

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES E. GREEN and U.S. POSTAL SERVICE,  
POST OFFICE, Seattle, WA

*Docket No. 03-1038; Submitted on the Record;  
Issued July 21, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a recurrence of disability for the period July 28 to August 5, 2002, causally related to his accepted October 1, 2001 lumbosacral strain; (2) whether appellant met his burden of proof to establish that he sustained an additional employment-related injury on September 22, 2002; and (3) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's September 22, 2002 injury claim for reconsideration.

On October 4, 2001 appellant, then a 34-year-old custodian, filed a claim alleging that on October 1, 2001 he injured his back while lifting a recycling bin in the performance of duty. This claim was designated file number 142006126. Appellant stopped work on the day of injury, returned to limited duty on October 9, 2001 and returned to full unrestricted duty on November 27, 2001. On April 5, 2002 the Office accepted appellant's claim for lumbosacral strain.

On August 14, 2002 appellant filed a claim for wage-loss compensation, Form CA-7, for the period July 28 to August 5, 2002. On August 21, 2002 he filed a claim for a recurrence of disability, Form CA-2a, for the same period and submitted additional medical evidence in support of his claim. On his recurrence claim form, appellant stated that he had been in constant pain since the October 1, 2001 injury and that on July 24, 2002, while at home, he tried to start his lawn mower and suffered immediate increased pain in the area of his original injury.

By letter dated September 4, 2002, the Office informed appellant that his CA-7 claim for compensation for the period July 28 to August 5, 2002 was not currently payable, as the medical evidence of record failed to support total disability for the period claimed. The Office requested that appellant submit additional medical evidence identifying the period of disability claimed and containing a well-reasoned opinion as to the relationship between the disability and appellant's accepted employment injury. By letter dated October 2, 2002, the Office responded to appellant's claim for a recurrence of disability for the same period and requested additional evidence to establish his claim.

On September 24, 2002 appellant filed a new claim for a new traumatic injury, Form CA-1, alleging that, on September 22, 2002, he injured his back when he lifted a feeder alignment kit in the performance of duty. This claim is designated file number 142015112. Appellant stopped work on September 22, 2002 and returned to light duty on October 15, 2002.

By letter dated October 11, 2002, the Office asked appellant to submit additional medical evidence in support of his new claim, including a narrative medical report from his treating physician containing a rationalized opinion on the causal relationship between the diagnosed conditions and his employment.

In a decision dated November 14, 2002, the Office denied appellant's claim for a September 22, 2002 injury on the grounds that he had failed to submit the requested narrative medical reports in support of his claim.

In a decision dated December 6, 2002, the Office denied appellant's claim for wage-loss compensation for the period July 28 to August 5, 2002, on the grounds that the medical evidence of record did not establish that appellant sustained a recurrence of total disability for this period, causally related to the accepted October 1, 2001 employment injury.

By letter dated November 26, 2002, appellant requested reconsideration of the Office's November 14, 2002 decision and submitted additional medical evidence in support of his claim for a September 22, 2002 employment injury.

In a decision dated February 13, 2003, the Office denied appellant's request on the grounds that he neither raised substantive legal questions nor included new and relevant evidence.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability from July 28 to August 5, 2002, causally related to factors of his federal employment and, therefore, is not entitled to wage-loss compensation for this period.

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury. As part of this burden, appellant must furnish 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 employment factors and supports that conclusion with sound medical reasoning.<sup>1</sup> An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.<sup>2</sup>

In this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed total disability for

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<sup>1</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>2</sup> *Id.*

work from July 28 to August 5, 2002 and his accepted lumbosacral strain.<sup>3</sup> The Board has held that the mere belief that a condition was caused or aggravated by employment factors or incidents are insufficient to establish a causal relationship between the two.<sup>4</sup> As applied to this case, appellant's assertion that his disability for work from July 28 to August 5, 2002 was causally related to the accepted lumbosacral strain must be supported by rationalized medical evidence establishing that relationship. Without supporting medical rationale from a physician, appellant's diagnosed back conditions and his personal belief that he was totally disabled for work from July 28 to August 5, 2002 due to work factors, are insufficient to establish his claim.

In support of his claim, appellant provided medical evidence from his treating physicians pertaining to the period of the claimed recurrence of disability, July 28 to August 5, 2002. In a report dated July 25, 2002, the date following the alleged recurrence, Dr. Cindy Bowers, a Board-certified family practitioner with the Everett Clinic completed a return to work certificate indicating that appellant could return to light duty on July 29, 2002 and could return to full duty on August 5, 2002. Dr. Bowers did not list a diagnosis however and further indicated by check mark that appellant's disability was due to a nonwork-related injury. In a report dated July 29, 2002, Dr. Hoang Truong, a Board-certified family practitioner, with Physicians Neighborhood Clinics, stated that he had seen appellant that day for "severe lower back pain" and asked that he be excused from work from July 29 to August 5, 2002. However, he failed to provide a diagnosis of appellant's condition or explain its causal relationship, if any, to his employment. As neither Dr. Bowers nor Dr. Huong provided a diagnosis or indicated that appellant's disability was in any way connected with his employment, their opinions are of little probative value with respect to establishing appellant's claim for a recurrence of disability.<sup>5</sup>

Appellant also submitted numerous reports and treatment notes from Dr. Steven K. Taylor, a Board-certified physiatrist. In his initial report of record, dated August 20, 2002, he noted that appellant had a history of having injured his back on October 1, 2001, while lifting a recycling container at work. Dr. Taylor noted that appellant subsequently improved but "had an aggravation of his condition in July 2002." He further noted that appellant subsequently had a computerized tomography (CT) scan that revealed an L4-5 left-sided herniation. Dr. Taylor diagnosed low back and lower left extremity radicular symptoms secondary to an industrial injury on October 1, 2001, aggravated in July 2002 and indicated that appellant should remain on light duty while undergoing conservative treatment. On an accompanying August 20, 2002 CA-20 form report, Dr. Taylor reiterated these findings, that appellant had been totally disabled from July 28 to August 5, 2002 and that by check mark that appellant's diagnosed L4-5 herniated disc was causally related to his employment. The Board notes initially that appellant's claim has not been accepted for an employment-related herniated disc, but only for a lumbosacral strain. In addition, while Dr. Taylor stated that appellant sustained an aggravation of his condition in July 2001 and indicated by check mark that appellant's condition was causally related to his employment, these assertions, without further explanation and medical rationale explaining how and why factors of appellant's federal employment and not his intervening lawn mower incident,

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Patricia Bolleter*, 40 ECAB 373 (1988).

caused this disability for work, are insufficient to meet appellant's burden of proof with regard to establishing the claimed recurrence of disability.<sup>6</sup>

Appellant also submitted work release slips and progress notes from Dr. Taylor dated August 23, 27 and September 6 and 18, 2002, in which the physician continued to diagnose lumbar disc protrusion at L4-5 and indicated that appellant was expected to be totally disabled from August 23 to September 15, 2002. However, as these reports do not address appellant's capacity for work between July 28 and August 5, 2002, which is the subject of the instant claim, they are insufficient to meet his burden of proof.<sup>7</sup>

The remaining narrative reports of record are also not relevant to the pertinent period of disability. In a narrative report dated September 16, 2002, Dr. Taylor diagnosed resolving left lower extremity radicular symptoms associated with an L4-5 disc protrusion as revealed by CT and indicated that appellant could perform light-duty work. With respect to the cause of his condition, Dr. Taylor stated: "I understand that [appellant] is having difficulty with time loss compensation as there has been a contention that he was injured while pulling a cord on a lawn mower on July 23, 2002. It should be emphasized that he had his original industrial injury on October 1, 2001 with very similar symptoms. It is my belief on a more probably than not basis that his current symptomatology reflects residuals of his industrial injury dated October 1, 2001." In a report dated September 23, 2002, Dr. Taylor noted that appellant presented complaining of having suffered a worsening of his low back and leg pain on September 22, 2002, when he picked up a cordless drill in the performance of duty. In a follow-up report dated October 25, 2002, Dr. Taylor explained that appellant has suffered an aggravation of suspected L4-5 disc protrusion, which in turn was likely caused by his October 1, 2001 employment injury. He explained that appellant's condition had been aggravated on several occasions, most recently on September 22, 2002. Dr. Taylor concluded that appellant was felt to have a lumbosacral sprain and probable herniated nucleus pulposus as a result of his industrial injuries. Finally, in a narrative report dated November 25, 2002, he noted that magnetic resonance imaging performed that day revealed persistent left-sided L4-5 disc herniation impinging on the traversing L4-5 nerve root. With respect to the cause of appellant's condition, Dr. Taylor stated: "[Appellant] has a history of an industrial injury on October 1, 2001 resulting in L4-5 disc protrusion temporarily aggravated by another occupational injury on September 22, 2002. I understand the second injury claim was denied as it was felt to be an aggravation of his prior injury." Dr. Taylor concluded by prescribing medication and treatment, and indicated that appellant could continue to work light duty, four hours a day. The Board notes that while Dr. Taylor's reports dated September 16 and 23, October 25 and November 25, 2002 lend support to the contention that appellant's diagnosed conditions are causally related to his employment, as he does not address appellant's capacity to work between July 28 and August 5, 2002, his reports cannot support appellant's claim for a recurrence of disability for that time period.<sup>8</sup>

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<sup>6</sup> *Beverly J. Duffey*, 48 ECAB 569 (1997); *see id.*

<sup>7</sup> *See Brady L. Fowler*, 44 ECAB 343 (1992).

<sup>8</sup> *Id.*

The Board concludes that appellant did not submit sufficient rationalized medical evidence to establish that he was totally disabled from July 2 to August 5, 2002 due to the accepted October 1, 2001 lumbosacral strain or other factors of his federal employment, appellant has not met his burden of proof to establish a recurrence of disability.

The Board finds that this case is not in posture for a decision on whether appellant met his burden of proof to establish that he sustained an additional employment related injury on September 22, 2002.

In its decision dated November 14, 2002, the Office noted that the only medical evidence appellant submitted in support of his claim for a September 22, 2002 injury consisted of emergency room notes from Providence General Hospital dated September 22, 2002, indicating that he was seen on that date and diagnosed with low back pain, specific cause unknown and a work release slip from a physician at the Western Washington Medical Group Rehabilitation Sports and Spine Center, requesting that appellant be released from work for the period September 23 to October 15, 2002. The Office denied his claim because neither of these reports causally related appellant's September 22, 2002 back injury to his employment. The Board notes, however, that the record file received by the Board contains two separate spindles of evidence, one apparently associated with appellant's initial file number 142001626 and one associated with his later file number 142015112. While the evidence spindle associated with file number 142015112, appellant's September 22, 2002 injury claim, contains only the two items of medical evidence, the spindle for file number 142001626, appellant's initial injury claim, contains several items of medical evidence relevant to appellant's September 22, 2002 injury claim. This evidence was received by the Office prior to the issuance of its November 14, 2002 decision but was not considered in relevant decision. These items include Dr. Taylor's September 23 and October 25, 2002 reports.

In *William A. Couch*, the Board stated:

"The Federal Employees' Compensation Act provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision, it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed, it is critical that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office."<sup>9</sup>

The Board also notes that on February 26, 2003 appellant filed a claim for a recurrence of disability, Form CA-2a, alleging that his September 22, 2002 injury and associated periods of disability were causally related to his October 1, 2001 accepted employment injury. He submitted numerous pieces of medical evidence in support of this claim, which is apparently in

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<sup>9</sup> 41 ECAB 548 (1990).

the process of being further developed by the Office. Under the circumstances present here, where the record contains evidence which was not considered by the Office in rendering its final decision and where the record contains an additional claim concerning the same injury which is in the process of being separately adjudicated by the Office and consistent with the Board's policy of avoiding piecemeal adjudication of the issues and the possibility of inconsistent results,<sup>10</sup> the Board finds that the entire case record must be remanded to the Office for full consideration of all the relevant evidence pertaining to appellant's September 22, 2002 injury claim.<sup>11</sup> After such further development as the Office may find necessary, the Office should issue a *de novo* decision with respect to appellant's September 22, 2002 injury claim.

The decision of the Office of Workers' Compensation Programs dated December 6, 2002 is affirmed. The decisions of the Office dated February 13, 2003 and November 14, 2002 are hereby set aside and the case record is remanded to the Office for further action in conformance with this decision.

Dated, Washington, DC  
July 21, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>10</sup> *William T. McCracken*, 33 ECAB 1197 (1982).

<sup>11</sup> The Board further notes that, if appellant's claim files numbered 142001626 and 142015112 are not already formally consolidated, the Office should double the claims before proceeding. Federal (FECA) Procedure Manual, Part 2 -- File Maintenance and Management, Doubling Case Files, Chapter 2.40000.8(c)(2-00) (February 2000).