

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDREW S. MUSUMECI and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Flushing, NY

*Docket No. 98-475; Submitted on the Record;
Issued September 22, 1999*

DECISION and ORDER

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

The issue is whether appellant has established a recurrence of disability commencing May 25, 1994.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained cellulitis in the performance of duty on January 1, 1994, when appellant fell and hit his left shin on a tractor step. Appellant was hospitalized from January 2 to January 28, 1994 and returned to a light-duty job on April 1, 1994. He filed a notice of recurrence of disability commencing May 25, 1994.

The Office initially denied the recurrence claim by decision dated August 15, 1994. By decision dated May 15, 1995, however, an Office hearing representative remanded the case for further development of the medical evidence, noting that appellant had submitted supporting evidence from his attending physician, Dr. Bruce Lowell, an internist.

In a decision dated September 18, 1995, the Office again denied appellant's claim for a recurrence of disability on or after May 25, 1994. By decision dated August 2, 1996, an Office hearing representative affirmed the prior decision. Following a request for reconsideration, the Office issued an October 22, 1997 decision denying modification of the claim.

The Board has reviewed the record and finds that this case is not in posture for a decision and requires further development of the medical evidence.

In this case, the Office referred appellant for a second opinion examination, based on the findings of an Office hearing representative in the May 15, 1995 decision. The reports of the referral physician, Dr. Harold Schechter, an internist, are of limited probative value and therefore additional development of the evidence is required. The recurrence claim in this case is for total disability commencing May 25, 1994. To be of probative value, the referral physician must specifically provide an opinion as to whether appellant was disabled for the light-duty job on or

after May 25, 1994, due to the employment injury, with supporting medical rationale. None of Dr. Schechter's reports provide a reasoned opinion on the relevant issue. In his initial report, dated July 10, 1995, Dr. Schechter diagnosed status post septic shock episode due to left leg cellulitis with subsequent postphlebitic syndrome and chronic left leg myalgia. He stated that appellant's condition was causally related to the January 1, 1994 injury and there was a "permanent, marked partial disability." Dr. Schechter did not provide further explanation. In a work capacity evaluation (Form OWCP-5c) dated July 10, 1995, he indicated that appellant could work zero hours per day.

The Office requested a supplemental report and in a report dated August 21, 1995, Dr. Schechter stated that the phlebitis developed as a result of the trauma and therefore there was a causal relationship with employment. Dr. Schechter opined that appellant "is disabled from performing light duty as a modified tractor operator. The rationale for this decision is that he has a chronic postphlebitic condition due to his employment injury."

In a report dated September 15, 1995, Dr. Schechter stated, "I have reviewed the job description provided by your office for a modified tractor trailer operator. It appears that the job is a sedentary clerical type position. In my opinion, the patient can pursue employment of this nature with restrictions on prolonged standing of more than ten minutes every hour and prolonged walking."

The Board finds that Dr. Schechter's reports are inconsistent and not well rationalized regarding the nature and extent of appellant's employment-related disability. Moreover, he does not address the relevant time period, which in this case is the period commencing May 25, 1994. As the Office sought the opinion of Dr. Schechter, it has the responsibility to obtain a report which adequately addresses the issues presented in the case.¹ Accordingly, the case will be remanded to the Office to secure a reasoned medical opinion, based on a complete and accurate factual and medical background, as to any employment-related disability on or after May 25, 1994. After such further development as the Office deems necessary, it should issue an appropriate decision.

¹ See *Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981).

The decision of the Office of Workers' Compensation Programs dated October 22, 1997 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
September 22, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member