

Appellant was offered a position as a part-time flexible modified distribution clerk with the employing establishment on August 6, 1998, which he accepted. This position required that appellant sort mail in a manual distribution case no more than two hours a day, and perform assorted clerical and customer service duties for the remainder of the day. He returned to work on August 10, 1998 and worked until September 28, 1998. By letter dated October 14, 1998, the Office informed appellant that he had 30 days to either return to the position or explain his reasons for abandoning it. By decision dated November 25, 1998, the Office denied appellant's claim for recurrence on September 28, 1998. This decision was affirmed by the hearing representative in a decision dated May 3, 1999. Appellant's request for reconsideration was denied on February 29, 2000.

On February 21, 2002 appellant filed a claim for recurrence of disability due to the accepted injury of aggravation of spondylolisthesis as of December 11, 2001. By letter dated March 28, 2002, the Office requested that appellant submit further information. No information was timely received, and by decision dated May 14, 2002, the Office denied appellant's claim for recurrence because there was no medical documentation to establish that the current condition was related to the accepted injury.

By letter dated June 3, 2002, appellant requested review of the written record. In support thereof, appellant submitted, *inter alia*, a May 29, 2002 report by Dr. Osler F.C. Rivas, a neurologist, wherein he indicated that appellant has seen him since April 18, 2002 for the purpose of trying other modalities or forms of treatment for his persistent low back pain. He noted that throughout the years, the established diagnoses were severe degenerative disc disease at the L3-4 level, four millimeter anterolisthesis of L3 in relation to L4 and bilateral facet joint degenerative changes in the lower lumbar spine. He further noted that he started treatments with vertebral axial decompression on April 24, 2002, and that appellant has had 14 visits so far, and that it is estimated that he will have a total of 32 sessions. He noted that the goal of the treatment was to decrease pain, increase lumbar range of motion to normal limits, and demonstrate home exercise program with accuracy. Appellant also submitted a progress note by Dr. Maria J. Valente, a Board-certified internist, dated April 15, 2002 wherein she indicated that appellant had Grade I spondylolisthesis at the L3-4 level with associated spondylolysis of L3 bilaterally, disproportionate degenerative changes with disc space narrowing at the L3-4 level, consistent with degenerative disc disease at that level, but with no significant changes since December 16, 1997.

In an August 30, 2002 report, Dr. Rivas indicated that appellant's outcome was not as productive as anticipated. He noted that, although there had been a significant increase in muscle strength, appellant's muscle strength remained 60 percent below the average norm for his age.

In a letter dated October 18, 2002, the employing establishment indicated that it agreed with the May 14, 2002 decision, as well as with the previous decisions in this case.

In a decision dated December 9, 2002, the hearing representative affirmed the Office's May 14, 2002 decision. The hearing representative indicated that the evidence did not establish a recurrence of disability. The hearing representative noted that, although the medical evidence establishes that appellant continues to have spondylolisthesis of his spine, his disability is due to

a herniated disc and degenerative disc disease and not the aggravation of his preexisting condition which was caused by his employment.

LEGAL PRECEDENT

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 an 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.¹

ANALYSIS

In the instant case, appellant returned to work in a modified limited-duty position provided by the employing establishment. Appellant alleged numerous recurrences, including an alleged recurrence on September 28, 1998. These claims for recurrence were denied in previous decisions dated November 25, 1998, May 3, 1999 and February 29, 2000. These decisions, issued more than one year before appellant filed his current appeal, are not under the Board's jurisdiction.

The issue currently before the Board is whether appellant established a recurrence of his accepted injury on December 11, 2001. The Board finds that the Office properly denied appellant's claim for recurrence. Appellant submitted no medical evidence concurrent with the date of the alleged recurrence, December 11, 2001. The medical evidence dated most recently, including the reports of Dr. Valente and Dr. Rivas, do not link appellant's current complaints with his work-related injury. In fact, Dr. Valente indicated in her April 15, 2002 report that there had been no significant changes since December 16, 1997. There is no other medical evidence in the record establishing a recurrence of disability on or about December 11, 2001. Accordingly, appellant has not met his burden of proof in establishing a recurrence of his accepted injury of aggravation of spondylolisthesis.

CONCLUSION

As described above, the Board finds that appellant has not established a recurrence of disability due to the accepted injury on December 11, 2001.

¹ Wilfredo Carrillo, 50 ECAB 99 (1998).

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 27, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member