

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BOBBY PRINCE and U.S. POSTAL SERVICE,
POST OFFICE, Coppel, TX

*Docket No. 03-212; Submitted on the Record;
Issued February 26, 2003*

DECISION and ORDER

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

The issue is whether appellant establish a recurrence of disability causally related to his accepted work injury of July 20, 1995.

On July 27, 1995 appellant, then a 57-year-old custodial group leader, filed a notice of traumatic injury alleging that on July 20, 1995 he fell from a forklift and hit his head while in the performance of duty. Appellant was treated on July 20, 1995 at a local hospital for head lacerations and bruised right shoulder and lower back. The Office of Workers' Compensation Programs approved the claim for open wounds to the scalp and back of the head with no complications, contusion of the right shoulder region and a lumbar abrasion. Appellant received continuation of pay and returned to limited duty with restrictions.

The record indicates that appellant was treated in the year to follow the work injury for complaints of dizziness. He was subsequently diagnosed with Parkinson's disease.

On May 5, 1997 the employing establishment offered appellant a modified position as a group leader custodial. Appellant accepted the position on May 13, 1997 and returned to work. He later retired on September 8, 2001.

In a July 22, 1998 report, Dr. Charles Tuen, a Board-certified neurologist, noted that appellant reported difficulty with memory and confusion beginning three years prior. The diagnosis was subjective decline in memory and motor skills and possible depression.

In reports dated August 18 and November 23, 1998, Dr. Tuen indicated that appellant's memory was improving on medication and that there was no evidence of dementia. Neurological findings were consistent in follow-up reports on April 29, June 24 and July 14, 1999, except that appellant complained of weakness in the right hand and thumb.

In a report dated December 14, 1999, Dr. Tuen diagnosed mild Parkinson's disease, mild carpal tunnel syndrome and small vessel disease confirmed by a magnetic resonance imaging

scan. He reported neurological and physical findings. Dr Tuen's reported findings and diagnoses were essentially repeated in follow-up examinations on April 20, May 2 and August 7, 2001. The physician noted on August 7, 2001 that appellant was thinking of retiring. The physician, however, made no comment as to appellant's capacity for work.

The record contains a series of Form CA-17 disability status reports dated February 26, May 20, July 17, September 5 and December 16, 1996, which are signed by a physician's assistant and include a diagnosis of postconcussion syndrome due to the injury of July 20, 1995.¹ Appellant was reported to have a 25-pound lifting restriction and he was directed to perform no climbing, lifting or bending in his work.

On June 1, 2002 appellant filed a claim for a recurrence of disability. He alleged that he had never recovered from his work injury and that symptoms of dizziness had been ongoing since July 20, 1995.

In a July 2, 2002 letter, the Office advised appellant of the factual and medical evidence required to establish his claim for compensation based on a recurrence of disability.

In reports dated October 1, 2001 and February 20, 2002, Dr. Tuen noted that appellant had a history of Parkinson's disease with a mild tremor but no problem with walking or talking. He indicated that appellant had retired on September 1, 2001 and had no recurrent dizziness and no falls. Physical findings were recorded. The neurological examination indicated that appellant was alert with no difficulty with recent memory.

In a decision dated August 6, 2002, the Office denied appellant's claim for compensation on the grounds that the evidence of record was insufficient to establish that he sustained a recurrence of disability.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability causally related to his accepted work injury of July 20, 1995.²

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.³ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴ An award of compensation may not be made on the

¹ The Office did not accept the claim for a concussion and, therefore, refused to pay medical bills relating to treatment of postconcussion syndrome.

² The Board does not have jurisdiction to review evidence submitted by appellant subsequent to the Office's final decision. 20 C.F.R § 501.2(c).

³ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

⁴ *See Nicolea Brusio*, 33 ECAB 1138 (1982).

basis of surmise, conjecture, or speculation or on appellant's unsupported belief of causal relation.⁵

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or she 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.⁶

In support of his claim for reconsideration, appellant relies on the various medical reports prepared by Dr. Tuen relating to his treatment for dizziness, headaches and memory loss. He indicates that appellant suffers from Parkinson's disease but he has never related that condition to appellant's work injury. Moreover, Dr. Tuen has failed to offer an opinion finding that appellant was no longer able to work his limited-duty job⁷ or that he sustained a recurrence of disability. In the absence of reasoned medical opinion explaining how appellant sustained a recurrence of disability, appellant has failed to carry his burden of proof. Accordingly, the Board finds the evidence insufficient to establish that appellant sustained a recurrence of disability causally related to his work injury as alleged.

⁵ *Ausberto Guzman*, 25 ECAB 362 (1974).

⁶ *Cynthia M. Judd*, 42 ECAB 246 (1990).

⁷ The Board notes that it appears from the record that appellant was given a limited-duty job to accommodate his medical restrictions associated with the diagnosis of Parkinson's disease. As this is not a work-related condition, appellant's assignment to light duty would not be due to his accepted work injury. Notwithstanding, the Board finds no opinion of record to support a finding that appellant was unable to work in his limited-duty job at the time of his retirement.

The decision of the Office of Workers' Compensation Programs dated August 6, 2002 is hereby affirmed.

Dated, Washington, DC
February 26, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member