

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BERNARD CUBLINSKY and U.S. POSTAL SERVICE,  
POST OFFICE, North Miami Beach, FL

*Docket No. 00-2807; Submitted on the Record;  
Issued March 27, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability on or around August 4, 1999, causally related to his January 12, 1976 accepted cervical disc disease.

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office of Workers' Compensation Programs dated August 31, 2000 denying appellant's claim for a recurrence of disability is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.<sup>1</sup>

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<sup>1</sup> The Board notes that the record contains a separate Office decision also dated August 31, 2000, in which the Office hearing representative affirmed the Office's prior finding that an overpayment in compensation had occurred in the amount of \$8,322.68 for the period July 19, 1999 through March 6, 2000, but remanded the case to the Office for further development on the issue of waiver of recovery. As appellant stated at the hearing that he did not dispute the amount of the overpayment, only his ability to pay, and as the Office has yet to issue a final decision on the issue of waiver, the Board has no jurisdiction in the present appeal over the issue of the overpayment, as the matter is in an interlocutory position before the Office; *see* 20 C.F.R. § 501.2(c).

The decisions of the Office of Workers' Compensation Programs dated August 31, 2000 and November 5, 1999, denying appellant's claim for a recurrence of disability, are hereby affirmed.<sup>2</sup>

Dated, Washington, DC  
March 27, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>2</sup> The Board notes that the record also contains an October 10, 2000 decision terminating appellant's wage-loss compensation benefits on the grounds that he abandoned suitable work when he stopped work on August 18, 1999, due to his alleged recurrence of disability. As the Office's October 10, 2000 decision was issued after appellant filed his September 7, 2000 appeal with the Board, and as this decision involved the same issues before the Board while the Board had jurisdiction over the case, it is null and void. *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).