

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID P. TROIE and U.S. POSTAL SERVICE,  
POST OFFICE, Springfield, MA

*Docket No. 98-1483; Submitted on the Record;  
Issued January 28, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on or after June 23, 1995 due to his February 4, 1988 or February 23, 1994 employment injury.

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

On February 4, 1988 appellant, then a 40-year-old mechanics helper, sustained an "acute moderate lower lumbar strain" while lifting a heavy mail container. Appellant returned to work in a light-duty position.<sup>1</sup> On February 23, 1994 appellant sustained a low back injury when he slipped and fell at work.<sup>2</sup> Appellant again returned to work in a light-duty position. In July 1995, appellant alleged that he sustained a recurrence of disability on June 23, 1995 due to his employment injuries. Appellant indicated that he experienced severe back pain after he began coughing at work on June 19, 1995. By decision dated November 28, 1995, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after June 23, 1995 due to his February 4, 1988 or February 23, 1994 employment injury. By decision dated and finalized October 22, 1996, an Office hearing representative affirmed the Office's November 28, 1995 decision. The Office hearing representative determined that appellant's June 19, 1995 coughing incident was an intervening cause which negated a finding that he sustained an employment-related recurrence of disability. By decision dated March 24, 1997, the Office affirmed its prior decisions on the grounds that appellant did not submit sufficient medical evidence to establish that he sustained a

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<sup>1</sup> Appellant periodically missed work due to medical problems, including periods beginning January 17, 1989 when he experienced a sharp pain in his back after coughing. In a decision dated between 1992 and 1995, the Office of Workers' Compensation Programs denied appellant's claim that he sustained an employment-related recurrence of disability beginning January 17, 1989.

<sup>2</sup> The Office characterized the injury as "back pain."

recurrence of disability on or after June 23, 1995 due to his February 4, 1988 or February 23, 1994 employment injury. The Office noted that appellant's June 19, 1995 coughing incident did not constitute an intervening cause.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 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>3</sup> However, it is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>4</sup>

In support of his claim, appellant submitted a September 6, 1996 report in which Dr. Marc A. Linson, an attending Board-certified orthopedic surgeon, determined that he sustained an employment-related recurrence of disability on June 23, 1995. In his report, Dr. Linson indicated that he had treated appellant since June 1990 and discussed appellant's factual and medical history including his February 4, 1988 and February 23, 1994 employment injuries. Dr. Linson discussed his treatment of appellant in mid 1995 and stated, "To the best of my knowledge he has never been able to resume regular duty, full and normal duty, or to be free of his back pain since his February 1988 work injury, and the exacerbation that had occurred in June 1995 requiring two weeks out of work was to the best of my knowledge and based on the information provided to me by [appellant], causally related to the 1988 work injury."<sup>5</sup>

The Board notes that, while the opinion of Dr. Linson is not completely rationalized, it indicates that appellant sustained an employment-related recurrence of disability on June 23, 1995, and is not contradicted by any substantial medical or factual evidence of record. Therefore, while the opinion is not sufficient to meet appellant's burden of proof to establish his claim, it raises an uncontroverted inference between appellant's claimed recurrence of disability and the accepted employment injuries, and is sufficient to require the Office to further develop the medical evidence and the case record.<sup>6</sup>

Accordingly, the case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained a recurrence of disability on or after June 23, 1995 due to his February 4, 1988 or February 23, 1994 employment injury.<sup>7</sup> The Office should

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<sup>3</sup> *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>4</sup> *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

<sup>5</sup> The record also contains brief reports of Dr. Linson regarding his treatment of appellant in mid 1995.

<sup>6</sup> See *Robert A. Redmond*, 40 ECAB 796, 801 (1989).

<sup>7</sup> The Board notes that the Office properly determined in its March 24, 1997 decision that appellant's June 19, 1995 coughing incident was not the type of intervening cause which would not negate a finding that he sustained an employment-related recurrence of disability. *But cf. John R. Knox*, 42 ECAB 193, 198-99 (1990) (finding that the

prepare a statement of accepted facts and obtain a medical opinion on this matter. After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated March 27, 1997 is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.  
January 28, 2000

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Bradley T. Knott  
Alternate Member

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injury of appellant's knee during a nonwork-related basketball game was an independent intervening cause which negated employment-related causal relationship).