

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICTOR F. KOVALOSKI and U.S. POSTAL SERVICE,
POST OFFICE, Altoona, PA

*Docket No. 98-2568; Submitted on the Record;
Issued March 15, 2000*

DECISION and ORDER

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

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on September 30, 1997 causally related to the accepted January 11, 1996 lumbar strain.

On January 11, 1996 appellant, then a 45-year-old letter carrier, filed a claim for traumatic injury alleging that on that day he strained his lower back when he "bent to pick up a tray of mail."

In a medical report dated January 11, 1996, an attending physician noted that appellant "bent over to pick up a tray of mail, lifted it and had severe lower back pain." In a hospital report also dated January 11, 1996, it was noted that appellant "slipped a month ago and twisted his back at that time." In a medical report dated January 11, 1996, Dr. E.R. Karunaratne, Board-certified in diagnostic radiology, stated that he had read appellant's lumbosacral computerized tomography (CT) scan taken that day as normal. In a medical report dated January 13, 1996, Dr. Adam Trybus, Board-certified in diagnostic radiology, stated that he had read a CT scan of the lumbosacral spine taken on that date as revealing mild facet arthropathy at the L1-2 and L2-3 level, bulging annuli at L3-4 and L4-5 levels, bulging annulus at L5-S1 level and a possible small superimposed lateral disc protusion on the right of the region of the right neural foramen. In a medical report dated January 12, 1996, Dr. Philip W. Hoovler, Board-certified in family practice and a specialist in occupational medicine, related appellant's history of a January 11, 1996 injury, and noted pain in the lower back area and down both legs. He found that appellant had lumbar spine strain. In a medical report dated January 15, 1996, Dr. Joseph A. Basile, appellant's treating physician and an orthopedic surgeon, noted that appellant "lifted a tray of magazines at work [and] immediately felt pain in both legs to knee and lower back-buttock. On Saturday [January 13, 1996] [appellant] blew his nose and the pain got worse, went to [the] [emergency] [room]...." He noted that appellant was symptomatic with left-sided pain, right radicular pain to thigh across the back.

In a medical report dated January 17, 1996, Dr. Michael-G. Moncman, appellant's treating osteopath, stated that appellant "bent to pick up magazines -- developed low back, right leg pain." He diagnosed appellant with herniated nucleus pulposus L5-S1, right and noted by way of checkmark that appellant's condition was employment related. In a medical report dated January 23, 1996, Dr. Moncman stated that he had examined appellant on January 17, 1996 and reported findings. He noted a familiarity with appellant's January 11, 1996 work-related injury and his January 13, 1996 incident at home when he sneezed causing severe back pain. Dr. Moncman reviewed the January 13, 1996 CT scan and determined that appellant had a right-sided L5-S1 foraminal disc herniation with right lumbosacral radiculopathy.

On February 27, 1996 the Office of Workers' Compensation Programs noted that it had accepted appellant's claim for lumbar strain. The Office noted, however, that it did not accept a herniated disc as work related "at this time." The Office requested that appellant describe an earlier injury which he related in a hospital report he had received.

In a duty status report dated February 27, 1996, Dr. Moncman stated that appellant's herniated nucleus pulposus at L5-S1 was causally related to his January 11, 1996 work-related injury. In a medical report dated February 28, 1996, he stated that appellant's lumbosacral radiculitis secondary to herniated disc had resolved and that appellant was released to return to work. In a medical report dated March 28, 1996, Dr. Moncman stated that appellant was "pain free," that he "is working at full duty without difficulty" and that "[H]is lumbar radiculopathy is resolved."

On September 30, 1997 appellant filed a claim for recurrence of disability. He noted that he "still had lower back pain after approximately 6 months" and that the pain was the same as when he initially injured his back. Appellant noted that he had received treatment from Dr. Victor Rizzo, a chiropractor, on "at least 3 or 4 occasions." In support of his claim for recurrence of disability, appellant submitted an October 9, 1997 medical report from Dr. Moncman. In that report he noted that appellant had a herniated nucleus pulposus at right L5-S1 and that his lumbar radiculopathy had resolved with conservative care. Upon examination that day, Dr. Moncman noted that appellant had right lumbosacral radiculitis/radiculopathy. In relating appellant's history on injury, he noted that appellant complained "of low back and right buttock and right leg pain of two weeks' duration. This began after he lifted a tray of 'flats.' Chiropractor Rizzo gave him only temporary relief."

In a narrative dated November 4, 1997, appellant stated that on January 11, 1996¹ as he bent down to pick up a two-foot tray of flats he "experienced a sharp burning pain from my lower back to the bottom of my feet." He then stated that later that night he sneezed and collapsed in severe pain and sought emergency care. A CT scan taken at that time was read by Dr. Moncman as revealing a herniated disc. After physical therapy, appellant stated that he was released to return to work but that after 2 to 4 months the pain in his back returned. Chiropractic care for over six months was ineffective at which time he returned to Dr. Moncman who in a medical report dated November 5, 1997 stated that appellant sustained a herniated disc at L5-S1 on January 11, 1996 as determined by CT scan. Dr. Moncman then noted that appellant had improved with conservative care and physical therapy, but that he was again symptomatic with

¹ Appellant cited January 10, 1996 vice January 11, 1996.

pain starting in mid-September 1997 after he lifted a tray of flats at work. He requested authorization for an L5-S1 microdisc surgery.

By letter dated December 31, 1997, the Office noted that appellant was required to submit additional information before it could process his claim.

In a narrative dated January 25, 1998, appellant stated that his January 11, 1996 injury occurred when he attempted to lift a tray of magazines from ground level to a shelf which was approximately 40 inches off the ground. He then noted that he had injured himself on November 18, 1995 when he had fallen on some ice but that he had not sought medical treatment at that time.

By decision dated March 2, 1998, the Office denied appellant's claim for a September 30, 1997 recurrence of disability. In an attached memorandum, the Office noted that appellant's alleged recurrence of disability was caused by a herniated nucleus pulposus which had not been accepted by the Office and that therefore the evidence of file was insufficient to establish that appellant's claimed recurrence of disability was causally related to his January 11, 1996 work-related injury of lumbar strain.

By letter dated March 26, 1998, appellant requested reconsideration of the Office's March 2, 1998 decision denying benefits. In a medical report dated March 6, 1998 and received by the Office on March 26, 1998, Dr. Moncman stated that appellant "did well until mid September 1997 when he returned to my office with a history of having lifted a tray of 'flats' at work."

By decision dated June 5, 1998, the Office denied appellant's application for review on the grounds that Dr. Moncman's report noted that appellant had returned to work and then sustained an intervening incident in September 1997 when appellant lifted a tray of flats. The Office noted that a recurrence of disability is defined as a spontaneous return or increase of disability due to a previous injury or occupational disease without intervening cause. A recurrence differs from a new injury in that with a recurrence, no event other than the previous injury accounts for the disability. The Office noted that the medical evidence indicated that appellant had "experienced a new work incident" and that the medical evidence did not establish that appellant sustained a recurrence of the original injury. It noted, however, that if appellant wished to claim a new injury he would need to file a new claim and describe the activity that led to a return of his symptoms.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability on September 30, 1997 causally related to the accepted January 11, 1996 work-related injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history,

concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

In the present case, the Office accepted that the January 11, 1996 work-related injury caused lumbar strain. However, there is no medical evidence of record which provides the necessary causal relationship to establish that appellant's alleged recurrence of disability on September 30, 1997 was causally related to the accepted lumbar strain of January 11, 1996. The medical evidence currently on file fails to demonstrate that the claimed recurrence of disability of September 30, 1997 was causally related to the accepted employment injury of January 11, 1996. Appellant's treating physician addressed a separate injury occurring in mid September 1997 based on his history of injury as noted in the doctor's November 5, 1997 and March 6, 1998 medical reports. This new incident, however, represents intervening factors which might support a new traumatic injury, not a recurrence of disability causally related to the January 11, 1996 accepted injury. Further, the medical evidence submitted in support of appellant's September 30, 1997 claim for recurrence of disability indicates that appellant's condition was caused by his herniated nucleus pulposus, a condition which the Office specifically stated it had not accepted in its February 27, 1996 acceptance letter.

Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability on September 30, 1997 was causally related to the accepted January 11, 1996 lumbar strain. Accordingly, the Office of Workers' Compensation Programs' June 5 and March 2, 1998 decisions are hereby affirmed.

Dated, Washington, D.C.
March 15, 2000

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

² *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1989); *Robert H. St. Onge*, 43 ECAB 169 (1992).