

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRUCE TAYLOR and U.S. POSTAL SERVICE,
POST OFFICE, Kinston, NC

*Docket No. 02-1218; Submitted on the Record;
Issued December 11, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on or after October 17, 1997 due to his December 2, 1996 employment injury.

On October 3, 1997 appellant, then a 49-year-old distribution clerk, filed a traumatic injury claim alleging that on December 2, 1996 he hurt his lower back. He stated that a rack of JC Penny catalogs was turning over on two of his coworkers as they were loading a truck. Appellant further stated that his coworkers yelled and he ran over to them and snatched the rack back so that they would not be injured.

By decision dated December 10, 1997, the Office of Workers' Compensation Programs found that appellant was not entitled to continuation of pay during his absence from work on the grounds that his traumatic injury claim was not filed within 30 days of the injury. However, by letter of the same date, the Office advised appellant that his claim had been accepted for a back strain.

On January 13, 2000 appellant filed a claim alleging that he sustained a recurrence of disability. By letter dated March 1, 2000, the Office advised him to submit medical evidence supportive of his claim. In response, appellant submitted medical evidence by letter dated March 23, 2000.

By decision dated April 4, 2000, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability. In a May 4, 2000 letter, he requested an oral hearing before an Office representative.

Subsequent to the hearing held on October 23, 2000 appellant submitted additional factual and medical evidence as requested by the hearing representative.

By decision dated March 14, 2001, the hearing representative found that, since appellant indicated on his recurrence claim form that he received medical treatment beginning October 17,

1997, this constituted the date of his alleged recurrence of disability. Upon review of the case record and appellant's hearing testimony, the hearing representative affirmed the Office's decision.¹

The Board finds that appellant has failed to establish that he sustained a recurrence of disability on or after October 17, 1997 due to his December 2, 1996 employment injury.

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 recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.² This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.⁴

In this case, appellant submitted medical evidence generally supporting a causal relationship between his current back condition and his December 2, 1996 employment injury. A February 23, 1998 report of Dr. Ira M. Hardy, a Board-certified neurosurgeon, indicated that appellant had degenerative disc changes at L2-3 that were consistent with his pain. Dr. Hardy stated that this could be a chronic strain problem. He further stated that, since appellant's accident happened a little over a year ago, he suspected that the L2-3 changes were "probably" related to appellant's injury. Dr. Hardy's opinion, that appellant's current back condition was "probably" related to his December 2, 1996 employment injury, is speculative and thus, of limited probative value.⁵

An August 13, 1999 report of Dr. Rupert W. Jilcott, a Board-certified internist, revealed that appellant had ongoing lower back problems aggravated by trauma, mild prostatic

¹ The Board notes that, subsequent to the hearing representative's March 14, 2001 decision, the Office received additional evidence. The Board, however, 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 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).

² *Ronald C. Hand*, 49 ECAB 113 (1997).

³ *Helen K. Holt*, 50 ECAB 279 (1999).

⁴ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ See *Jennifer Beville*, 33 ECAB 1970 (1982); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).

hypertrophy and hypertension. In his June 21, 2000 letter, Dr. Jilcott noted appellant's back problems. He stated that appellant sustained a work injury on December 2, 1996 and that he had experienced acute disability since that time. Dr. Jilcott also stated that appellant's condition was easily aggravated by additional activity. He, however, failed to specifically diagnose appellant's ongoing lower back condition and to provide any medical rationale explaining the causal relationship between appellant's current back condition and his accepted employment injury. Thus, his reports are insufficient to establish appellant's burden.

Appellant submitted medical evidence negating a causal relationship between his current back condition and his December 2, 1996 employment injury. An April 7, 2000 report of Dr. John R. Leonard, a Board-certified neurosurgeon, indicated that appellant underwent a myelogram and a postmyelogram computerized tomography (CT) scan.⁶ He stated that, except for a very slight bulge at L2-3, appellant's studies were essentially totally normal. Dr. Leonard told appellant that he was not sure why appellant had ongoing chronic pain. He stated that there was no objective reason for it, other than a minor change in the disc at L2-3, noting; however, that appellant's pain was down low at the lumbosacral junction. Dr. Leonard further stated that, by exclusion, appellant had a chronic musculoskeletal strain problem and that he did not see severe facet joint arthritis or a disc problem that was severe enough to cause this problem. He concluded that beyond that he did not see any cause for appellant's chronic right leg pain. Thus, Dr. Leonard's report tends to negate causal relationship.

Similarly, the November 17, 1997 treatment notes of Dr. Harrison A. Latimer, an orthopedic surgeon, tend to negate a causal relationship between appellant's current back and right leg conditions and his December 2, 1996 employment injury. He stated that on follow-up treatment of appellant's mechanical low-back strain with some mild sciatica-type symptoms in his right leg that related back to his December 1996 work injury, his sciatica symptoms had resolved. Dr. Latimer noted that appellant was at regular work activities with no restrictions.

The Office advised appellant of the medical opinion evidence he needed to submit to establish a recurrence of disability. As he failed to submit rationalized medical evidence establishing that his current back and right leg conditions were caused by his December 2, 1996 employment injury, he has not met his burden of proof in establishing the claimed recurrence of disability on or after October 17, 1997.

⁶ The record reveals that appellant underwent a lumbar myelogram and a postmyelogram CT scan of the lumbar spine on April 6, 2000.

The March 14, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 11, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member