

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD J. GRACE and U.S. POSTAL SERVICE,
POST OFFICE, Wilmington, DE

*Docket No. 02-1599; Submitted on the Record;
Issued December 3, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability beginning September 4, 2001 causally related to a September 26, 1999 employment injury.

On September 28, 1999 appellant, then a 38-year-old mailhandler, filed a claim alleging that on September 26, 1999 while "staging downstate mail," he sustained an injury to his right side and back. By letter dated October 1, 2001, the Office of Workers' Compensation Programs accepted appellant's claim for a thoracic sprain.

On September 4, 2001 appellant filed a notice of recurrence of disability and claim for continuation of pay/compensation (Form CA-2a), alleging a recurrence of disability on September 4, 2001, which occurred when he "hurt back bending over to put ball seal on truck."

By letter to appellant dated October 1, 2001, the Office requested further information, including a statement from appellant and medical records of all treatment he received for his back since September 4, 2001. In response, appellant submitted a note dated October 29, 2001, wherein he indicated that he believed that his current condition was related to his original injury because it occurred in the same area as before, but that the pain was more severe. He also noted that, as a result of eight weeks of rehabilitation and pain management, he has been able to return to full duty with a minimal amount of pain.

Appellant submitted a medical report dated October 22, 2001 from Dr. Robert B. Brereton, a Board-certified internist, who indicated that he saw appellant on September 6, 2001 at which time he was complaining of low back pain that started at work when he was bending over to seal a truck. Dr. Brereton noted that, at that time, appellant "had severe lumbar pain with radiation to both buttocks and to both exterior legs with restricted range of motion of his lumbar spine." He opined that appellant "exacerbated his chronic degenerated disc disease of his lumbar spine that day, September 6, 2001 at work."

Appellant also submitted an October 18, 2001 report from Dr. Richard M. Jannelli, a chiropractor, who indicated that appellant had been referred to him in August by his family physician for therapy related to his chronic low back pain and that during the course of his treatment appellant sustained a severe exacerbation while at work. Dr. Jannelli noted that, when appellant returned for therapy on September 5, 2001, he indicated that he was lifting up a tailgate of a postal vehicle and that this caused a severe exacerbation. He also submitted his progress notes.

Appellant also submitted medical reports which predated his alleged September 4, 2001 recurrence, including an August 15, 2001 report by Dr. Jannelli, a report from a magnetic resonance imaging of his spine of May 2, 2000, a note indicating that he received physical therapy on May 11, 2000 and a June 26, 2000 note from Dr. Bruce J. Rudin, noting that appellant still had some back pain but that his leg pain was gone.

By decision dated December 15, 2001, the Office denied appellant's claim for a recurrence, as it found that the evidence failed to establish that the claimed recurrence was causally related to the injury of September 26, 1999.

The Board finds that the evidence fails to establish that appellant's alleged disability commencing September 4, 2001 is causally related to his September 26, 1999 injury.

An employee 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 disability for which he claims compensation is causally related to the accepted injury.¹ This burden of proof requires that a claimant furnish medical evidence from a 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.²

Appellant has not submitted rationalized medical opinion evidence showing that his disability beginning September 4, 2001 was causally related to his September 26, 1999 employment injury. The evidence dated after the September 4, 2001 consists of an October 22, 2001 report by Dr. Brereton and an October 18, 2001 report by Dr. Jannelli, who indicates that appellant "sustained a severe exacerbation while at work" and indicated that appellant told him that the exacerbation occurred "while lifting up a tailgate of a postal vehicle." However, he fails to specifically link appellant's current condition to the accepted work-related injury of September 26, 1999. Additionally, under section 8101(2) of the Federal Employees' Compensation Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.³ Dr. Jannelli did not diagnose a subluxation and therefore his report is of no probative value in this case. Dr. Brereton, in his report of October 22, 2001, recites appellant's history of

¹ *Jose Hernandez*, 47 ECAB 288, 293-94 (1996).

² *Helen K. Holt*, 50 ECAB 279, 282 (1999).

³ 5 U.S.C. § 8107(a); *see Jack B. Wood*, 40 ECAB 95, 109 (1998).

complaining of a recurrence that occurred “when he was bending over to seal up a truck,” but also does not relate this to the accepted thoracic sprain of September 26, 1999. Rather, he indicated that appellant exacerbated his chronic degenerated disc disease of the lumbar spine on September 6, 2001, while at work. As there is no medical report showing a spontaneous material change in appellant’s injury-related condition as of September 4, 2001, appellant did not meet his burden of proof to show a recurrence of disability.⁴

The decision of the Office of Workers’ Compensation Programs dated December 15, 2001 is hereby affirmed.

Dated, Washington, DC
December 3, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁴ A recurrence of disability includes a work stoppage caused by a spontaneous material change in the employment-related condition without an intervening injury. If the disability results from new exposure to work factors, an appropriate new claim should be filed; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (January 1995).