

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH A. SCUTIERI and U.S. POSTAL SERVICE,
POST OFFICE, Mount Vernon, NY

*Docket No. 01-2098; Submitted on the Record;
Issued December 3, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained a recurrence of disability on or after September 3, 1991 due to his accepted July 19, 1977 employment injury.

This is the third time this case has been before the Board. In a decision dated May 16, 1995, the Board found that appellant had not met his burden of proof in establishing that he sustained a recurrence of disability on or after September 3, 1991 due to his July 19, 1977 employment injury.¹ By decision dated March 29, 2001, the Board found that the Office of Workers' Compensation Programs had abused its discretion by denying appellant's request for reconsideration and remanded the case for the Office to consider new evidence.² The history of the case is contained in the Board's May 16, 1995 and March 29, 2001 decisions and is incorporated herein by reference.

In his July 26 and October 1, 1996 reports, Dr. Richard E. Peress, based upon a physical examination and review of medical records, diagnosed possible thoracic disc herniation, cervical spinal stenosis, cervical neuropathy and a lumbar spine derangement with radiculitis and right lumbar radiculopathy. Dr. Peress then concluded that appellant "should never have been taken off of total disability" and that appellant's "returning to full activities of lifting caused exacerbation of his prior deteriorated spine from 1977 through 1991 and 1992 and perhaps at worse case scenario may have, in addition, caused a new condition to intervene on top of that."

Dr. Peress, in his September 2, 1997 report, reiterated his opinion that appellant was totally disabled on and after September 3, 1991 due to his July 19, 1977 employment injury. He also concluded that the medical evidence and appellant's pain symptoms are sufficient "to correlate a causal relationship between the lumbosacral sprain and degenerative herniated discs

¹ Docket No. 93-2315 (issued May 16, 1995).

² Docket No. 99-862 (issued March 29, 2001).

noted and his claim to disability.” Dr. Peress opined that the job and load duties appellant was required to perform repetitiously over three months in his limited-duty position exacerbated his back condition and caused a recurrence of disability.

In addition, the physician noted that appellant was required to work outside of his restrictions by lifting from the floor to above his shoulder as well as lifting boxes of magazines. Specifically, Dr. Peress opined that appellant’s “lumbar spine was incapable of performing for a sustained period of time and, therefore, he sustained recurrence in exacerbation of clinical conditions referred to as herniated disc, radiculitis and lumbar instability, secondary to the disc herniation.” Dr. Peress concluded that being “required to perform tasks requiring bending and lifting above the shoulder and lifting pallets and boxes of mail” aggravated appellant’s already damaged lumbar spine and caused his recurrence of total disability.

By merit decision dated May 21, 2001, the Office denied modification of its prior decisions. The Office found Dr. Peress’ opinion was “not sufficiently probative to overcome the May 18, 1991 opinion of Dr. William P. Howley, an impartial Board-certified orthopedic surgeon, who concluded that appellant was capable of performing light-duty work. The Office also found the record contained no factual or medical evidence establishing a change in his medical condition or in his light-duty work.

The Board finds that appellant has not established a recurrence of disability.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform 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 light-duty requirements.³

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁴ Rationalized medical evidence is medical evidence that includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

³ *Carlos A. Marrero*, 50 ECAB 117 (1998).

⁴ *John F. Glynn*, 53 ECAB ____ (Docket No. 01-1184, issued June 4, 2002).

⁵ *Patricia J. Glenn*, 53 ECAB ____ (Docket No. 01-65, issued October 12, 2001).

Appellant has failed to present evidence to corroborate that his light-duty work exceeded his restrictions. His statements that his work exceeded his restrictions were noted by Dr. Peress in his reports, but there was no independent evidence of appellant's assertion.

In order to support the claim for a recurrence of disability, medical evidence is needed to establish a clear connection between the accepted work-related condition on July 19, 1977 and the renewed symptoms. The Board has held that to be probative, a medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury.⁶ The only relevant evidence in this case pertaining to the issue of whether appellant sustained a recurrence of disability are the reports by Dr. Peress, who, in reports dated July 26 and October 1, 1996, concluded that appellant should not have been taken off disability and that appellant's "return to full activities of lifting" caused his recurrence. In his September 2, 1997 reports, Dr. Peress attributed appellant's recurrence of disability to his pain symptoms and the medical evidence. He also noted appellant being "required to perform tasks requiring bending and lifting above the shoulders and lifting pallets and boxes of mail" aggravated his lumbar spine which caused the recurrence of disability. In this case, Dr. Peress based his opinion on causation on erroneous information that appellant was regularly lifting and bending. The record establishes that appellant began his light-duty job on May 18, 1991 but no evidence of record indicates that appellant performed the repetitious lifting and bending as described by Dr. Peress. Thus, Dr. Peress' report is of reduced probative value as it is based upon an inaccurate description of appellant's job duties in his light-duty position.

The Board finds that appellant has not established a recurrence of disability. The evidence does not establish that there was a change to the light-duty job that was outside appellant's work restrictions, nor is there medical evidence showing a change in the nature and extent of the employment-related condition at the time appellant stopped working. Accordingly, the Board finds the Office properly denied the claim in this case.

⁶ *Kathleen M. Fava*, 49 ECAB 519, 523 (1998).

The decision of the Office of Workers' Compensation Programs dated May 21, 2001 is hereby affirmed.

Dated, Washington, DC
December 3, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member