

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH ANNATONE and U.S. POSTAL SERVICE,
POST OFFICE, White Plains, NY

*Docket No. 01-1757; Submitted on the Record;
Issued April 2, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability beginning September 14, 2000 due to his January 19, 1999 employment injury.

On January 19, 1999 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he injured his neck and back when he fell on the pavement due to icy conditions. The Office of Workers' Compensation Programs accepted the claim for lumbar and cervical strains. Appellant returned to a light-duty job on January 21, 1999 working four hours per day which was increased to eight hours on February 20, 1999. The Office accepted that he sustained a recurrence of disability on May 27, 1999 and he returned to a limited-duty position on June 7, 1999.

On September 19, 2000 appellant filed a claim for a recurrence of disability commencing on September 14, 2000.

In a report dated October 27, 1999, Dr. Michael R. Miller, a Board-certified orthopedic surgeon, diagnosed cervical and dorsolumbar strains due to the January 19, 1999 employment injury. He opined that appellant had "no objective evidence of ongoing orthopedic disability" and was capable of performing his usual duties as a letter carrier without restriction.

In a report dated November 15, 2000, Dr. Kenneth A. Falvo, a second opinion Board-certified orthopedic surgeon, diagnosed cervical and low back strains which had both resolved. He concluded that appellant had no disability due to his accepted employment injury and capable of performing his usual duties as a letter carrier. Dr. Falvo concluded that appellant had not sustained a recurrence of disability on September 14, 2000 as x-rays of the cervical spine revealed "no clinical evidence today of an acute process involving the cervical spine or right upper extremity."

In a treatment note dated November 21, 2000, Dr. William J. Walsh, Jr., an attending Board-certified orthopedic surgeon, concluded that appellant was totally disabled. He noted that

appellant continued to have low back and neck pain and “[t]he neck pain is most prominent and radiates into the right upper extremity and is associated with tingling and numbness in the right upper extremity.” A physical examination revealed “guarding of the cervical motion in all directions. There is cervical paravertebral muscle spasm and tenderness. There is weakness of grasp of the right hand.”

By decision dated December 29, 2000, the Office denied appellant’s claim for a recurrence of disability.

Appellant requested reconsideration by letter dated January 13, 2001 and submitted an October 17, 2000 report by Dr. Elliot Gross, a Board-certified neurologist, an October 17, 2000 report by Dr. Charles M. Toterò, a Board-certified orthopedic surgeon, and progress notes dated September 14 and 25, October 24, November 21 and December 19, 2000 report by Dr. Walsh, a September 20, 2000 report by Dr. Seth L. Neubardt and an August 2, 2000 magnetic resonance imaging (MRI) test by Dr. Yaron Lebovitz.

In a September 20, 2000 report, Dr. Neubardt diagnosed chronic cervical and lumbar strain. He noted that appellant’s range of motion in his neck was “near full in flexion/extension and lateral rotation to the left but he is unable to rotate beyond neutral.”

Dr. Toterò, in an October 17, 2000 report, noted 10 to 15 degrees restriction of range of motion in appellant’s cervical spine and noted appellant reacted “painfully to even light touch of the paracervical and trapezial musculature.” He diagnosed cervical and lumbar strains which he opined appeared to be causally related to the January 19, 1999 employment injury “with aggravation of preexisting cervical and lumbar degenerative disc disease.” Dr. Toterò concluded that appellant had a mild partial disability based upon his review of the objective evidence and indicated that appellant could return to full-duty work with restrictions of no lifting over 30 pounds.

In an October 17, 2000 report, Dr. Gross diagnosed cervical and lumbar strains. Regarding causal relationship, he stated:

“If the history presented by the claimant is accurate then subsequent complaints are related to the accident of January 19, 1999. This is superimposed upon preexisting disc disease, which recently caused an aggravation of his symptoms.”

On April 3, 2001 the Office denied appellant’s request for modification. The Office found the new evidence failed to establish that he was unable to perform his light-duty position or that there was a change in his medical condition.

The Board finds that appellant has not established that he sustained a recurrence of disability beginning September 14, 2000 due to his January 19, 1999 employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a limited or light-duty position or the medical evidence of record establishes that he can perform the duties of 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 limited-duty requirements.¹

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his January 19, 1999 employment injury.² This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.³

In this case, appellant has not shown a change in the nature and extent of his light-duty job requirements, nor has he submitted sufficient medical evidence to show a change in the nature and extent of his injury-related condition. In support of his claim, he submitted reports from Drs. Gross, Neubardt, Toterò and Walsh and an August 2, 2000 MRI test by Dr. Lebovitz. Dr. Walsh indicated in his various reports that appellant was totally disabled from his work. Dr. Gross, in his opinion, stated that appellant has a preexisting disc disease and that appellant's subsequent complaints were related to his accepted employment injury. However, the reports by both Drs. Gross and Walsh do not explain how appellant's injury had worsened or explain why appellant became totally disabled from working on September 14, 1999. Dr. Toterò's opinion is also insufficient to support appellant's burden as the physician opined that appellant was capable of working with restrictions on lifting. Lastly, while Dr. Neubardt diagnosed chronic cervical and lumbar strain, he provided no opinion as to whether appellant was currently disabled or if he was disabled, the cause of the disability.

The Board has held that medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.⁴ In this case, Dr. Walsh's reports merely concluded that appellant was totally disabled due to his employment injury. As no explanation or rationale was provided, these reports are of diminished probative value. Furthermore, the remaining medical evidence does not support appellant's contention that he sustained a recurrence of total disability due to his accepted employment injury.

¹ *Barry C. Peterson*, 52 ECAB ____ (Docket No. 98-2547, issued October 16, 2000); *Carlos A. Marrero*, 50 ECAB 117 (1998); *Terry R. Hedman*, 38 ECAB 222 (1986).

² *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes G. Davila*, 45 ECAB 139, 142 (1993); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

³ *Alfred Rodriguez*, 47 ECAB 437, 441 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

⁴ *William C. Thomas*, 45 ECAB 591 (1994).

The decisions of the Office of Workers' Compensation Programs dated April 3, 2001 and December 29, 2000 are hereby affirmed.⁵

Dated, Washington, DC
April 2, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ The Board notes that, on appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 CFR § 501.2(c)(1).