

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID G. FROST and U.S. POSTAL SERVICE,  
POST OFFICE, Akron, OH

*Docket No. 98-241; Submitted on the Record;  
Issued October 25, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof in establishing that he sustained a recurrence of disability, due to the December 11, 1991 employment injury, commencing September 1, 1992 and September 1, 1993.

This case has previously been on appeal.<sup>1</sup> On the first appeal, the Board reviewed a November 14, 1994 decision, by which the Office of Workers' Compensation Programs found that appellant had failed to establish that his current disabling condition was causally related to his December 11, 1991 employment injury. The Office found that the September 22 and October 19, 1992 and November 9, 1993 opinions of appellant's treating physician, Dr. David A. Martin, a Board-certified internist with a specialty in rheumatology, and the February 2, 1994 opinion of Dr. Dennis B. Kolarik, a Board-certified orthopedic surgeon, that the aggravation of appellant's degenerative disc disease was directly related to the December 11, 1991 employment injury were not well rationalized, and therefore were insufficient to meet appellant's burden of proof. In its decision, the Board found that although Dr. Martin's opinion was not sufficient to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that appellant's degenerative disc disease and arthritis were aggravated by the December 11, 1991 employment injury, it constituted sufficient evidence in support of appellant's claim to require further development of the record by the Office. The Board therefore remanded the case, with instructions for the Office to prepare a statement of accepted facts and send the case record and appellant, if necessary, to a physician in the appropriate field of medicine for a reasoned opinion on whether appellant's degenerative disc disease and arthritis were causally related to the December 11, 1991 employment injury and whether appellant was disabled due to those conditions.

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<sup>1</sup> Docket No. 95-1336 (issued May 12, 1997). The facts and history surrounding the prior appeal are set forth in the prior decision and are hereby incorporated by reference.

On remand, the Office referred appellant to a second opinion physician, Dr. Charles J. Paquelet, a Board-certified orthopedic surgeon. In a report dated August 11, 1997, Dr. Paquelet considered appellant's history of injury, performed a physical examination, and reviewed the results of magnetic resonance imaging (MRI) scans dated August 8, 1989 and December 15, 1994. He stated that the 1989 MRI scan showed some degenerative changes in the posterior facets primarily at L4-5 and the 1994 MRI scan suggested a relatively mild spinal stenosis at L4-5 on the basis of degeneration of the posterior facets. Dr. Paquelet opined that based on appellant's medical history, the physical examination and the radiographic studies, appellant had facet hypertrophy with spinal stenosis at L4-5. He stated that the condition preexisted the December 11, 1991 employment injury as evidenced by the August 8, 1989 MRI scan. Dr. Paquelet opined that the December 11, 1991 employment injury temporarily aggravated the spinal stenosis on the basis of facet arthritis at L4-5 and the aggravation subsequently resolved itself without leaving any continuing impairment. He stated that appellant's present impairment was solely on the basis of spinal stenosis due to facet arthropathy at L4-5 and was not on the basis of the allowed claim of lumbosacral strain which would have resolved itself soon after the injury. Dr. Paquelet stated that appellant should not lift more than 10 pounds or stand for more than an hour at a time but these restrictions were based on the spinal stenosis at L4-5 and were not "specifically" the result of the December 11, 1991 employment injury.

In a report dated August 26, 1997, Dr. Paul T. Scheatzle, an osteopath with a specialty in physiatry, reviewed appellant's history of injury, performed a physical examination and reviewed an MRI scan and x-rays. Dr. Scheatzle opined that the MRI scan showed diffuse bulging of the discs at L4-5 and L5-S1, with the most significant problem being the bulge at L5-S1. He opined that the x-rays revealed significant loss of disc height at L5-S1 with both anterior and posterior spurs. Dr. Scheatzle diagnosed lumbar spine degenerative disc disease, facet arthritis and lumbar sprain/strain injury. He opined that it appeared that appellant sustained a recurrence of the December 11, 1991 employment injury due to the "recurrence of the like symptoms as well as mechanism of injury." Dr. Scheatzle stated that appellant could not perform his usual work which involved heavy, strenuous labor and was unable to perform light-duty work due to his inability to sit in one position for a prolonged period of time due to chronic back pain. He opined that appellant's back injury in conjunction with his age and physical condition would make him permanently, totally disabled.

By decision dated September 23, 1997, the Office denied the claim, stating that the evidence of record established that the claimed medical condition or disability is not causally related to the December 11, 1991 employment injury.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability causally related to the December 11, 1991 employment injury.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury.<sup>2</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical

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<sup>2</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986).

history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>3</sup>

In the present case, the opinion of Dr. Paquelet, the second opinion physician, which is complete and well rationalized, constitutes the weight of evidence. In his August 11, 1997 report, he considered the two MRI scans of record performed in 1989 and 1994 as well as appellant's history of injury and the results of his physical examination, and diagnosed facet hypertrophy with spinal stenosis at L4-5. Dr. Paquelet stated that the back condition preexisted the December 11, 1991 employment injury and that the employment injury temporarily aggravated the spinal stenosis based on the facet arthritis at L4-5 but subsequently resolved itself without leaving any continuing impairment. He therefore opined that appellant's present impairment which required lifting and standing restrictions was based solely on the spinal stenosis due to facet arthropathy at L4-5. Dr. Paquelet stated that the lumbosacral strain would have resolved itself soon after the December 11, 1991 employment injury. In his August 26, 1997 report, Dr. Scheatzle considered appellant's history of injury, performed a physical examination, and stated that he considered the x-rays and the MRI scan although he did not specify which MRI scan. He diagnosed lumbar spine degenerative disc disease, facet arthritis and lumbar sprain/strain injury and stated that appellant was permanently, totally disabled. Dr. Scheatzle opined that appellant had sustained a recurrence of disability of the December 11, 1991 employment injury based on "the recurrence of the like symptoms and the mechanism of injury." His opinion is not well rationalized and is incomplete as he did not explain the significance of the results of the MRI scans in 1989 and 1994 or explain the significance of appellant's preexisting back condition in terms of whether it was aggravated by the December 11, 1991 employment injury or to what extent, if any, it contributed to his current back condition.<sup>4</sup> Appellant has therefore provided insufficient evidence to meet his burden of establishing a recurrence of disability.

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<sup>3</sup> *Louise G. Malloy*, 45 ECAB 613, 617 (1994).

<sup>4</sup> *Id.*

The decision of the Office of Workers' Compensation Programs dated September 23, 1997 is hereby affirmed.

Dated, Washington, D.C.  
October 25, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member