

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY A. DURAN and U.S. POSTAL SERVICE,
POST OFFICE, Santa Fe, NM

*Docket No. 00-2681; Submitted on the Record;
Issued November 15, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability on January 26, 2000 causally related to his accepted October 15, 1998 employment injury.

On May 13, 1999 appellant, then a 39-year old distribution clerk, filed a claim for an occupational disease, alleging that on October 15, 1998 he first realized that his left ankle condition was caused by factors of his employment. Appellant stopped work on February 8, 1999.¹

By letter dated July 14, 1999, the Office of Workers' Compensation Programs accepted appellant's claim for aggravation of thrombophlebitis of the left leg.

On May 7, 2000 appellant filed a claim alleging that he sustained a recurrence of disability on January 26, 2000 and stopped work.

By letter dated May 23, 2000, the Office advised appellant to submit factual and medical evidence supportive of his claim.

In a July 31, 2000 decision, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on January 26, 2000 causally related to his October 15, 1998 employment injury. In an August 23, 2000 letter, appellant requested reconsideration of the Office's decision and submitted factual and medical evidence.

By decision dated September 18, 2000, the Office denied appellant's request for modification after a merit review of the claim.

Initially, the Board finds that the September 18, 2000 decision of the Office is null and void. The Board and the Office cannot have jurisdiction over the same issue in the same case at

¹ Appellant returned to full-duty work effective October 5, 1999.

the same time.² Appellant's application for review of the July 31, 2000 decision denying his recurrence claim was docketed by the Board on August 23, 2000. On this same date, appellant requested reconsideration of the Office's July 31, 2000 decision. Inasmuch as the issue of whether the Office properly denied appellant's claim for compensation is the same in both requests, the Office had no jurisdiction to issue the September 18, 2000 decision denying merit review of appellant's request. That decision is, therefore, deemed null and void.³

The Board also finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability on January 26, 2000.

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.⁴

In support of his recurrence claim, appellant submitted a January 11, 2000 disability certificate of Dr. Edward Ward, a Board-certified internist, revealing a diagnosis of gout, ankle fracture with orthopedic hardware, severe thrombophlebitis and status post varicose vein surgery. Dr. Ward noted that appellant's increased venous insufficiency commenced in 1998 and would continue through his life. He added that appellant was able to perform the duties of his position. Dr. Ward failed to address whether appellant's conditions were caused by his October 15, 1998 employment injury.

Similarly, Dr. Ward's reports dated February 11, March 7, May 8 and June 8, 2000, finding that appellant was disabled from work, failed to address whether appellant's disability was caused by his October 15, 1998 employment injury.

Dr. Ward's February 10, 2000 supplemental report indicated a date of injury as September 21, 1998. Dr. Ward stated that on November 2, 1995 appellant fell at work and sustained a fracture of the left distal tibia. He also diagnosed gout, osteoarthritis, venous insufficiency and recurrent thrombophlebitis.⁵ He indicated that appellant was disabled and that the cause of appellant's conditions was unknown.

In his March 7, 2000 attending physician's report, Dr. Ward provided a description of the injury at work on November 2, 1995. Appellant then slowly developed osteoarthritis, gout,

² *Arlonia B. Taylor*, 44 ECAB 591, 597 (1993); 20 C.F.R. § 501.2(c).

³ *Cf. Douglas E. Billings*, 41 ECAB 880, 893 (1990) (finding that the Office had jurisdiction to issue a decision on a matter unrelated to the issue on appeal before the Board).

⁴ *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁵ The record indicates that appellant filed a claim for the injury he sustained on November 2, 1995.

venous insufficiency and recurrent thrombophlebitis. Dr. Ward indicated that appellant's conditions were caused or aggravated by an employment activity by placing a checkmark in the box marked "yes." He stated that appellant's obesity also was a contributing factor, but that most of the problems followed the work injury.

The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form question on whether the claimant's disability was related to employment is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁶ Dr. Ward failed to explain how or why appellant's conditions were caused or aggravated by his November 2, 1995 injury.

Inasmuch as appellant has failed to submit rationalized medical evidence establishing that he sustained a recurrence of disability beginning January 26, 2000 causally related to his October 15, 1998 employment injury, he has failed to satisfy his burden of proof.

The July 31, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 15, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁶ *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).