

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RODGER R. FACER and U.S. POSTAL SERVICE,  
POST OFFICE, Harrisburg, PA

*Docket No. 02-918; Submitted on the Record;  
Issued November 20, 2002*

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DECISION and ORDER

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

The issue is whether appellant established that he sustained a recurrence of disability on August 12, 2001, causally related to his May 28, 2001 employment injury.

On May 28, 2001 appellant, a 45-year-old mailhandler, was injured in the performance of duty when his head came in contact with the guard door of a freight elevator. He lost consciousness and he fell to the floor, striking his head and right elbow. Appellant ceased working May 29, 2001 and returned to limited duty on June 4, 2001. He resumed his regular duties on June 26, 2001. The Office of Workers' Compensation Programs accepted appellant's claim for a closed head injury, right elbow contusion and cervical and thoracic sprains.

Appellant allegedly experienced a pain flare-up on August 10, 2001. He later claimed that he suffered a recurrence of disability on August 12, 2001, causally related to his accepted employment injury of May 28, 2001. Appellant explained that he continued to experience pain in his neck and back and that, while physical therapy provided some temporary relief, the pain and discomfort persisted.

The Office denied the claim on November 9, 2001 based on appellant's failure to establish a causal relationship between his claimed recurrence of disability and the May 28, 2001 employment injury.

The Board finds that appellant failed to establish that he sustained a recurrence of disability on August 12, 2001, causally related to his May 28, 2001 employment injury.

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a

previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>1</sup>

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>2</sup> This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.<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> While a physician's opinion 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>5</sup> Moreover, the physician must support his conclusion with sound medical reasoning.<sup>6</sup>

The record indicates that appellant had a preexisting cervical condition that required surgical intervention on March 24, 1995. At that time, appellant underwent a cervical discectomy at C5-6. In September 2000, Dr. A. Loren Amacher, a neurosurgeon, who has treated appellant since 1995 for his cervical condition, diagnosed left facet syndrome, resolved and further noted the presence of cervical spurs at C5-6 and C6-7.

The May 28, 2001 emergency room treatment records note a history of "some cervical degenerative disease in C5 and C6 which acts up from time to time." A May 28, 2001 x-ray of cervical spine "showed degenerative changes consistent with [appellant's] history."

A June 11, 2001 magnetic resonance imaging (MRI) scan of the lumbar spine revealed a mild broad-based disc bulge posteriorly at L5-S1, with disc space causing mild impression on the thecal sac. The MRI scan further revealed desiccation of the disc material at L5-S1.<sup>7</sup>

In the instant case, the Office has not accepted that appellant sustained an injury to his lumbar spine as a result of his May 28, 2001 employment injury. Where appellant claims that a condition not accepted or approved by the Office was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>8</sup>

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<sup>1</sup> 20 C.F.R. § 10.5(x).

<sup>2</sup> 20 C.F.R. § 10.104(b) (1999); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>3</sup> See *Helen K. Holt*, *supra* note 2.

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

<sup>5</sup> *Norman E. Underwood*, 43 ECAB 719 (1992).

<sup>6</sup> See *Robert H. St. Onge*, *supra* note 2.

<sup>7</sup> A similarly dated MRI scan of the thoracic spine was "unremarkable."

<sup>8</sup> *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

Appellant's treating physician, Dr. Jere L. Wagner, a Board-certified family practitioner, reported on August 17, 2001 that when he examined appellant on August 13, 2001, appellant was experiencing severe back pain, neck pain and headaches. He noted that appellant's MRI scan revealed a mild broad-based disc bulge at L5-S1, with disc space causing mild impression on the thecal sac. Dr. Wagner diagnosed muscle sprain and possible concussion syndrome, which he attributed to appellant's May 28, 2001 employment injury. He recommended further physical therapy and arranged for a consultation with Dr. Thomas F. Dominick, an orthopedic surgeon. Additionally, Dr. Wagner advised appellant not to return to work pending further evaluation by Dr. Dominick.

In a September 4, 2001 attending physician's report (Form CA-20), Dr. Wagner again diagnosed a muscle sprain. He further indicated that appellant was capable of doing light work with restrictions of "[l]ift nothing heavy" and "no constant bending." On September 6, 2001 Dr. Wagner advised the employing establishment that appellant was capable of performing limited-duty work that involved no lifting, pulling and pushing in excess of five pounds. He also recommended no prolonged walking or standing, with freedom of movement.

In an undated report, Dr. Wagner provided a summary of his treatment of appellant dating back to May 29, 2001. He noted, among other things, that he released appellant to return to his regular duties on June 24, 2001 and that appellant continued with physical therapy through July 13, 2001. Dr. Wagner stated that he next examined appellant on August 13, 2001, at which time he complained of severe upper back pain, neck pain and headaches. He explained that, since it was now nearly two months since the May 28, 2001 employment injury, he ordered an orthopedic consult and recommended that appellant cease working and resume physical therapy.

Although Dr. Wagner attributed appellant's current condition to his May 28, 2001 employment injury, he did not explain the basis for his finding. In both the August 17 and September 4, 2001 attending physician's reports (Form CA-20), he merely checked the "yes" box indicating that appellant's condition was related to his prior employment injury. Dr. Wagner did not otherwise explain the causal relationship. The Board has consistently held that such an opinion is of little probative value and is, therefore, insufficient to establish causal relationship.<sup>9</sup> Additionally, Dr. Wagner's undated narrative report provided no further insight regarding causal relationship.

Dr. Dominick evaluated appellant on August 31, 2001 and reported complaints of pain, mostly middle of the back. He further indicated that appellant's pain was worse with activity, but he did have constant low level pain. Physical examination revealed tenderness in the mid-thoracic spine. However, Dr. Dominick noted that appellant "does not move with a great deal of pain, in fact, he moves very nicely, smoothly and quickly without any apprehension or guarding." He reviewed appellant's thoracic and lumbar MRI scans, noting a normal thoracic spine and evidence of a mild broad-based disc bulge at L5-S1 causing some mild compression on the thecal sac. Dr. Dominick diagnosed "Back pain," most of which was thoracic in nature. He stated that while appellant has an L5-S1 degenerative disc, "I do not believe this is the etiology of his pain. I think this is myofascial pain." Dr. Dominick further stated that he did not believe

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<sup>9</sup> *E.g., Lee R. Haywood*, 48 ECAB 145, 147 (1996).

there were any fractures and there was certainly no thoracic disc herniation. And while appellant complained of a lot of pain, Dr. Dominick stated that “objectively [he could not] elicit much pain at all.” His impression was that appellant could definitely work in some capacity. Dr. Dominick recommended a bone scan and a functional capacity evaluation.

Appellant underwent a bone scan on September 7, 2001 and in his treatment notes dated September 14, 2001, Dr. Dominick noted that the recent bone scan did not show any abnormality in the region of the spine or thoracic rib cage. Nonetheless, appellant continued to complain of mid-thoracic pain. Dr. Dominick recommended pain pills, physical therapy and a functional capacity evaluation.

A September 20, 2001 functional capacity evaluation revealed, among other things, that appellant provided submaximal effort and exhibited a significant degree of symptom magnification. The report further indicated that appellant currently meet the requirements of a medium level job. Appellant reportedly could work an 8-hour shift and was able to tolerate 30 pounds of frequent lifting and 45 pounds of occasional lifting from floor to waist. Additionally, appellant could tolerate 15 pounds of frequent lifting and 18 pounds of occasional lifting from waist to overhead. Lastly, the report indicated that appellant was suffering from borderline depression.

In a September 20, 2001 attending physician’s report (Form CA-20), Dr. Dominick diagnosed lumbar pain and checked the “yes” box relating appellant’s condition to his May 28, 2001 employment injury. He further indicated that appellant was disabled as of August 31, 2001.

Dr. Dominick treated appellant on September 21, 2001, and his notes indicate that appellant was angry and in a lot of pain. He reviewed appellant’s functional capacity evaluation and stated that he too was concerned about appellant’s mental status. Dr. Dominick indicated that appellant seems very depressed, even suicidal. He further stated that appellant’s problem was not an orthopedic problem and could not be cured with surgery. Dr. Dominick recommended an MRI scan of the cervical spine and physical therapy. Additionally, he stated “more importantly,” that a pain clinic was crucially important as well as a psychiatric evaluation.

A September 26, 2001 MRI scan of the cervical spine revealed multilevel degenerative changes of the disc. The radiologist, Dr. Thomas Damiano, explained that the most significantly affected level was C5-6, where a right paracentral protrusion and osteophyte along with ligamentous thickening produced compression on the right side of the cord and narrowed the right side of the canal.

When Dr. Dominick examined appellant again on October 5, 2001, he reviewed the recent MRI results, noting “multilevel disc degeneration most at C5-6.” He recommended an epidural cervical injection and discharged appellant from his care.

Dr. Dominick’s September 20, 2001 Form CA-20 is the only report in which he attributed appellant’s current condition to the May 28, 2001 employment injury. As he merely checked the

“yes” box relating appellant’s condition to his May 28, 2001, this report is insufficient to establish causal relationship.<sup>10</sup>

Neither Dr. Wagner nor Dr. Dominick provided a rationalized medical opinion attributing appellant’s current condition to his accepted employment injury of May 28, 2001. Accordingly, the Office properly denied appellant’s claim for recurrence of disability.<sup>11</sup>

The November 9, 2001 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC  
November 20, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>10</sup> See *Lee R. Haywood*, *supra* note 9.

<sup>11</sup> The record on appeal includes numerous exhibits submitted after the Office issued its November 9, 2001 decision. The Board is precluded from reviewing evidence that was not before the Office at the time it issued its decision. 20 C.F.R. § 501.2(c); *Thomas W. Stevens*, 50 ECAB 288, 289 (1999).