

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VINCENT PARKER and U.S. POSTAL SERVICE,
OAKLAND STATION, Pittsburgh, PA

*Docket No. 02-809; Submitted on the Record;
Issued August 12, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability causally related to his accepted temporary aggravation of lumbar strain of August 6, 1992.

On August 7, 1992 appellant, then a 34-year-old letter-carrier, filed a notice of traumatic injury/claim for continuation of pay/compensation (Form CA-1), alleging that, on August 6, 1992, while pulling the relay sack out of the relay box, he pinched a nerve in his back and sustained numbness in his right leg. By letter dated November 2, 1992, the Office of Workers' Compensation Programs approved appellant's claim for temporary aggravation of lumber strain. The Office noted that the underlying herniated disc was not accepted as work related. Subsequently, appellant filed claims for recurrences on May 5, 1995 and February 27, 1997 which were denied on August 10, 1995 and June 27, 1997, respectively.

On February 28, 2000 appellant filed another claim for a recurrence beginning on December 15, 1999. By letter dated October 24, 2000, the Office requested further information. In April 2000, appellant filed a claim for compensation (Form CA-7) for benefits from April 1, 2000 and ongoing based on the August 7, 1992 injury.

On January 31, 2000, appellant was offered and accepted a position for the employing establishment wherein he would not be required to lift over 10 pounds. From March 15 through 31, 2000, appellant was placed on paid administrative leave. Appellant was removed from postal employment on March 31, 2000, for violation of terms of last chance settlement agreement with regard to the amount of unscheduled leave he had taken.

In an attending physician's report dated April 11, 2000, Dr. Nita Rai-Gohel, a Board-certified internist, diagnosed lumbar radiculopathy. She checked the box indicating that she did not believe the condition was caused or aggravated by an employment activity.

In a decision dated November 30, 2000, the Office determined that the evidence was insufficient to support that the claimed recurrence of December 15, 1999 and subsequent claim

for compensation beginning April 1, 2000 were causally related to the approved injury. Accordingly, the claims were denied.

On November 29, 2000 the Office received a November 20, 2000 medical report from Dr. Gohel, wherein she stated that she had followed appellant for his back pain since December 21, 1999 and that on that date he had severe pain in his back. She concluded:

“It is possible that any heavy lifting or chronic sitting could contribute to the patient’s chronic back pain. In patients that suffer from low back pain, often any mild degree of physical exertion can exacerbate the symptoms. The patient has not been seen at this office since June of the year 2000.”

It is not clear that this report was considered by the Office in its decision of November 30, 2000.

In a medical report dated June 15, 2000, Dr. Riccardo Marinelli, a surgeon, noted that appellant was “reporting significant left lower back and left lower extremity pain that is constantly present, and, “It appears as though this may be secondary to his findings on MRI [magnetic resonance imaging] of a dis[c] herniation at the L4-5 space as well as the L5-S1 level. He recommended a course of lumbar epidural steroid injections. Injections were given on August 23 and September 13, 2000. In a medical report dated November 9, 2000, Dr. Marinelli noted that appellant had not benefited from his second lumbar epidural steroid injection and recommended a nerve root injection. In an attending physician’s report (Form CA-20) dated December 29, 2000, Dr. Marinelli noted chronic low back pain with left lower extremity radiculagia possibly secondary to inflammatory changes from disc pathology, and stated that he was unable to determine whether appellant’s condition was caused by an employment activity, although he noted that appellant told him that he was injured when lifting an object in 1992.

By letter dated August 27, 2001, appellant requested reconsideration. In support thereof, appellant submitted a January 18, 2001 medical report wherein Dr. Marinelli noted that appellant returned to see him for the first time since November 9, 2000. Appellant complained of constant left lower back and left lower extremity symptoms. Dr. Marinelli recommended an MRI to rule out L4-5 disc herniation, however, he failed to provide any opinion in this report about causal relationship. Appellant also submitted a medical report dated February 7, 2000 wherein Dr. Mark A. Fye, a Board-certified orthopedic surgeon, noted that appellant presented himself for reevaluation for low back pain and left leg pain that was getting worse. He noted that appellant was having difficulty working and was working restricted duty. He recommended an MRI to rule out an L4-5 disc herniation.

By decision dated November 28, 2001, the Office denied modification of the decision. The Office, after conducting a full merit review, found that, while the current medical records indicate that appellant was complaining of back pain, at no time did appellant submit a detailed narrative report which discussed appellant’s prior work injury and the relationship between it and appellant’s current complaints.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability causally related to his accepted temporary aggravation of lumbar strain of August 6, 1992.

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury. As part of this burden, appellant must furnish 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 and supports that conclusion with sound medical reasoning.¹ An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causation.² However, proceedings under the Federal Employees' Compensation Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.³

In the instant case, appellant's claim for the injury of August 7, 1992 was accepted for temporary aggravation of lumbar strain. The Office specifically noted that the underlying herniated disc was not accepted as work related. Appellant alleged a recurrence beginning on December 15, 1999. In support, he offered numerous medical opinions, but none of them linked appellant's current condition to his work-related injury of August 6, 1992. Dr. Gohel diagnosed lumbar radiculopathy, but indicated that she did not believe the condition was caused or aggravated by employment. Although she later stated that it was possible that heavy lifting or chronic sitting could contribute to appellant's back pain, she did not specifically link any pain to appellant's work-related injury. Dr. Marinelli stated that he was unable to determine whether appellant's condition was caused by employment activity, although he noted that appellant told him that he was injured when lifting an object in 1992. None of the medical evidence amounts to rationalized medical evidence which links appellant's current back condition to his work related injury in 1992.

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.⁴ To establish causal relationship, appellant must submit a physician's report in which the physician concludes that factors of employment identified by appellant as causing his condition and taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or

¹ *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996).

² *Id.*

³ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁴ *William A. Wright*, 45 ECAB 498 (1993).

aggravated appellant's diagnosed condition.⁵ Appellant failed to submit such evidence and, therefore, failed to discharge his burden of proof.

The decision of the Office of Workers' Compensation Programs dated November 28, 2001 is affirmed.

Dated, Washington, DC
August 12, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

⁵ *Id.*