

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN J. MOSLEY and U.S. POSTAL SERVICE,  
POST OFFICE, San Bernardino, CA

*Docket No. 02-21; Submitted on the Record;  
Issued June 24, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on or after June 26, 1997 causally related to the accepted work condition of lumbar strain.

On February 28, 1997 appellant, then a 55-year-old mailhandler and equipment operator, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained lower back pain as a result of "constant pulling heavy container when hooking to mule, bending and going across bumps on mule." In support of his claim, appellant submitted a May 2, 1997 report by Dr. G. Sunny Uppal, a Board-certified orthopedic surgeon, wherein Dr. Uppal indicated that appellant had significant back and leg pain. He also noted that on February 15 or 16, 1997, while lifting heavy material at work and twisting, appellant developed progressively increasing back and leg pain. Dr. Uppal stated that he believed that this injury was industrially related. The records also reflect a progress note from Dr. Uppal dated March 25, 1997 wherein he returned appellant to his "usual and customary work." By letter dated May 20, 1997, appellant's claim was accepted for lumbar strain.<sup>1</sup>

In a June 24, 1997 progress note, Dr. Uppal indicated that appellant twisted the wrong way as he was "placing some fixtures on a coffee table and he started developing severe back pain." He diagnosed appellant with discogenic back pain and indicated that he was temporarily totally disabled. In his July 24, 1997 progress note, Dr. Uppal released appellant to work "with the limitations of no heavy lifting or repetitive bending or stooping of his back."

On October 13, 1999 appellant filed a notice of recurrence (Form CA-2a), alleging that in June 1997 he reached for some photographs on a coffee table and that his back went out the same way that it did in February 1997. He also stated that he had discogenic surgery.

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<sup>1</sup> On November 23, 1985 another claim was filed for a strained muscle in lower back (No. 13-782866). This claim was accepted for lumbar paravertebral spasm.

By decision dated May 9, 2000, the Office denied the claim for recurrence for the reason that appellant failed to supply evidence that the current condition was causally related to the accepted work injury.

By letter dated June 7, 2000, appellant requested an oral hearing. In further support of his claim, appellant submitted a June 25, 1999 medical report by Dr. Uppal, who diagnosed appellant as sustaining a herniated disc in the lumbar spine.

By decision dated August 28, 2000, the hearing representative determined that the Office failed to advise appellant of what evidence was necessary to perfect his claim. Accordingly, the hearing representative directed the Office to request appellant's treatment records prior to February 17, 1997, a detailed statement on a lodge incident mentioned in Dr. Uppal's report of February 17, 1997 and obtain a detailed statement describing a nonwork injury that occurred while appellant was visiting friends.

By letter to appellant dated September 13, 2000, the Office requested the missing information. However, appellant did not file a timely response and by decision dated October 24, 2000, the claim was again denied. By letter dated November 13, 2000, appellant requested an oral hearing.

Subsequent to this decision, appellant submitted further evidence. In a medical report dated November 11, 1997, Dr. Uppal noted that appellant injured himself on February 16, 1997 while pulling heavy equipment, that he subsequently had a magnetic resonance imaging scan, which showed that there was a seven millimeter herniated disc at L4-5 and that a discography was positive at L4-5. He noted that appellant responded well to conservative treatment. Dr. Uppal further noted that appellant's condition was permanent and stationary and that he was precluded from heavy lifting. In a report dated September 28, 2000, he noted that appellant had been his patient since October 12, 1994 and that he suffered from "intermittent, slight to moderate low back pain." Dr. Uppal noted that from June 26 through July 24, 1997 appellant had an aggravation that was industrially related, for which he was treated conservatively.

In a letter dated October 6, 2000, appellant explained how his injuries occurred. He noted that on February 16, 1997 when leaning forward to change the position of a round table, he felt excruciating pain in his lower back, which paralyzed him for a few moments. Appellant noted that on June 22, 1997 he experienced the same pain when, after looking at some photos, appellant rose from the chair and leaned forward to place them on the coffee table.

Appellant also submitted a statement from Willie and Sadie Miller dated September 25, 2000, wherein they noted that when appellant was visiting their home on June 22, 1997 he threw out his back as he leaned over to rise from one of the chairs to place photographs on the coffee table.

A hearing was held on March 28, 2001. At the hearing, appellant testified that he returned to work after the February injury in May 1997 to a modified light-duty position, that 80 percent of the time in this job he is sitting, but that he does do some walking and that his duties have not changed since he returned to work in 1997. Appellant testified that he filed his claim because he was concerned about his continued entitlement to his bid job and because he

started to experience an increase in his pain and discomfort in 1999 and 2000. Appellant testified that he initially contacted the Office to get approval to obtain medical treatment, as his physician would not see him without prior authorization. Appellant noted that he sustained a minor injury to his back while in the military but maintained that the work injury in 1985 caused his continued back problems. Appellant also acknowledged that he injured his back in 1994 but was unsure of whether it occurred at work. Appellant noted that he experienced a recurrence of his symptoms in June 1997, but returned to work after four or five weeks of sick leave. Appellant confirmed that he did not receive any medical treatment from November 1997 to January 1999, but stated that he did take time off when he experienced pain in his back.

In a progress note dated April 5, 2001, Dr. Uppal noted that appellant was on temporary disability because of pain from June 26 through July 24, 1997 and further stated, "This total disability occurred because at that time he had an acute aggravation of the herniated disc and he was in severe pain."

In a decision dated June 20, 2001, the hearing representative affirmed the May 9, 2000 decision finding no recurrence. However, the hearing representative also sent the case back to the Office for further development of the evidence with regard to whether appellant sustained a herniated disc as a result of the accepted injury.

The Board finds that appellant has not established a recurrence of disability on or after June 26, 1997 causally related to his accepted work condition of lumbar strain.

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 duties of 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 limited-duty requirements.<sup>2</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his accepted employment injury.<sup>3</sup> 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.<sup>4</sup>

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 in February 1997 and

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<sup>2</sup> *Barry C. Peterson*, 52 ECAB \_\_\_\_ (Docket No. 98-2547, issued October 16, 2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>3</sup> *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes G. Davila*, 45 ECAB 139, 142 (1993); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>4</sup> *Alfred Rodriguez*, 47 ECAB 437, 441 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

the renewed symptoms. Dr. Uppal reported on May 2, 1997 that the claimant had responded well to conservative treatment. On June 24, 1997 he noted that appellant claimed that he twisted wrong, while placing some fixtures on a table and developed severe back pain. On July 24, 1997 Dr. Uppal reported that he released appellant back to work with limitations. In a more detailed report dated November 11, 1997, Dr. Uppal provided his physical examination findings and noted that a lumbar spine x-ray showed spondylosis and that a discogram was positive at L4-5. Dr. Uppal diagnosed herniated disc at L4-5 and restricted appellant from very heavy lifting. He opined that the herniated disc resulted from the lifting of heavy equipment while at work. In his report dated September 28, 2000, Dr. Uppal stated that appellant's aggravation was industrially related. This medical evidence failed to establish a recurrence. In his progress notes of June 24 and July 24, 1997, Dr. Uppal failed to make any connection between appellant's recurrence and his accepted employment-related injury. In his September 28, 2000 report, Dr. Uppal does state, "From June 26, 1997 through July 24, 1997 he had an aggravation that was industrially related." However, he failed to give any explanation for this opinion.

Therefore, appellant failed to submit medical evidence establishing a change in the nature and extent of his accepted injury-related condition. Furthermore, appellant did not submit evidence indicating a change in the extent of his light-duty activities.

The June 30, 2001 and October 24, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
June 24, 2002

Alec J. Koromilas  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member