

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES ALDOUS and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Syracuse, NY

*Docket No. 00-2529; Submitted on the Record;
Issued August 1, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability on September 10, 1999 causally related to his April 15, 1999 employment injury.

On April 15, 1999 appellant, then a 52-year-old mailhandler, filed a notice of traumatic injury alleging that he hurt his back while bending and dumping mail into a hamper. The Office of Workers' Compensation Programs accepted the claim for a lumbosacral strain. Appellant did not miss any time but was placed on limited duty. He later sustained a recurrence of disability on July 2, 1999 and received wage-loss compensation from July 7 until September 8, 1999, when he was approved for limited duty with restrictions of no lifting more than 10 pounds and intermittent twisting and bending.

On September 17, 1999 appellant filed a claim for a recurrence of disability beginning September 10, 1999, alleging that within three days of returning to work, the pain in his back and leg returned.

In a June 7, 1999 report, Dr. Richard A. Maun, a Board-certified orthopedic surgeon, noted that appellant was seen in consultation for a history of low back pain related to a lifting injury at work that occurred "approximately seven weeks ago." He reported physical findings and discussed appellant's x-ray findings. Dr. Maun diagnosed a "ruptured disc of the lumbar spine with minimal residual symptomatology." He prescribed medication and recommended that appellant not lift more than 20 pounds while on limited duty.

A magnetic resonance imaging (MRI) scan of the lumbar spine on August 13, 1999 revealed a prolapsed disc at L5-S1 with an annular tear on the left side.

In an August 23, 1999 report, Dr. Maun noted that appellant's back condition was resolving, but that he still complained of tightness in the left leg compared to the right leg. Dr. Maun stated: "I would recommend that he stay off work until after Labor Day, and then he can return to work. We will see him again after he has been back to work for about a week." On

September 1, 1999, Dr. Maun advised that appellant could resume limited duty on September 8, 1999.¹

In a September 14, 1999 treatment note, Dr. Maun noted appellant's pain had started bothering him again in both the upper and lower leg on the left side. He further noted that appellant complained of numbness in the lateral foot. The diagnosis was recurrent ruptured disc by history. Dr. Maun stated: "We are going to try to get a repeat MRI exam[ination] to see if there are any additional findings to explain his recurrent discomfort. I think he is temporarily, at least totally disabled for now."

An MRI on October 22, 1999 showed a prolapsed disc at L5-S1 to the left of the midline, annular tear with bulging disc along the posterior border at the level of L4-5, and mild bulging at L3-4.

In an October 26, 1999 treatment note, Dr. Maun reported that appellant's MRI came back with symptoms consistent with a large disc rupture at L5-S1 on the left side, and a smaller, more central rupture at L4-5. The doctor indicated that appellant had failed to improve clinically and therefore recommended surgical decompression to relieve appellant's leg pain.

In a decision dated November 15, 1999, the Office denied compensation for a recurrence of disability on the grounds that the evidence was insufficient to establish either a change in the nature or extent of appellant's injury-related disability, or a change in the nature and extent of his light-duty position.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability on September 10, 1999.²

When an employee, who is disabled from the job he or she had when injured on account of employment-related residuals returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of disability and to show that the light duty can not be performed. As part of the burden of proof, 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.³

In this case, appellant's treating physician, Dr. Maun took appellant off work on September 10, 1999 based on his complaints of bilateral leg pain. He ordered an MRI on October 1, 1999, which showed essentially the same findings reported on an August 13, 1999 MRI scan. Dr. Maun did not offer an opinion explaining whether appellant was totally disabled

¹ He also prepared a duty status report outlining appellant's work restrictions.

² Appellant submitted evidence subsequent to the Office's November 15, 1999 decision. The Board lacks jurisdiction to consider evidence that was not before the Office at the time it issued its final decision. 20 C.F.R. § 501.2(c). This decision does not preclude appellant from resubmitting the evidence to the Office along with a request for reconsideration.

³ *Gary L. Whitmore*, 43 ECAB 441 (1992); *Cloteal Thomas*, 43 ECAB 1093 (1992).

after September 10, 1999 based on the accepted employment injury. He failed to provide a reasoned medical opinion addressing why appellant was not capable of performing light-duty work. On examination, he noted appellant's subjective complaints of pain. There is insufficient medical evidence to establish that appellant sustained a change in the nature or extent of his limited-duty assignment, or a change in his accepted medical condition. Therefore, the Board finds that appellant has failed to carry his burden of proof. Accordingly, the Office properly denied compensation.

The decision of the Office of Workers' Compensation Programs dated November 15, 1999 is hereby affirmed.

Dated, Washington, DC
August 1, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member