

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROOSEVELT AARON and U.S. POSTAL SERVICE,  
POST OFFICE, Springfield, MA

*Docket No. 01-1649; Submitted on the Record;  
Issued March 7, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on and after October 9, 1999 due to his September 17, 1998 employment injury.

On September 19, 1998 appellant, then a 50-year-old mailhandler, filed a claim for compensation benefits alleging that he pulled a muscle in his leg while removing mail from a machine. The Office of Workers' Compensation Programs accepted that appellant sustained an employment-related left leg strain and paid him appropriate compensation benefits. Appellant did not stop work but returned to a limited-duty position and resumed his regular duties in October 1998.

Accompanying appellant's claim was a treatment note from Dr. Michael Gebe, a specialist in family practice, dated September 19, 1998, who noted a history of appellant's injury indicating appellant injured her left leg while at work. He recommended that appellant return to limited duty.

Thereafter, appellant filed treatment notes from Dr. Gebe dated September 24 to October 23, 1998; physical therapy notes from September 28 to October 7, 1998; a treatment note from Dr. Thomas Mathews, Board-certified in emergency medicine, dated October 8, 1998; a magnetic resonance imaging (MRI) scan and x-ray both dated June 25, 1999; a treatment note from Dr. Neal Lakritz, a Board-certified internist, dated May 3, 1999; and a narrative statement dated August 8, 1999. The treatment notes from Dr. Gebe noted that appellant was treated for a left leg injury which he sustained at work. He indicated that appellant presented with complaints of swelling of the left calf muscle and showed no signs of edema. Dr. Gebe's October 8, 1998 note indicated that appellant's injury was resolved and he could return to regular duty. Dr. Mathews' treatment note indicated that appellant was able to return to work on regular duty without restrictions. The MRI scan of the lumbar spine dated June 25, 1999 revealed a Grade I spondylolisthesis of L4-5; left lateral disc herniation; obliteration of the L4 neural foramina; and nerve root compression. The x-ray of the lumbar spine noted a small central disc herniation at

L5-S1. The treatment note from Dr. Lakritz dated May 3, 1999 indicated that appellant was diagnosed with a muscle strain and was under lifting restrictions of 10 pounds. The narrative statement noted a history of appellant's injury and indicated that he believed he was misdiagnosed by his physicians. Appellant noted that the original diagnosis of a left muscle strain was incorrect and that he actually sustained a herniated disc as revealed by MRI scan.

On October 9, 1999 appellant filed a Form CA-2a, notice of recurrence of disability. He indicated a recurrence of a herniated disc due to employment-related injuries sustained in September 1998. Appellant did not stop work. He indicated that his recurrence of symptoms began on October 9, 1999.

In support of his claim, appellant submitted a duty status report dated November 1, 1999. The duty status report diagnosed appellant with lumbar radiculopathy and an L4 herniated disc. Dr. Lakritz recommended restrictions for appellant of no prolonged standing, pushing or pulling.

By letter dated November 18, 1999, the Office requested detailed factual and medical evidence from appellant, stating that the information submitted was insufficient to establish a recurrence on the above date.

In response to the Office's request, appellant submitted a narrative statement. He noted a history of injury indicating that he originally experienced pain shooting down his lower back through his leg. Appellant noted that he did not have back problems prior to this injury.

By decision dated January 13, 2000, the Office denied appellant's claim for recurrence of disability on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after October 9, 1999 which was causally related to the accepted employment injury sustained September 17, 1998.

In a letter dated February 11, 2000, appellant requested an oral hearing before an Office hearing representative which was held February 21, 2001. At the hearing, he noted that he was injured on September 17, 1998 and at that time experienced a pull in his back and pain. Appellant indicated that he subsequently experienced spasms going down his leg.

Appellant submitted various medical records, most of which were duplicates of those previously considered by the Office. He also submitted two new reports from Dr. Lakritz dated February 16 and March 2, 2001 and an article addressing sciatica. Dr. Lakritz's February 16, 2001 report indicated that appellant sustained a back injury on September 17, 1998 related to his employment. He noted that appellant experienced left leg discomfort and the injury was diagnosed as a left leg strain. Dr. Lakritz further noted that a subsequent MRI scan revealed a disc herniation at L4 and indicated that the herniation was a result of the September 17, 1998 work-related injury. His March 2, 2001 note indicated that the lifting and reaching appellant performed on September 17, 1998 caused the herniated disc at L4.

By decision dated April 12, 2001, the Office hearing representative affirmed the January 13, 2000 decision on the grounds that appellant did not submit sufficient medical evidence to establish a causal relationship between his claimed recurrence of disability and his September 17, 1998 employment injury.

The Board finds that the evidence fails to establish that appellant sustained a recurrence of disability on or after October 9, 1999 as a result of his September 17, 1998 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.<sup>1</sup> 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.<sup>2</sup> Moreover, the physician's conclusion must be supported by sound medical reasoning.<sup>3</sup>

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>4</sup> In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.<sup>5</sup> While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>6</sup>

The Office accepts that appellant sustained a left leg strain on September 17, 1998. However, the medical record lacks a well-reasoned narrative from appellant's physician relating appellant's claimed recurrent condition, beginning October 9, 1999, to the September 17, 1998 employment injury. Reports from Dr. Gebe, appellant's treating physician, noted a history of appellant's injury indicating appellant injured his left leg while at work but make no mention of a back condition. Other treatment notes from Dr. Gebe indicate that appellant was treated for a left leg injury which he sustained at work. He indicated that appellant presented with complaints of swelling of the left calf muscle and showed no signs of edema. Dr. Gede's October 8, 1998 note indicated appellant's injury was resolved and he could return to regular duty. None of the medical records submitted most contemporaneously with the date of the alleged injury, indicated

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<sup>1</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>2</sup> Section 10.104(b) of the Code of Federal Regulations provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The physician's report should include the dates of examination and treatment, the history given by the employee, the findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions, and the prognosis. 20 C.F.R. § 10.104(b) (1999).

<sup>3</sup> See *Robert H. St. Onge*, *supra* note 1.

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

<sup>5</sup> For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, *supra* note 1; *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 748 (1986).

<sup>6</sup> See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

that appellant was being evaluated for back pain, rather they only mention a left leg muscle strain.<sup>7</sup>

Reports from Dr. Lakritz provide some support for causal relationship but are insufficient to establish the claim. He noted that appellant was originally diagnosed with a left muscle strain. Dr. Lakritz noted that a subsequent MRI scan revealed a disc herniation at L4 and indicated that “this herniation is a direct result of his September 17, 1998 job-related injury.” His March 2, 2001 note indicated that the lifting and reaching appellant performed on September 17, 1998 caused his herniated disc at L4. Although Dr. Lakritz’s opinion somewhat supports causal relationship in a conclusory statement he provided no medical reasoning or rationale to support such statement. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.<sup>8</sup> Additionally, Dr. Lakritz made no attempt to explain how a left leg strain would cause or aggravate any of the other diagnosed conditions. There is no “bridging evidence” which would relate the Grade I spondylolisthesis of L4-5 and disc herniation to the accepted left leg strain. That is, he did not explain how, over 13 months following the accepted left leg strain, it was exacerbated by appellant’s employment factors to result in a Grade I spondylolisthesis at L4-5 and a herniated disc. The Office never accepted that appellant sustained a Grade I spondylolisthesis at L4-5 and a herniated disc at L4-5 as a result of his September 17, 1998 work injury and there is no medical rationalized evidence to support such a conclusion.<sup>9</sup> The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.<sup>10</sup>

Other medical reports submitted by appellant did not specifically address causal relationship between his accepted condition and his claimed recurrence of disability or conditions.

For these reasons, appellant has not met his burden of proof in establishing that he sustained a recurrence of disability or a medical condition beginning October 9, 1999 causally related to his accepted September 17, 1998 employment injury.

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<sup>7</sup> The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence; see *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

<sup>8</sup> See *Theron J. Barham*, 34 ECAB 1070 (1983).

<sup>9</sup> For conditions not accepted by the Office as being employment related, it is the employee’s burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office’s burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB \_\_\_\_ (Docket No. 98-2423, issued August 29, 2000).

<sup>10</sup> *Theron J. Barham*, *supra* note 8.

The April 12, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
March 7, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member