

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD WEBSTER and U.S. POSTAL SERVICE,
POST OFFICE, Milwaukee, WI

*Docket No. 02-95; Submitted on the Record;
Issued August 28, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on August 12, 2000 causally related to his August 14, 1995 employment injury.

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

On December 11, 1998 appellant, a 36-year-old mailhandler, filed an occupational disease claim alleging that he suffered continued back pain and discomfort as a result of a traumatic injury sustained on August 14, 1995 while unloading mail from a hamper. He initially filed a claim for the injury, which was accepted by the Office of Workers' Compensation Programs for low back strain. On October 8, 1996 the Office denied compensation benefits and continuing medical treatment on and after August 20, 1996, on the grounds that the evidence failed to establish continuing disability as a result of the work-related injury of August 14, 1995. The Office denied reconsideration by decisions dated February 5 and October 27, 1997 and March 10, 1998.

In support of the December 11, 1998, occupational disease claim, appellant submitted medical documentation, which supported that he had a history of continued low back pain with a component of persistent left sciatica through February 1, 1999. On April 16, 1999 the Office accepted appellant's 1998 claim for left sciatica, however, periods of disability claimed by appellant from January 2, 1996 through May 3, 1999 were denied. He filed a notice of recurrence of disability on August 18, 2000 alleging that on August 12, 2000 appellant sustained a recurrence of disability causally related to his August 14, 1995 employment injury. By decision dated December 1, 2000, the Office denied his claim for recurrence of disability on August 12, 2000 causally related to his August 14, 1995 employment injury. Appellant through his attorney requested reconsideration on February 6, 2001. By decision dated June 27, 2001, the Office denied modification of its December 1, 2000 decision.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing August 18, 2000 and his August 14, 1995 employment injury.¹ 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.²

In this case, appellant filed an occupational disease claim alleging that he suffered from continual low back pain due to an August 14, 1995 employment injury. The Office, having found that appellant's low back pain attributed to the employment injury had resolved August 20, 1996, only accepted the 1998 claim for left leg sciatica established through medical evidence. Appellant filed a recurrence on August 18, 2000 alleging additional disability on August 12, 2000 attributed to the August 14, 1995 injury and stopped work on August 14, 2000.

In support of the recurrence claim, appellant submitted a report dated August 18, 2000, from Dr. John Fahey, an attending physician who stated that appellant had been recently hospitalized for severe lower back pain, sciatica and L4-5 disc herniation. He noted further that this was in the same place in his back as his original injury.

In a report dated August 31, 2000, Dr. Fahey related the facts of appellant's alleged recurrence; that on August 12, 2000 appellant suffered from instantaneous pain in his lower back and left leg while walking on a beach. He further related that appellant experienced several episodes of severe back and left leg pain when he attempted to sit down. Dr. Fahey reported that appellant complained of low back and left leg pain and following an examination, he diagnosed degenerative disc disease L4-5 and L5-S1. He stated that appellant was hospitalized for four days for bed rest and pain medication and recommended that appellant remain off work for one week until reevaluated.

Dr. Marshall Cushman, the second opinion physician and Board-certified neurologist, agreed with Dr. Fahey that appellant's current condition was connected to the August 1995 employment injury. In a report dated January 9, 2001, Dr. Cushman related that in August 2000 while walking, appellant experienced a very sharp back pain with a muscle spasm, which ultimately required hospitalization and treatment. He diagnosed lumbar disc herniation with radiculopathy and also indicated that appellant had continued complaints of sciatica which had become progressive since the employment injury. Dr. Cushman noted that the computerized tomography (CT) scan done on September 1, 1995 demonstrated a central and left disc bulge, which was likely work related. He further stated that appellant's diagnosed condition was medically related to the injury of August 14, 1995, which had not resolved. He did indicate that it was impossible to determine whether appellant could have sustained the disc herniation prior to August 14, 1995 or whether the duties performed after August 14, 1995 could have caused the disc herniation. Dr. Cushman stated that nevertheless, it was evident that the herniation was present after the August 14, 1995 injury as noted on the CT scan.

¹ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

² *See Nicolea Brusio*, 33 ECAB 1138, 1140 (1982).

In a March 28, 2001 report, Dr. Cushman opined further that appellant's low back condition was medically related to his original work injury in August 1995, because the history supplied indicated a continuum of complaints and limitation since the injury. Following this report, the Office requested again that Dr. Cushman provide medical rationale supporting his opinion of causal relationship, particularly since the low back strain condition previously accepted by the Office had been determined to have resolved. In a supplemental report dated May 30, 2001, he replied that if in fact appellant's low back pain attributed to the employment injury had resolved, then appellant's current condition could be considered new and not due to the employment situation and that the determination of causal relationship "would have to be made by others."

The Board finds that the recent opinions of Drs. Fahey and Cushman are sufficient to require the Office to further develop the claim. In this connection, the Office should prepare an updated statement of accepted facts and refer appellant and the case record to an appropriate physician for an opinion as to what medical conditions, if any, appellant is experiencing and whether or not such conditions has caused appellant to become disabled and the relationship, if any, between appellant's current condition and his accepted August 14, 1995 employment injury.

Accordingly, the June 27, 2001 and December 1, 2000 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
August 28, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member