

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALBERT J. RODRIGUEZ and U.S. POSTAL SERVICE,  
POST OFFICE, Tampa, FL

*Docket No. 02-1983; Submitted on the Record;  
Issued March 19, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether is entitled to wage-loss compensation for the period December 29, 2001 to January 11, 2002 and from February 22 to 26, 2002 due to his accepted cervical strain.

On September 17, 2001 appellant, then a 50-year-old carrier, filed a claim for occupational disease alleging that on that day he sustained an injury to the right side of his neck and upper back.

In a report dated September 18, 2001, Dr. Edward N. Feldman, appellant's treating orthopedic surgeon, noted "spasm of the paracervical muscles with trigger points tenderness extending from C3-4 down to the trapezius and extending laterally to the acromion." He noted that there were multifocal pinpoint areas of pain. Dr. Feldman also noted that appellant's thoracic spine x-ray revealed degenerative disease at T5-6 and-T7-8. He opined that appellant sustained an injury to the neck on September 17, 2001, that he had identified "myonodular spasm with trigger point areas of pain, and a series of trigger point injections were performed with good intermediate results." Dr. Feldman returned appellant to work with minimal restrictions. In a duty status report dated that same day, he released appellant to full duty that day.

The Office of Workers' Compensation Programs accepted appellant's claim for cervical strain. Appellant returned to full duty on September 18, 2001.

On January 2, 2002 appellant filed a claim for wage loss from December 29, 2001 to January 11, 2002 based on the September 17, 2001 work-related injury.<sup>1</sup>

In a report dated October 19, 2001, Dr. Charles William Hirt, a radiologist, noted a herniated disc pulposus at L3-4, a herniated disc pulposus at L4-5 and a bulge at L5-S1 associated with early degenerative disc disease.

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<sup>1</sup> On February 23, 2002 appellant filed a second claim for wage loss from February 22 to 26, 2002.

In a report dated October 23, 2001, Dr. Feldman stated that appellant's herniated disc pulposus at L3-4 and L4-5, his bulging disc at L5-S-1, degenerative disc disease at C5-6 and his subacute cervical sprain were causally related to his September 17, 2001 work-related injury.

In a report dated November 1, 2001, Dr. Feldman noted that appellant had a herniated disc pulposus at C5-6.

In a report dated November 14, 2002, Dr. William O. DeWeese, Board-certified in neurological surgery, noted that appellant's initial September 17, 2001 neck injury caused pain and that it later caused severe back and left leg pain. He then related appellant's subjective complaints of severe left leg pain while vacationing in Hawaii.

In a report dated December 10, 2001, Dr. DeWeese noted that appellant had a large centralized left disc protrusion at L4-5 causing back and left leg pain.

On December 12, 2001 Dr. DeWeese performed a lumbar laminectomy and discectomy on appellant.

By decision dated January 25, 2002, the Office denied appellant's claim for wage loss.

By letter dated February 7, 2002, appellant, through his representative, requested reconsideration.

In support of his request, appellant submitted a February 21, 2002 report from Dr. DeWeese who stated that he performed a lumbar disc excision with laminectomy on December 18, 2001 which was causally related to the September 17, 2001 work-related injury.

In a report dated February 21, 2002, Dr. Feldman stated that appellant's herniated lumbar disc was causally related to his work-related injury.

In a report dated October 5, 2001, Dr. James Barchal stated that he had examined appellant on that day, that appellant had low back pain and was totally disabled from October 1 to 4, 2001.

By decision dated May 29, 2002, the Office denied modification of its prior decision.

The Board finds that appellant failed to establish that his entitlement to wage-loss compensation for the period December 29, 2001 to January 11, 2002 and from February 22 to 26, 2002 were due to his accepted cervical strain.

It is a well-settled principle of workers' compensation law that, if the medical evidence establishes that the residuals of an employment-related impairment are such that, from a medical standpoint, they prevent the employee from continuing in the employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.<sup>2</sup> The

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<sup>2</sup> Bobby W. Hornbuckle, 38 ECAB 626, 630 (1987).

general test of loss of wage-earning capacity is whether a claimant's work-related impairment prevents him from engaging in the kind of work being performed when injured.<sup>3</sup>

To establish a causal relationship between appellant's accepted lumbar and thoracic and any related period of disability, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s). The opinion of the physician must be based on a complete factual and medical background, 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.<sup>4</sup>

In this case, appellant failed to submit rationalized medical evidence. The Office accepted that appellant sustained a cervical injury on September 17, 2001. Appellant was released to full duty on September 18, 2001. None of the evidence submitted by appellant established that his disability from work for certain periods was caused by his accepted injury. For example, Dr. Hirt diagnosed herniated disc pulposus at L3-4 and L4-5, and a bulge at L5-S1; however, the condition caused by these findings were not accepted by the Office. Although Dr. Feldman stated that appellant's herniated disc pulposus at L3-4 and L4-5, his bulging disc at L5-S1 and degenerative disc disease at C5-6 were causally related to his September 17, 2001 work-related injury, he did not support that conclusion with a rationalized medical opinion. Further, Dr. Feldman did not find that appellant's C5-6 degenerative disc disease was caused by his employment or that he was disabled as a result of it. Likewise, Dr. DeWeese did not support his conclusion that appellant's left leg pain, which was initially identified while appellant was on vacation in October 2001, was caused by his accepted injury. Further, Dr. DeWeese's February 21, 2002 report in which he stated that he performed a lumbar disc excision with laminectomy on December 18, 2001, did not relate that condition with appellant's work-related injury.<sup>5</sup> Finally, Dr. Barchal's report did not include a rationalized medical opinion establishing a causal relationship between appellant's low back pain and his employment.

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<sup>3</sup> *Elis Loveless, Jr.*, 40 ECAB 368, 373 (1988).

<sup>4</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

<sup>5</sup> In appellant's request for reconsideration, his representative stated: "[Appellant] was given authorization to have surgery by Dr. DeWeese and only after checking into the hospital and while performing the surgery someone called to cancel the authorization." The record does not include an Office authorization for surgery.

The decisions of the Office of Workers' Compensation Programs dated May 29 and January 25, 2002 are affirmed.

Dated, Washington, DC  
March 19, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member