

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH D. DILLARD and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Youngstown, OH

*Docket No. 02-612; Submitted on the Record;
Issued November 7, 2002*

DECISION and ORDER

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

The issues are: (1) whether appellant established that he sustained a recurrence of disability on or around April 11, 2001 causally related to his prior accepted back injuries; and (2) whether the Office of Workers' Compensation Programs properly denied authorization for back surgery.

On February 8, 1999 appellant, then a 48-year-old mail processor, filed a claim for traumatic injury, Form CA-1, alleging that on January 26, 1999 he sustained a back injury while pulling mail out of a bin. He stopped work on January 26, 1999 and returned to limited duty on February 4, 1999. The Office accepted appellant's claim for lumbar sprain. He subsequently filed additional claims for back injuries sustained on June 25 and July 23, 1999 and July 10, 2000, which were accepted by the Office for aggravation of lumbar sprain, lumbar strain and sprain, respectively. As all appellant's injuries were to the same part of the body, the Office combined all the claims into one master file, claim number 09-450099. After each injury he was off work for a short period and then returned to limited duty.¹

Appellant remained in his limited-duty capacity until April 11, 2001, when he stopped work and filed a claim for a recurrence of disability. He returned to work on April 21, 2001. On July 17, 2001 appellant requested authorization for back surgery.

In a decision dated July 27, 2001, the Office denied appellant's claim for a recurrence of disability on or around April 11, 2001. The Office further denied his request for back surgery, stating that medical treatment at the Office's expense was not authorized and that all prior authorization for medical treatment was terminated.

¹ Appellant stopped work on June 25, 1999 and returned to limited duty on July 8, 1999, stopped work again on July 23, 1999 and returned to limited duty on July 24, 1999 and stopped work on July 10, 2000 and returned to limited-duty work on July 14, 2000.

The Board initially finds that appellant has not established that he sustained a recurrence of disability on or around April 11, 2001.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a 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 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 light-duty job requirements.² 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 and supports that conclusion with sound medical reasoning.³ Causal relationship is a medical issue⁴ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

In a narrative statement submitted in support of his claim, appellant stated that on April 11, 2001, while performing his normal work duties, he experienced severe pain in his lower back in the exact area that he injured on January 26, 1999. He stated that he was scheduled to be off work on April 12, 2001 and on April 13, 2001 he went to the hospital for treatment. The medical records indicate that just prior to his claimed recurrence, on April 10, 2001 appellant was seen for follow-up by Dr. Andrew Beistel, an associate of his treating physician and was advised to continue working his modified duty. The relevant medical evidence from the claimed recurrence of April 11, 2001 includes hospital treatment notes dated April 13, 2001, which note appellant's history of prior back injuries dating to 1999, state that his current complaint of pain began two days prior and contain a diagnosis of back strain. The hospital notes do not contain any discussion of appellant's ability to perform his limited-duty job and refer him to his regular physician. In a treatment note dated April 13, 2001, Dr. Joseph R. Cordova, appellants treating Board-certified family practitioner, diagnosed acute exacerbation of low back pain/injury, gave 1999 as the date of injury and advised appellant to follow up with Dr. Morris Pulliam, a Board-certified neurologist. Dr. Cordova listed physical restrictions, which he indicated should be observed for five to seven days, but he did not indicate whether or not appellant could return to work or otherwise discuss his ability to perform his light-duty job.

² *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *Frances B. Evans*, 32 ECAB 60 (1980).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

In a report dated May 3, 2001, Dr. Pulliam recommended that appellant undergo a lumbar laminectomy with arthrodesis and pedicle screws, as well as an iliac crest graft. He spoke solely to the nature of the surgical procedures involved and did not discuss the date or cause of appellant's back condition or his ability to work. In a follow-up form report dated July 17, 2001, Dr. Pulliam stated that he estimated appellant would be off work for six months postoperatively, but did not otherwise discuss his condition. The remaining medical reports of record either predate appellant's claimed April 11, 2001 recurrence of disability, including Dr. Pulliam's initial report dated February 15, 2001 or were received by the Office subsequent to the issuance of its July 27, 2001 decision.

The Board finds that the medical evidence of record is insufficient to establish that appellant sustained a recurrence of disability on or around April 11, 2001 causally related to the accepted employment injuries. Although in Dr. Cordova's April 13, 2001 report, he diagnosed acute exacerbation of a 1999 back injury, he did not discuss whether the exacerbation was sufficient to disable appellant from performing his light-duty job. Similarly, while the April 13, 2001 hospital treatment notes contain a diagnosis of back strain and indicate that appellant has a history of back injuries dating to 1999, these notes also do not discuss appellant's ability to perform his light-duty job. Finally, the remaining evidence dated between appellant's claimed April 11, 2001 recurrence of disability and the Office's July 27, 2001 decision does not address the relevant issues in this case. Therefore, as appellant failed to submit any medical evidence to indicate that his disability for work after April 11, 2001 was causally related to his accepted employment injuries, he has failed to establish the requisite causal relationship⁶ and the Office properly denied his recurrence claim.

The Board further finds that the issue of whether the Office properly denied appellant's request for back surgery, as well as any additional medical treatment for his accepted conditions, is not in posture for a decision.

Section 8103(a) of the Federal Employees' Compensation Act provides for the furnishing of "services, appliances and supplies prescribed or recommended by a qualified physician" which the Office, under authority delegated by the Secretary, "considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation."⁷ In interpreting section 8103(a), the Board has recognized that the Office has broad discretion in approving services provided under the Act to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.⁸ The Office has administrative discretion in choosing the means to achieve this goal and the only limitation on the Office's authority is that of reasonableness.⁹

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁷ 5 U.S.C. § 8103(a).

⁸ *Dale E. Jones*, 48 ECAB 648, 649 (1997).

⁹ *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by the Office is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or administrative actions which are contrary to both logic and probable deductions from established facts).

While the Office is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.¹⁰ Proof of causal relation must include rationalized medical evidence.¹¹ However, proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While a claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.¹²

In this case, appellant began conservative back treatment and physical therapy after his January 1999 accepted back strain and continued to receive periodic treatment for his four accepted back injuries. On July 11, 2000 after x-rays showed some spinal subluxation, appellant's treating physician, Dr. Cordova, requested authorization for a magnetic resonance imaging (MRI), which was granted by the Office. The MRI, performed on October 10, 2000 revealed moderate spondylostenosis at L4-5 and diffuse annular disc bulge with encroachment of the left lateral recess more than the right. In a report dated October 19, 2000, Dr. Cordova noted that based on appellant's complaints of radicular pain and the MRI findings, he might be a candidate for surgery and recommended that he be evaluated by Dr. Pulliam, which was subsequently authorized by the Office. In a report dated February 15, 2001, Dr. Pulliam noted that appellant's work duties involved a lot of lifting, twisting and bending and that he had a history of having sustained multiple employment-related back injuries, with the initial injury occurring on January 26, 1999. He concluded that, based on the MRI results, which showed significant degenerative disease at L4-5, with a narrowed bulging disc, surgical intervention was appropriate. In a follow-up report dated May 3, 2001, Dr. Pulliam explained the type of surgical procedure he recommended, but did not discuss the cause of appellant's condition.

In this case, the Office accepted that appellant sustained four back injuries prior to his April 11, 2001 recurrence claim. While the medical reports of Drs. Cordova and Pulliam are not sufficiently well rationalized to establish appellant's claim for back surgery, as neither physician explained why the requested surgery was related to appellant's accepted back condition and not to his degenerative disease, the Board finds that Dr. Cordova's and Pulliam's reports, taken together with appellant's history of multiple accepted back injuries, raise an inference of causal relationship between appellant's need for surgery and his accepted employment injuries and are sufficient to require further development of the case record by the Office.¹³ Additionally, the Board notes that the record contains no medical opinion contrary to appellant's claim.

On remand, the Office should further develop the medical evidence by referring appellant and a complete statement of accepted facts to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether the requested surgery is causally related, either directly or by way of aggravation, acceleration or precipitation, to the combined effect of his four accepted back conditions.

¹⁰ *Debra S. King*, 44 ECAB 203, 209 (1992).

¹¹ *Id.*

¹² *William J. Cantrell*, 34 ECAB 1223 (1983).

¹³ *See John J. Carlone*, 41 ECAB 354 (1989).

The July 27, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed in part and set aside in part and this case is remanded to the Office for further consideration consistent with this opinion.

Dated, Washington, DC
November 7, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member