

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GERALD R. BROWN and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Pittsburgh, PA

*Docket No. 97-2158; Submitted on the Record;  
Issued January 3, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a recurrence of disability causally related to his May 4, 1985 employment injury; and (2) whether appellant met his burden of proof to establish that he sustained an emotional condition causally related to factors of employment.

On May 4, 1985 appellant, then a 36-year-old mailhandler, sustained an employment-related exacerbation of lumbar disc disease.<sup>1</sup> He stopped work that day, received appropriate compensation and returned to limited duty, four hours per day, on April 3, 1995 and continued to receive wage-loss compensation for four hours per day. On August 26, 1996 he filed a recurrence claim, stating that he had to stop work on August 8, 1996 due to pain and discomfort in his low back. Appellant also alleged that his back condition caused depression and, following development by the Office of Workers' Compensation Programs, in a March 20, 1996 decision, the Office denied that appellant sustained an emotional condition causally related to his employment injury. By decision dated October 23, 1996, the Office denied that appellant sustained a recurrence of disability on August 8, 1996 causally relationship to the May 4, 1985 employment injury. Appellant requested a hearing that was held on January 28, 1997. In an April 9, 1997 decision, an Office hearing representative affirmed the October 23, 1996 decision finding that appellant did not sustain a recurrence of disability on August 8, 1996. The Office

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<sup>1</sup> The record indicates that on July 20, 1980 appellant sustained an employment-related back injury and underwent authorized excision of herniated discs at L4-5 and L5-S1. The Office subsequently accepted lumbar radicular syndrome as work related.

hearing representative vacated the March 20, 1996 decision for further development regarding the issue of whether appellant's emotional condition was employment related.<sup>2</sup> The instant appeal follows.

The Board finds that this case is not in posture for decision regarding whether appellant sustained a recurrence of disability.

When an employee, who is disabled from the job he or she held when injured on account of employment residuals, returns to a light-duty position or the medical evidence of record establishes that he or she 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 show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>3</sup>

Causal relationship is a medical issue,<sup>4</sup> and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>5</sup>

The medical evidence relevant to appellant's recurrence claim includes an attending physician's report dated September 4, 1996, in which Dr. Robert G. Edwards, appellant's treating family practitioner, diagnosed lumbar disc disease and radiculopathy and severe depression. He advised that appellant was and continued to be totally disabled, beginning on August 8, 1996 and checked the "yes" box, stating that the condition was from a previous work injury. Dr. Edwards

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<sup>2</sup> Thus, the issue of whether appellant established that he sustained an emotional condition causally related to factors of employment is in an interlocutory position. The Board further notes that appellant initially requested a hearing regarding the March 20, 1996 decision and filed an appeal with the Board regarding the October 23, 1996 decision. In an order dated December 18, 1996, the Board dismissed the appeal on the grounds that it had been withdrawn by appellant. The Office hearing representative found that appellant had also requested a hearing regarding the October 23, 1996 decision and made findings accordingly.

<sup>3</sup> *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>4</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>5</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

noted that appellant had been hospitalized from August 16 to 22, 1996.<sup>6</sup> In a report dated September 19, 1996, Dr. Edwards advised:

“Please know that [appellant] is being treated for lumbar disc disease with right L5 radiculopathy. He is status post laminectomy at L4-5 and L5-S1 on the right. He had been released to light duty within the [employing establishment] and experienced an exacerbation of symptoms, especially pain, in his low back area radiating down his right lower extremity. He also experienced some weakness and numbness in the same distribution. We evaluated [him] on August 9, 1996 and found symptomatology and functional deficits correlating so that an [MRI] [scan] was obtained [which] showed a diffuse disc bulge at L4-5 which is asymmetric to the right with superimposed right lateral disc herniation resulting in narrowing of the right neural foramen.

“Because of worsening symptomatology and functional deficits, he was admitted to the University of Pittsburgh Medical Center wherein he was evaluated by our medical team and consultation to neurosurgery was obtained. The neurosurgical consultants agreed with our evaluation and to this point surgical intervention has been entertained but not implemented. [Appellant’s] exacerbation has a work related relationship in our estimate. At present he is being treated with conservative measures....

“Again, it is our opinion with a reasonable degree of medical certainty that this exacerbation is related to his light-duty activities and does bear relationship to his injuries sustained in May of 1985.”

In a November 27, 1996 report, Dr. Levin, who is an assistant professor of anesthesiology and pain management, advised that appellant’s ongoing pain symptoms dated back to his initial injury in 1980, concluding:

“[Appellant] has never been pain-free since the initial injury despite his efforts at returning to work. [His] ongoing pain was approximately three weeks prior to my evaluation of him in the hospital on August 18, 1996. It is my opinion that [his] ongoing pain was exacerbated by his light-duty activities.”

In a February 14, 1997 report, Dr. Levin clarified that appellant reported that he had been pain free from the time of his surgery following the 1980 injury until the May 4, 1985

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<sup>6</sup> Appellant also submitted a discharge summary dated August 28, 1996 in which Dr. Edwards noted that appellant was hospitalized on August 16, 1996 for pain control due to a three- to four-week history of worsening back pain with radiation to his right leg and for neurological evaluation of his spinal condition. An August 14, 1996 magnetic resonance imaging (MRI) scan of the lumbar spine revealed a diffuse disc bulge at L4-5 and moderate stenosis at L3-4. An August 20, 1996 lumbar myelogram demonstrated arachnoiditis which appeared mild from L1-3 and severe from L3-4 to the termination of the terminal sac at S1 and severe spinal stenosis at L4-5, slightly less severe at L3-4, and moderate stenosis at L2-3. Appellant was seen in consultation by Dr. Steven C. Levin, a Board-certified anesthesiologist, and Dr. William C. Welch, a Board-certified neurosurgeon. He was discharged from the hospital on August 22, 1996. Dr. Welch also provided a September 11, 1996 report in which he did not discuss the cause of appellant’s condition or his degree of disability.

employment injury and concluded “[Appellant] has attempted reentry into work in the form of light-duty activity, but frequent flares of pain made even these light duties unbearable.”

While the reports of Drs. Edwards and Levin are insufficient to establish entitlement, the fact that they contain deficiencies preventing appellant from discharging his burden does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished. Dr. Edwards indicated that appellant could not work due to his employment-related condition and Dr. Levin advised that appellant’s condition in 1996 was employment related. Their opinions are thus sufficient to require further development of the record.<sup>7</sup> It is well established that proceedings under the Federal Employees’ Compensation Act<sup>8</sup> are not adversarial in nature,<sup>9</sup> and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>10</sup> On remand the Office should refer appellant to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant’s accepted condition on August 8, 1996 was exacerbated to the point that he could not perform his light-duty work for the period in question. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The Board further notes that it will not act on appellant’s emotional condition claim as this is in an interlocutory posture.

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<sup>7</sup> See *Lourdes Davila*, 45 ECAB 139 (1993); *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant’s claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second opinion evaluation regarding the recurrence of disability.

<sup>8</sup> 5 U.S.C. §§ 8101-8193.

<sup>9</sup> See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

<sup>10</sup> See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

The decision of the Office of Workers' Compensation Programs dated April 9, 1997 is set aside regarding whether appellant established that he sustained a recurrence of disability. The case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.  
January 3, 2000

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member