

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID MORRIS BATTISTE and U.S. POSTAL SERVICE,
POST OFFICE, Plaquemine, LA

*Docket No. 03-305; Submitted on the Record;
Issued April 18, 2003*

DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability causally related to his accepted work injury.

Appellant's claim filed on September 13, 1995 after he stepped through a porch floor while delivering mail and hurt his left leg, thigh, groin and back was accepted for herniated lumbar discs. Appellant was treated at an emergency room and a computerized tomography scan showed moderate bilateral L3-5 neuroforamal encroachment as well as marginal spondylosis at L4-5.

On December 29, 1995 appellant returned to limited duty on the advice of his treating physician, Dr. Gregory Ward, Board-certified in physical medicine and rehabilitation. On November 7, 1996 the Office of Workers' Compensation Programs terminated appellant's wage-loss compensation on the grounds that his permanent modified part-time, flexible city carrier position fairly and reasonable represented his wage-earning capacity.

On September 24, 1997 appellant requested reconsideration, stating that he had not received his "scheduled" wages because the employing establishment did not give him enough work. The Office denied appellant's request on October 29, 1997. Subsequently, the Office denied appellant's recurrence of disability claim on April 11, 1997.¹

On March 18, 1999 appellant filed a second recurrence of disability claim and submitted a disability slip from Dr. Timothy R. Wentland, an anesthesiologist, who performed a procedure to relieve appellant's back pain on March 22, 1999. The Office accepted this claim and appellant returned to work on March 29, 1999.

¹ On June 26, 1996 the Department of Veterans Affairs increased appellant's disability compensation to 70 percent, which included traumatic arthritis and post-traumatic stress disorder. He received \$1,137.00 a month. He began receiving social security disability benefits in January 2001. On May 21, 2002 appellant's service-connected disability was increased to 100 percent, with a monthly payment of \$2,504.00.

On March 28, 2002 appellant filed a recurrence of disability claim alleging that increasing pain had incapacitated him for his limited-duty job. On April 17, 2002 the Office asked appellant for factual information and medical evidence to support his claim. The Office explained that he needed to submit evidence showing that either the requirements of his limited-duty job had changed or that his work-related condition had worsened so that he was unable to do the job. On May 30, 2002 the Office repeated its request for medical evidence.

Appellant submitted a May 23, 2002 report from Dr. Ward, who stated that appellant was unlikely to pursue and maintain gainful employment and would likely remain impaired because of “concerns pursuant to his low back.” Dr. Ward diagnosed lumbar degenerative disc disease and osteoporosis, with a long-standing history of low back pain. He added that appellant’s persistent pain brought him to the doctor’s office or the emergency room regularly and recommended further disability management and evaluation.

On September 5, 2002 the Office denied appellant’s claim on the grounds that the medical evidence was insufficient to establish that his disability for work was causally related to the 1995 accepted injury.²

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability causally related to his accepted work injury.

When an employee, who is disabled from the job he or she held when injured, returns to a limited- or light-duty position or the medical evidence establishes that the employee can perform the duties of such a position, the employee has the burden to establish by the weight of reliable, probative and substantial evidence, a recurrence of total disability.³ As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements or a change in the nature and extent of the injury-related condition.⁴

A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury.⁵ A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted employment injury.⁶ To meet this burden of proof, a claimant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history,

² Appellant filed a second recurrence of disability claim on November 7, 2002 and submitted an August 14, 2002 report from Dr. Ward. The Office has not issued a final decision on this claim. On November 25, 2002 the Office reduced appellant’s compensation based on the part-time rehabilitation position he accepted on September 15, 2001. This decision is not before the Board.

³ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ *Glenn Robertson*, 48 ECAB 344, 352 (1997).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997).

⁶ *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁷

Causal relationship is a medical issue,⁸ and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of 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.⁹ The physician's opinion 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.¹⁰

In this case, the Office informed appellant of the type of evidence necessary to establish that either the requirements of his limited-duty job had changed or that his work-related condition had worsened, resulting in a recurrence of disability causally related to the accepted work injury. Appellant submitted no evidence that the physical requirements of his limited-duty position had changed.

The only medical evidence appellant submitted in response to the Office's inquiry was the May 23, 2002 report from Dr. Ward. He stated that he had been treating appellant since November 1995 for a long-standing history of low back pain but did not discuss appellant's current disability in terms of the accepted disc herniation resulting from the September 1995 fall.¹¹

Appellant had preexisting osteoarthritis, which had worsened over the years and lumbar degenerative disc disease with persistent pain, as shown by a May 30, 2001 x-ray of his spine. But Dr. Ward offered no opinion on whether appellant's work-related back condition had deteriorated to the point of precluding appellant from performing his duties as a modified carrier. He did not discuss the disc herniation resulting from the September 1995 incident at all. Therefore, Dr. Ward's report is insufficiently rationalized to meet appellant's burden of proof in establishing that his current back condition is causally related to the disc herniation accepted as work related.¹²

⁷ *Helen K. Holt*, 50 ECAB 279, 282 (1999).

⁸ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

⁹ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

¹⁰ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

¹¹ See *Michael E. Smith*, 50 ECAB 313, 316 (1999) (finding that appellant failed to submit a rationalized medical opinion on causal relationship).

¹² See *Carmen Gould*, 50 ECAB 504, 508 (1999) (finding that a physician's opinion that failed to explain the relationship between appellant's current back condition and the accepted lumbar sprain was insufficient to establish causation and thus failed to meet appellant's burden of proof).

The September 5, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 18, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member