establishment in a sedentary capacity, he believed appellant was disabled from this type of work and had therefore recommended that he retire on disability. He stated in an October 1, 1992 progress note that appellant had experienced an acute recurrence of his back condition on August 14, 1992 which kept him from doing any type of activity, that this problem was caused by a ruptured disc at the L4-5 level as shown by two magnetic resonance imaging (MRI) scans and that this was a chronic problem which was unlikely to improve from its present state.

By decision dated November 27, 1992, the Office denied appellant's compensation for a recurrence of his accepted May 19, 1987 employment-related low back condition, finding that appellant failed to submit evidence sufficient to establish that the claimed recurrence of disability was caused or aggravated by the May 19, 1987 employment injury.

By letter to the Office dated January 27, 1993, appellant and his representative requested reconsideration of the Office's November 27, 1992 decision denying benefits. Accompanying the letter were several progress reports and forms and a January 19, 1993 report from Dr. Mandel, in which he indicated that appellant was totally disabled due to his chronic lumbar condition, which was a direct result of his May 19, 1987 employment injury.

In a decision dated April 29, 1993, the Office denied appellant's request for reconsideration, finding that the evidence submitted was not sufficient to warrant modification.

By letter to the Office dated July 19, 1993, appellant and his representative requested reconsideration of the Office's April 29, 1993 decision denying benefits. Accompanying the letter was a May 18, 1993 report from Dr. Mandel; a June 21, 1993 report letter from Dr. James J. Rascher, a Board-certified orthopedic surgeon; a May 19, 1993 letter from Dr. Montague Blundon, III, a Board-certified orthopedic surgeon; and a June 9, 1993 report from Dr. Joel A. Reiskin, Board-certified in internal medicine.

In a decision dated October 6, 1993, the Office denied appellant's request for reconsideration, finding that the evidence submitted was not sufficient to warrant modification.

By letter to the Office dated February 25, 1994, appellant requested reconsideration of the Office's October 6, 1993 decision denying benefits. Accompanying the letter was an August 10, 1993 report from Dr. Rascher; a November 2, 1993 report and November 9, 1993 progress note from Dr. Reiskin; a November 9, 1993 report from Dr. Mandel; and two reports from Dr. Blundon dated December 27, 1993 and January 5, 1994.

In a decision dated August 30, 1994, the Office denied appellant's request for reconsideration, finding that the evidence submitted was not sufficient to warrant modification.

By letter to the Office dated November 2, 1994, appellant requested reconsideration of the Office's August 30, 1994 decision denying benefits. Accompanying the letter was an October 28, 1994 report from Dr. Blundon. Appellant also submitted several other medical documents which he had previously submitted.

In a decision dated November 21, 1994, the Office denied appellant's request for reconsideration, finding that the evidence submitted was not sufficient to warrant modification.

By letter to the Office dated March 6, 1995, appellant requested reconsideration of the Office's November 21, 1994 decision denying benefits. Accompanying the letter was a February 28, 1995 report from Dr. Rascher.³

In a decision dated September 14, 1995, the Office denied appellant's request for reconsideration, finding that the evidence submitted was not sufficient to warrant modification.

By letter to the Office dated September 18, 1995, appellant requested reconsideration of the Office's September 14, 1995 decision denying benefits. Accompanying the letter was a January 18, 1995 report from Dr. Rascher and a March 1, 1995 letter from Dr. Reiskin, both of which essentially reiterated previous findings and conclusions, and a January 31, 1995 letter from Dr. Blundon. Appellant also submitted additional medical evidence which he had submitted prior to previous Office decisions.

In a decision dated February 9, 1996, the Office denied appellant's request for reconsideration, finding that the evidence submitted was not sufficient to warrant modification.

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

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and who supports that conclusion with sound medical reasoning.⁴

In the present case, appellant has submitted ample rationalized, probative medical evidence, which is unrefuted, which indicated that he still suffered residual pain from his May 19, 1987 employment injury, and which relates his disability for work as of August 14, 1992 to his May 19, 1987 employment injury. Appellant has submitted supporting medical evidence in the present case which consists of:

“(1) Dr. Mandel's January 19, 1993 medical report, in which he stated, [Appellant] returns with acute symptoms. He has again tried to return to limited work. He has had an increase in his symptomatology. . . . I feel that [appellant] has a chronic lumbar disc problem with intractable symptoms as a result of his work injury. I have little to offer him due to his other medical problems. At this time [appellant] is totally disabled due to his chronic lumbar condition and he has filed for a recurrence of his injury. On September 4, 1992 [appellant] returns with

³ In his letter requesting reconsideration, appellant referred to other medical evidence which he indicated would be included with his reconsideration request; however, this information was never received by the Office.

⁴ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

the same intractable symptoms. . . . His current symptoms remain unchanged. [Appellant] has a chronic lumbar problem which is a direct result of his employment injury and I feel he is unlikely to show improvement. . . . Since his [May 19, 1987 employment injury], he has had chronic lower back pain, caused by the damage he sustained to his lumbar discs at location L4 and L5, which occurred as a result of his injury. . . . His chronic back pain has increased due to the inability to tolerate anti-inflammatories and his condition progressed to total disability on or about August 14, 1992.

“(2) Dr. Mandel’s May 18, 1993 report, in which he advised that immediately prior to his injury appellant had no significant problems with his back and was working daily as a mailhandler. Dr. Mandel stated that appellant had been disabled from his job due to his job-related injury since August 14, 1992, that there was a direct causal relationship between his employment injury and his back problems, resulting in his inability to perform his job-related duties, and that the primary reason for his current problems was the May 19, 1987 employment injury.

“(3) Dr. Reiskin’s June 9, 1993 report, in which he stated that due to the May 19, 1987 employment injury appellant had experienced chronic back pain and limitation of motion, and that he had been unable to perform his regular job duties. Dr. Reiskin opined that appellant’s recurrence of disability was causally related to his work injury.

“(4) Dr. Rascher’s June 21, 1993 report, in which he stated that appellant continued to suffer the sequelae of his May 19, 1987 employment injury and was unable to take medication due to his chronic hepatitis. Dr. Rascher concluded based on reasonable medical certainty that he should retire due to his injuries.

“(5) Dr. Reiskin’s November 9, 1993 progress note, in which he stated that appellant consulted him on that date for the purpose of retiring on disability, a request which Dr. Reiskin considered reasonable, and advised that despite his compliance with all treatment recommendations, appellant still exhibited marked limitation of motions, spasms, and moderate-to-severe pain of the low back.

“(6) Dr. Blundon’s December 27, 1993, January 5, 1994 and January 31, 1995 reports. In his December 27, 1993 report, Dr. Blundon stated that the statement of accepted facts with which he was provided on August 8, 1989 indicated an acceptance of lumbosacral strain of May 19, 1987. He stated that, as of that day’s examination, appellant still required medical care. Dr. Blundon opined that the medical care appellant sought was still from the May 19, 1987 employment injury, and that, with a reasonable degree of medical certainty, appellant’s injury to his lumbar spine was attributable to his accident at work on May 19, 1987. In his January 5, 1994 report, Dr. Blundon stated that appellant was being treated for follow-up treatment of the injury to his lumbar spine from his accident at work of May 19, 1987. Dr. Blundon stated that appellant still had severe pain and tenderness in his back radiating up to the lumbar region and also down into the

sacroiliac area. Dr. Blundon advised that appellant was totally disabled with respect to work. In his January 31, 1995 report/letter to the Office, Dr. Blundon asserted that ‘Specifically you addressed the diagnosis of acute lumbar disc which was made at the time of the injury. It is very difficult, if not impossible, to make the diagnosis of acute lumbar disc solely on the clinical picture and usually a myelogram or MRI is made in conjunction with this diagnosis despite the initial clinical picture. The point remains that he had a significant injury to his lumbar spine on May 19, 1987 and it [has] gotten to the point where he [is] now totally disabled. Also you raised the issue of the first MRI showing a bulging disc and the second MRI showing degeneration. The reason that the disc had degenerated over the years is because of his accident at work of May 19, 1987. Now it [has] gotten so bad that he [is] unable to do his regular job and he [is] incapacitated.’

“(7) Dr. Rascher’s February 28, 1995 report, wherein he stated that he had reviewed appellant’s medical records concerning his work injury and had concluded, in accordance with his previous reports, that the evidence indicated that his back problems were caused solely by the 1987 work injury. Dr. Rascher advised that appellant’s injury was initially accepted incorrectly as a lumbar strain based on an emergency room diagnosis, and that a more accurate diagnosis was made on the basis an MRI which showed a herniated lumbar disc.⁵ Dr. Rascher specifically stated that, based on reasonable medical certainty, appellant continued to suffer the sequela of his May 19, 1987 employment injury.”

The Board finds that the evidence submitted by appellant, which contains a history of the development of the condition and a medical opinion that the condition found was consistent with the history of development, given the absence of any opposing medical evidence, is sufficient to require further development of the record.⁶ Although the medical evidence submitted by appellant is not sufficient to meet appellant’s burden of proof, the medical evidence of record raises an uncontroverted inference of causal relationship between appellant’s May 19, 1987 work injury and his alleged August 14, 1992 recurrence of disability, and is sufficient to require further development of the case record by the Office.

On remand, therefore, because the evidence in this case record has not been adequately developed, the Office must determine whether appellant met his burden of establishing that on August 14, 1992, he experienced a recurrence of his employment-related disability which was caused or aggravated by his May 19, 1987 employment injury, thereby entitling him to continuing compensation for total disability. Accordingly, the Office should further develop the medical evidence by requesting that the case be referred to a Board-certified neurosurgeon to submit a rationalized medical opinion on whether he sustained a recurrence of his employment-related lower back condition/disability as of August 14, 1992 which was caused or aggravated by

⁵ The Board notes that the Office never accepted the condition of herniated disc at L4-5, as indicated by reports from Drs. Blundon and Rascher.

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

his May 19, 1987 employment. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The February 9, 1996 and September 14, 1995 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
November 30, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member