

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY R. KOZAK and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Rockford, IL

*Docket No. 02-964; Submitted on the Record;
Issued February 6, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability beginning November 13, 1986 due to his June 10, 1985 employment injury.

This case has previously been before the Board on four occasions. The Board's most recent decision, dated April 20, 2001,¹ sets forth the history of the case and is incorporated by reference. The Board found that, given the Office of Workers' Compensation Programs' definition of subluxation and its acceptance of a herniated disc at L4-5 due to appellant's June 10, 1985 employment injury, the report of an impartial medical specialist was sufficient to establish that appellant sustained a subluxation at L4-5 on June 10, 1985. The Board remanded the case to the Office "for an evaluation regarding whether appellant sustained a recurrence of disability on or after November 13, 1986 due to any of the accepted conditions related to his June 10, 1985 employment injury."²

On November 1, 2001 the Office referred appellant, prior medical records, x-rays and a statement of accepted facts to Dr. John Debush, a Board-certified orthopedic surgeon, for an evaluation of whether the medical evidence showed that appellant sustained a recurrence of disability on November 13, 1986 due to the accepted conditions related to his June 10, 1985 employment injury.

In a report dated November 15, 2001, Dr. Debush set forth appellant's history and findings on examination and reviewed the prior medical reports including computerized tomography (CT) scans and x-rays. He concluded:

"It is likely the injury of June 10, 1985 caused the injury to the annulus and bulging disc, which was the cause of [appellant's] symptoms. The findings of the

¹ Docket No. 00-1080.

² Also included in the accepted conditions were a lumbosacral strain and a right wrist strain.

degenerative changes on the CT scan of March 10, 1986 would indicate that the degenerative changes were present even prior to the June 10, [1985] injury. Certainly, the injury was significant insofar that it caused the bulging of the disc. If [appellant] had the recurrent pain in November 1985 (as he claims) and not in November 1986 it is possible that this recurrent pain may have been the aggravation of the preexisting condition caused in June 1985. However, judging from the multiple reports, it seems to be that [appellant] is mistaken and that he woke up with the pain in November 1986. If this is the case, then I think that his problems in November 1986 were not causally connected to the injury of June 10, 1985. This would be more than one year after the original injury and I do not think that this would classify as the aggravation of the previous injury.

“Therefore, I believe that [appellant’s] condition and increased pain in November 1986 is not in any way connected with the injury of June 10, 1985. It appeared to most likely be a sequela of degenerative disc changes and degenerative facet joints. Therefore, the medical evidence of record has established that there was no recurrence of the work-related disability secondary to the work-related injury of June 10, 1985.”

By decision dated December 12, 2001, the Office found: “[B]ased on the well-reasoned and objectively based medical opinion provided by Dr. Debush, the claim is in posture for denial as the medical evidence of record fails to establish that you sustained a recurrence of the work-related disability on or after November 13, 1986.”

The Board finds that the weight of the medical evidence establishes that appellant did not sustain a recurrence of disability beginning November 13, 1986 due to his June 10, 1985 employment injury.

In a November 5, 2001 report, Dr. Debush, a Board-certified orthopedic surgeon, to whom the Office referred appellant for a second opinion, concluded that appellant’s disability beginning November 1986 was not related to his June 10, 1985 injury but rather to the degenerative changes in his spine that were present before the injury, as demonstrated by a March 10, 1986 CT scan. Dr. Debush provided rationale for his conclusion, stating that the alleged recurrence was too remote in time from the original injury and that it could be attributed to the preexisting degenerative changes of his spine. The Board finds that Dr. Debush’s opinion constitutes the weight of the medical evidence and establishes that appellant did not sustain a recurrence of disability beginning November 13, 1986 due to his June 10, 1985 employment injury.

In a report dated August 17, 1987, appellant’s attending physician, Dr. Michael J. Hulsebus, a chiropractor, noted that appellant had experienced several recurrences of total disability after his return to work following his June 10, 1985 employment injury.³ Dr. Hulsebus noted that appellant was seen on November 13, 1986 “with an exacerbation of the condition of

³ The Office paid compensation for temporary total disability for the first of these recurrences, from October 23 to December 6, 1985. The other recurrences listed by Dr. Hulsebus, in March and July 1986 lasted only three days each and appellant used leave and did not file a claim for compensation.

June 10, 1985. He was put on total disability and was advised not to return to work until April 13, 1987.” In the August 7, 1987 report, Dr. Hulsebus stated that appellant was “still being treated for the original injury of June 10, 1985” and concluded: “Each time [appellant] was put on total disability or restricted duty was a result of the original injury of June 10, 1985.” The reports of Dr. Hulsebus are entitled to lesser probative value than those of Dr. Debush for the reason that Dr. Hulsebus did not provide any rationale explaining how appellant’s inability to work beginning November 13, 1986 was causally related to his June 10, 1985 employment injury.⁴

The December 12, 2001 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, DC
February 6, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁴ Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee’s burden of proof. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).