

**United States Department of Labor
Employees' Compensation Appeals Board**

PERRY T. TURNER, Appellant

and

**U.S. POSTAL SERVICE, EUFAULA POST
OFFICE, Eufaula, AL, Employer**

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**Docket No. 03-1670
Issued: April 20, 2004**

Appearances:
Valerie D. Judah, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On June 17, 2003 appellant filed a timely appeal from a December 17, 2002 merit decision of the Office of Workers' Compensation Programs, which denied modification of a February 26, 2002 decision denying his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the recurrence of disability issue in this case.

ISSUE

The issue on appeal is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability on or after October 12, 2001 causally related to his accepted July 5, 1996 lumbar strain. On appeal he asserted that the opinion of Dr. Richard Meadows, an attending Board-certified osteopath specializing in family practice, was sufficient to establish causal relationship.

FACTUAL HISTORY

The Office accepted that on July 5, 1996 appellant, then a 38-year-old city mail carrier, sustained a lumbar sprain when he slipped and fell on a wet concrete porch. Dr. Richard

Bendinger, an attending Board-certified osteopath specializing in family practice, diagnosed an acute lumbar strain and contusion. He released appellant to full duty on July 15, 1996.

Appellant submitted periodic reports from Dr. Bendinger and Dr. Meadows. In reports from October 1997 to October 2001, the physicians described appellant's worsening low back pain with February 1999¹ and October 2001 flare-ups and diagnosed degenerative disc disease, a herniated lumbar disc and left-sided sciatica. Dr. Meadows stated in an October 5, 2001 report, that appellant "over did it yesterday lifting" and experienced low back pain and left-sided sciatica.

On October 22, 2001 appellant filed a claim alleging that he sustained a recurrence of total disability from October 12 to 23, 2001 attributable to the July 5, 1996 lumbar sprain. He asserted that he had experienced episodes of back pain since the July 5, 1996 injury.²

In a January 11, 2002 letter, the Office advised appellant of the type of additional evidence needed to establish his claim, including a statement regarding any additional injuries sustained since his return to full duty on July 15, 1996. Appellant responded by February 6, 2002 letter, stating that the heaviest things he lifted were packages at work and that he had no strenuous hobbies. He noted no injuries subsequent to July 15, 1996.

In support of his claim, appellant submitted additional reports from Dr. Meadows. In an October 15, 2001 report, Dr. Meadows noted the July 1996 occupational injury, diagnosed a probable herniated nucleus pulposus with sciatica and restricted appellant to light duty. In a January 30, 2002 report, he opined that appellant's worsening symptoms were "compatible with degenerative disc disease" and a probable herniated lumbar disc. Dr. Meadows noted that appellant's back pain began after the July 1996 fall and that it was "conceivable that the injury ... [was] at least contributing to and probably a major causative factor to his back pain, at the present time."

By decision dated February 26, 2002, the Office denied appellant's claim on the grounds that causal relationship was not established. He requested an oral hearing which was held on September 23, 2002. At the hearing, appellant asserted that he used his private medical insurance to pay for treatment to avoid the humiliation he felt when his postmaster accompanied him to medical visits.³

¹ The record indicates that appellant lost time from work in February 1999 due to back pain, but did not file a compensation claim. Dr. Meadows referred appellant to Dr. Henry H. Barnard, a Board-certified orthopedic surgeon, who submitted reports from February 23 to May 21, 1999. Dr. Barnard obtained a March 2, 1999 lumbar magnetic resonance imaging (MRI) scan showing broad based central disc herniations at L4-5 and L5-S1 with impingement on the thecal sac and a small herniated disc at T11-12. He opined that appellant was neurologically intact and; therefore, not a surgical candidate.

² The employing establishment controverted the claim as appellant did not report an October 12, 2001 injury, did "heavy work" at his home and farm and allegedly stated that he filed the claim because paying for treatment under his private health insurance had become too expensive.

³ The record contains an undated note from the employing establishment asserting that appellant's back problems preexisted his postal employment and that he used leave rather than claim compensation.

By decision dated and finalized December 17, 2002, an Office hearing representative affirmed the February 26, 2002 decision, finding that there was insufficient rationalized medical evidence to establish a causal relationship between appellant's back condition as of October 10, 2001 and the accepted July 5, 1996 injury. The hearing representative found that Dr. Meadows' January 30, 2002 opinion was speculative as he used the term "conceivable" in characterizing the possibility of a causal relationship.

LEGAL PRECEDENT

A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury or new exposure to factors causing the original illness or injury.⁴ When a claimant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician, who on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician's conclusion.⁵ An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.⁶

ANALYSIS

The Office accepted that appellant sustained a lumbar sprain resulting from a July 5, 1996 slip and fall. He was released to full duty as of July 15, 1996. In his claim for recurrence of disability, appellant alleged that the July 15, 1996 slip and fall caused a total disability for work from October 12 to 23, 2001, as well as lumbar conditions diagnosed from October 1997 to October 2001. Appellant thus, has the burden of providing rationalized medical evidence to establish the causal relationship asserted.⁷

In support of his claim for recurrence of disability, appellant submitted reports from Dr. Meadows, an attending Board-certified osteopath specializing in family practice. In an October 5, 2001 report, Dr. Meadows noted the onset of lumbar pain and left-sided sciatica after "over doing it" while lifting the day before. Dr. Meadows thus implicated an intervening October 4, 2001 incident as the cause of appellant's lumbar symptoms as opposed to the July 5, 1996 injury.⁸ The Board notes that October 4, 2001 was a Thursday, which the record indicates was a nonworkday under appellant's schedule. Thus, the chain of causation between the July 5,

⁴ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- *Claims, Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997).

⁵ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁶ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁷ *Ricky S. Storms*, *supra* note 5.

⁸ Dr. Meadows did not indicate whether or not the October 4, 2001 lifting incident occurred in the performance of appellant's federal duties and would thus, constitute a new occupational injury.

1996 injury and appellant's lumbar condition was broken as of October 4, 2001, prior to the claimed recurrence of disability commencing October 10, 2001.⁹ The claimed recurrence of disability; therefore, cannot be deemed to have arisen out of appellant's federal employment.

The Board notes that appellant was advised by a January 11, 2002 letter, of the need to submit a statement reporting any additional injuries sustained since his return to full duty on July 16, 1996. However, his February 6, 2002 letter noted no injuries subsequent to July 15, 1996 and did not address the October 4, 2001 lifting incident.

The Board notes that the Office denied appellant's claim on the grounds that the medical evidence submitted was speculative and insufficiently rationalized.¹⁰ The Board notes that Dr. Meadows did not submit any reports finding appellant totally disabled for work from October 10 to 23, 2001. However, the dispositive issue in the case is that the legal chain of causation stemming from the July 5, 1996 injury was broken by the intervening October 4, 2001 lifting incident. Therefore, the lack of rationale in Dr. Meadows' reports regarding a medical causal relationship between the July 5, 1996 injury and appellant's condition after October 4, 2001 is no longer relevant.¹¹

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability on or after October 10, 2001 causally related to his July 5, 1996 employment injury, as the evidence demonstrates an intervening October 4, 2001 incident which breaks the legal chain of causation from the July 5, 1996 injury.

⁹ See *Carlos A. Marrero*, 50 ECAB 117, 119-20 (1998) (the Board found that the claimant's use of an exercise machine constituted an intervening cause of his disability and thus, the Office properly denied appellant's claim for recurrence of disability); *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994) (the Board found that the claimant's knee injury sustained while playing basketball broke the legal chain of causation from an accepted knee injury sustained in the performance of his duties as a firefighter).

¹⁰ In an October 15, 2001 report, Dr. Meadows noted the July 5, 1996 injury and diagnosed a probable herniated nucleus pulposus, but did not explain any connection between them. Such an explanation is crucial as Dr. Meadows diagnosed only a lumbar strain and contusion contemporaneously to the July 5, 1996 injury, not a herniated disc. In the absence of clarifying rationale, Dr. Meadows' later attribution of new diagnoses to the original injury is of lessened probative value. *Charles W. Downey*, 54 ECAB ___ (Docket No. 02-218, issued February 24, 2003). In a January 30, 2002 report, Dr. Meadows opined that it was "conceivable" that the 1996 injury caused or contributed to appellant's ongoing back pain. The probative value of this report is weakened by its speculative nature. *Barbara Johnsen (James C. Johnsen)*, 54 ECAB ___ (Docket No. 03-1738, issued September 30, 2003).

¹¹ *Clement Jay After Buffalo*, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated and finalized December 17, 2002 is affirmed.

Issued: April 20, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member