

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT DICKERSON and U.S. POSTAL SERVICE,
POST OFFICE, Brooklyn, NY

*Docket No. 01-1126; Submitted on the Record;
Issued February 25, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on April 5, 2000 causally related to his accepted back condition.

On April 4, 1998 appellant, then a 49-year-old letter carrier, filed an occupational disease claim stating that his lower back, leg, buttock and groin pain was due to factors of his federal employment. The Office of Workers' Compensation Programs accepted the claim for aggravation of preexisting disc degeneration of the lumbar spine. Appellant stopped work on April 4, 1998 and returned to limited duty on April 6, 1998 based on medical restrictions established by his treating physician. He stopped work on April 5, 2000 and did not return. On February 26, 2001 the Office accepted additional conditions of subluxation at L3-4 and L4-5.

On April 11, 2000 appellant filed a notice of recurrence of disability of total disability and submitted a memorandum from Dr. John D. Timothy, an internist, who stated that appellant should stay home from work from April 5, 2000 until further notice due to severe sciatica, lumbar disc disease and uncontrolled diabetes.

By letter dated April 21, 2000, the Office requested additional evidence from appellant in support of his recurrence claim. Specifically, the Office requested a description of his duties and physical condition on return to work following the original injury, an explanation of why he believed his current condition related to the original injury and a physician's opinion supporting a causal relationship between his current condition and the original injury. Appellant was advised that since he was performing limited duty at the time of the claimed recurrence, he needed to establish that there was a change in the nature and extent of his injury-related condition or a change in the nature and extent of the limited-duty requirements.

In response, appellant submitted a magnetic resonance imaging (MRI) scan of April 13, 2000; form reports from Dr. Timothy diagnosing sciatic nerve compression syndrome and herniated disc and advising that appellant was totally disabled due to his March 17, 1998 injury;

and a May 1, 2000 note from a Dr. Ramesh P. Babu indicating that appellant has lumbar canal stenosis and is diabetic. Appellant also stated that he awoke on April 5, 2000 with pain in his lower back, legs and groin area and was admitted to the hospital April 6 through 9, 2000 because of a high sugar level.

By decision dated June 26, 2000, the Office denied appellant's claim on the grounds that he failed to establish that his condition had worsened or that requirements of his limited-duty position had changed.

Appellant requested reconsideration on October 19, 2000 and submitted an August 30, 2000 report from Dr. Howard Jay Rosner, a chiropractor, and a June 1, 2000 report from Dr. Robert W. Hard, an internist, who noted appellant's history of injury, provided the results of his examination and diagnosed lumbar spine derangement, herniated disc, radiculopathy, internal derangement of the right knee, internal derangement of the right ankle, high grade lumbar spinal stenosis and disc protrusions. Dr. Hard opined that those injuries were causally related to the March 17, 1998 accident and that appellant was not able to perform his work duties and/or activities of daily living.

In an August 30, 2000 report, Dr. Rosner noted a history of injury and provided the results of the examination, a March 21, 1998 x-ray and an August 10, 1998 MRI scan. He related that he had treated appellant since March 21, 1998 and that appellant's prognosis was guarded due to the disabling severity and longevity of the injuries to his lower back. Dr. Rosner opined that the compressive subluxations of the original injury on March 17, 1998 was the competent producing cause of the flare-up of April 5, 2000 due to symptomologies, location, severity and similar examination findings. He further opined that appellant was permanently and totally disabled from his job and work capabilities due to the compressive subluxations and the subsequent constant low back pain and dysfunctions noted. Dr. Rosner added that it remained obvious that the injuries, conditions, exacerbations and disabilities described were from the work-related accident as the competent producing cause.

By letter dated December 11, 2000, the Office advised appellant's attorney that at the time of the recurrence, appellant was under the care of Dr. Timothy. It stated that, to pursue the recurrence claim, appellant's attorney should arrange for Dr. Timothy to review his office notes and compare his findings before and after April 5, 2000 to explain whether and how appellant's condition had changed so that he could no longer perform the modified duties of his position. The letter requested that a reasoned medical opinion or any evidence showing that appellant's job duties changed before April 5, 2000 be sent within 30 days.

A January 3, 2001 supplemental report from Dr. Rosner explained the x-ray results of March 21, 1998 and February 7, 2000 to substantiate his diagnosis of subluxations. Dr. Rosner further opined that the subluxation pattern revealed either a long-term, repetitive trauma or sudden trauma which had a direct cause and effect as the result of appellant's employment as a mailhandler and letter carrier with its duties and physical demands. A July 21 2000 medical report from Dr. Michael Chris Overby, a Board-certified neurologist, evaluated appellant's back condition for surgical procedures.

By decision dated January 22, 2001, the Office denied appellant's request for reconsideration on the basis that the evidence was insufficient to warrant modification of its prior decision.

On February 26, 2001 the Office accepted the additional conditions of subluxation at L3-4 and L4-5 as work related.

The Board finds that appellant failed to meet his burden of proof to establish a recurrence of disability on April 5, 2000 causally related to his March 17, 1998 employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a limited or 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 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.¹ Furthermore, 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 April 5, 2000 and his March 17, 1998 employment injury.² 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.³

The Office accepted the condition of aggravation of preexisting disc degeneration of the lumbar spine. Appellant was working limited duty at the time of the alleged recurrence of April 5, 2000. There is no evidence that the requirements of this position changed. Moreover, the medical evidence in this case lacks a well-reasoned narrative from appellant's physician relating his recurrence of disability on April 5, 2000 to the accepted employment condition. The record reveals that appellant is diabetic and was hospitalized for a high sugar level on April 6 through April 9, 2000. Dr. Timothy, appellant's treating internist, did not offer an opinion regarding the relationship of appellant's spinal stenosis at L3-4 and L4-5 and sciatic nerve compression to the event of April 5, 2000 or explain whether or how there was a change in the nature and extent of the accepted condition of aggravation of preexisting disc degeneration of the lumbar spine. In the Office's December 11, 2000 letter, appellant was informed of the necessity of having Dr. Timothy provide a rationalized opinion explaining whether appellant's condition had changed so that he could no longer perform the modified duties of his position.

In further support of his claim for a change in the nature and extent of his injury-related condition, appellant submitted reports from other physicians. The reports from Dr. Hard and a Dr. Thomas N. Conroy fail to indicate that appellant was examined either shortly before or

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

³ *See Nicolea Brusio*, 33 ECAB 1138, 1140 (1982).

closely after the claimed recurrence. Dr. Hard appears to have evaluated appellant for chiropractic care starting June 1, 2000. Appellant presented for another chiropractic evaluation with Dr. Conroy on June 2, 2000. And Dr. Overby's July 21, 2000 report has no relevance to the recurrence issue. None of these reports relate appellant's work stoppage to the claimed recurrence of April 5, 2000 or explain whether and how appellant's condition changed.

Appellant also submitted reports dated August 30, 2000 and a January 3, 2001 from Dr. Rosner, a chiropractor. In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under the Federal Employees' Compensation Act. Section 8101(2) of the Act provides that the term "'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist...."⁴ Therefore, a chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by x-ray evidence.⁵

In this case, based upon the evidence that was properly before the Office, Dr. Rosner noted a diagnosis of subluxations by a March 21, 1998 x-ray in his report of August 30, 2000. Dr. Rosner stated that the x-ray revealed a distinct hyperlordosis of the lumbar spine with vertebral subluxations at L2 postinferior L3-4, PI-L5, L5-PI and S1 with left spinous rotational subluxations from L2 through L5. Disc height losses were also noted as well as results from an August 10, 1998 MRI scan. In its December 11, 2000 letter, the Office advised appellant's attorney of what information the chiropractor needed to provide to pursue the matter of chiropractic care. In his January 3, 2001 report, Dr. Rosner noted the specific x-rays he relied upon in diagnosing subluxations and opined that appellant's subluxation patterns were either due to long-term trauma or a sudden trauma resulting from appellant's employment as a mailhandler and letter carrier. The Office subsequently accepted the additional conditions of subluxations at L3-4 and L4-5. In the instant case, based upon the evidence that was properly before the Office, Dr. Rosner can be considered a physician under the Act. However, the report from Dr. Rosner does not state that the subluxations caused the recurrence. Dr. Rosner's opinion that the subluxations were responsible for appellant's current disability is not rationalized. Moreover Drs. Timothy and Hard also relate various conditions to the March 17, 1998 injury and opine that appellant is totally disabled from his work duties and/or activities of daily living without providing sufficient medical rationale.

⁴ 5 U.S.C. § 8101(2); *see also Linda Holbrook*, 38 ECAB 229 (1986).

⁵ *Kathryn Haggerty*, 45 ECAB 383 (1994).

The January 22, 2001 and June 26, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
February 25, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member