

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN H. MOORE and U.S. POSTAL SERVICE,  
POST OFFICE, Plattsburgh, NY

*Docket No. 98-364; Submitted on the Record;  
Issued September 24, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of disability beginning August 15, 1995 causally related to his July 6, 1993 employment injury.

The Office of Workers' Compensation Programs accepted that appellant sustained a lumbar strain and a disc displacement by pulling a tub of mail on July 6, 1993. Appellant did not stop work at the time of the injury, but performed limited duty from July 7, 1993 until his return to his regular work on July 12, 1993. Appellant stopped work on November 13, 1993 and the Office paid him compensation for temporary total disability until his return to limited duty on January 27, 1994. The Office accepted that appellant sustained another recurrence of disability on April 21, 1994, and paid him compensation for temporary total disability until his return to limited duty for four hours per day on August 2, 1994.<sup>1</sup> Appellant again stopped work on August 11, 1994, claiming a recurrence of disability, and the Office paid him compensation for temporary total disability until his return to limited duty for four hours per day on June 5, 1995. Appellant increased his work hours to six per day on June 9, 1995 and to eight hours per day on July 1, 1995, whereupon the Office terminated his compensation for disability.

On August 15, 1995 appellant again stopped work and filed a claim for a recurrence of disability causally related to his July 6, 1993 employment injury. Appellant described the circumstances of the recurrence of disability: "The term recurrence is out of context. The problem was never rectified. The pain is in the same area of my back and now extends down the right leg. The drive to work sets up my workday. I am so stiff and in pain that the rest of the day is stressful and agonizing."

Appellant submitted medical evidence to support his claim for a recurrence of disability beginning August 15, 1995. In a report dated July 24, 1995, appellant's attending physician, Dr. Honorio T. Dispo, a Board-certified psychiatrist, stated, "On account of [appellant's]

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<sup>1</sup> During this period appellant returned to work for 2.05 hours on July 11, 1994 and 1.4 hours on July 13, 1994.

persistent back pain and pain down the leg which is aggravated by standing, walking and bending over as well as driving to and from work, I do not believe that he can continue working as a mail carrier.” In a report dated August 22, 1995, Dr. Dispo stated that appellant was seen that day “because of increasing back pain radiating down the legs.” Dr. Dispo stated, “With persistent low back pain and spasms and recurrences of his symptoms, I do not believe that [appellant] can continue working in his present job; therefore, he will be taken out of work.... He was told to find another job that does not require any prolonged standing, walking, sitting as well as bending of the spine....”

By decision dated September 8, 1995, the Office found that the evidence failed to establish a recurrence of disability causally related to appellant’s employment injury. The Office found that Dr. Dispo did not explain why appellant was no longer able to perform limited duty, and did not provide rationale relating appellant’s recurrence of disability to his original employment injury.

Appellant requested reconsideration and stated that his only relief from his back pain was medication that he could not take and drive to work. Appellant submitted a September 28, 1995 report from Dr. Dispo, in which the doctor diagnosed “Chronic low back pain with sciatica which is causally related to his accident of July 6, 1993.” Dr. Dispo stated, “It is my medical opinion that, even though [appellant] returned to work on June 5, 1995 on light duty, he continued to complain of persistent back pain and spasms and I believe the prolonged standing, walking and repetitious motion of the spine continued to aggravate his back and sciatic pain and he remained with disability even though he was working.”

By decision dated December 4, 1995, the Office refused to modify its prior decision, finding that Dr. Dispo’s account of appellant’s work was inaccurate and that the doctor did not attribute appellant’s recurrence of disability to his inability to take medications.

Appellant again requested reconsideration and submitted a January 13, 1997 report from Dr. Dispo, in which the doctor diagnosed “Recurrent and chronic low back pain with bilateral sciatica most likely from a central disc herniation.” Dr. Dispo stated that appellant was seen “because of progressive back pain and spasms radiating down the leg with more persistent numbness and paresthesias, more towards the right side. It is quite difficult for him now to sit in a car or in a chair for long periods of time as any kind of standing and walking as well as bending/twisting of the spine increases his symptoms.” Dr. Dispo noted that appellant also had “depression [that] is definitely from his chronic pain syndrome,” and concluded, “His disability at this time remains the same.”

By decision dated February 26, 1997, the Office refused to modify its prior decisions, finding that Dr. Dispo’s reports discussed appellant’s subjective complaints but did not show a change in the objective physical findings.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this 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>2</sup>

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

Following appellant's return to work on June 5, 1995 after his fourth accepted recurrence of disability related to his July 6, 1993 employment injury, he continued to be examined and treated on a regular basis by his attending physician, Dr. Dispo. In a report dated July 24, 1995, Dr. Dispo concluded that appellant was unable to continue working because of persistent back pain and pain down his leg. In a report dated August 22, 1995, Dr. Dispo stated that appellant was seen that date "because of increasing back pain radiating down the legs" and concluded that appellant could not continue working because of his "persistent low back pain and spasms and recurrences of his symptoms."

In his July 24 and August 22, 1995 reports, as well as in his later reports, Dr. Dispo attributed appellant's recurrence of disability to the standing, walking and twisting involved in his light-duty assignment. In a report dated September 28, 1995, Dr. Dispo made it clear that he was aware that appellant was performing light duty after his most recent return to work; the doctor nonetheless concluded, "I believe the prolonged standing, walking and repetitious motion of the spine continued to aggravate his back and sciatic pain...." In this report, Dr. Dispo also stated that appellant's chronic low back pain with sciatica was causally related to his July 6, 1993 injury. In a report dated January 13, 1997, Dr. Dispo stated that appellant had depression that was "definitely from his chronic pain syndrome." In this report, Dr. Dispo also stated, for the first time, that appellant's recurrent and chronic low back pain with bilateral sciatica were "most likely from a central disc herniation," and recommended further testing to determine the cause of the pain.

The reports of Dr. Dispo dated July 24, 1995 to January 13, 1997 while insufficient to meet appellant's burden of proof because they do not contain enough medical rationale they are sufficient to require further development by the Office. Moreover, these reports are similar to those upon which the Office relied to accept appellant's four prior recurrences of disability, and pain due to an employment-related condition can be the basis for payment of compensation for disability.<sup>3</sup> Given the absence of any medical evidence indicating that appellant's disability beginning August 15, 1995 is not causally related to his employment, the Board finds that the reports of Dr. Dispo raise an uncontroverted inference of causal relation sufficient to require development of the medical evidence by the Office.<sup>4</sup>

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<sup>2</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>3</sup> *See Sylvia Lucas (Richard Lucas)*, 32 ECAB 1582 (1981) (the Board found that the evidence established that the employee's symptom of angina pectoris was related to factors of his employment, and that the employee was entitled to compensation for the period of disability due to his angina pectoris).

<sup>4</sup> *See Lola M. Lewis*, 34 ECAB 823 (1983); *Daniel J. Gury*, 32 ECAB 261 (1980).

The decision of the Office of Workers' Compensation Programs dated February 26, 1997 is set aside and the case remanded to the Office for further action consistent with this decision of the Board, to be followed by an appropriate decision.

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

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member