

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SEAN REED and U.S. POSTAL SERVICE,  
POST OFFICE, New Orleans, LA

*Docket No. 03-1896; Submitted on the Record;  
Issued January 7, 2004*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant sustained a back injury causally related to factors of his federal employment.

On July 23, 2001 appellant, then a 33-year-old part-time flat sorting machine operator, filed a traumatic injury claim alleging that he aggravated a preexisting back condition on July 22, 2001 due to lifting, twisting and constant standing at work.

In reports dated July 23, 2001, Dr. Charles Sea, an emergency room physician working at the Ochsner Clinic, diagnosed a lumbar sprain while lifting and indicated that appellant had a preexisting back condition that was aggravated by lifting heavy buckets of mail and constant standing at work. Appellant continued to receive treatment for back problems for an extended period after July 2001.

By decision dated September 14, 2001, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he had not submitted sufficient medical evidence to establish that he sustained an injury on July 22, 2001, as alleged.

By letter dated October 3, 2001, appellant requested an oral hearing that was held on November 20, 2002. At the hearing, appellant indicated that his back injury had occurred due to lifting buckets, weighing up to 90 pounds, in the 2 or 3 days leading up to and including July 22, 2001. Following the hearing, the employing establishment and appellant submitted descriptions of the physical requirements of his job. The employing establishment asserted that the buckets lifted by appellant weighed no more than 40 pounds and appellant reiterated his belief that they weighed more than 40 pounds.

By decision dated February 6, 2003, the Office hearing representative vacated the Office's September 14, 2001 decision and remanded the case for further development. The Office hearing representative found that appellant had established fact of injury and remanded

the case for determination of whether appellant's back strain was temporarily or permanently aggravated by the work injury.

On remand, the Office referred appellant to Dr. Christopher E. Cenac, a Board-certified orthopedic surgeon, for evaluation of whether appellant had a back condition and whether it was "secondary to his approximately 21-month old work incident." In a report dated May 27, 2003, Dr. Cenac provided a history of appellant's condition and findings on examination and stated that he could find no objective evidence of a back condition. He stated:

"Reflex testing is normal in both lower extremities. No sensory deficits are noted to pinprick or light touch. Muscle spasm is not detected. [Appellant] has nonphysiologic responses to palpation. He has nonphysiologic responses to evaluation or motion. He can heel and toe walk without difficulty. The straight leg raise examination is negative to 90 degrees sitting and supine.... X-ray studies were completed. They are normal in my opinion. I cannot document any narrowing of the disc space at L5-S1."

In a report dated June 12, 2003, Dr. Cenac stated that he had reviewed a magnetic resonance imaging (MRI) scan performed on May 30, 2003 and the study was normal. He stated his opinion that appellant had no physical limitations "as a result of complaints of low back pain."

By decision dated July 2, 2003, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that he sustained a back condition as a result of his July 22, 2001 work incident. The Office determined that the opinion of Dr. Cenac showed that appellant did not sustain an employment-related back injury.

The Board finds that this case is not in posture for a decision.

In the decision of the Office hearing representative dated February 6, 2003, the hearing representative vacated the Office's September 14, 2001 decision and stated:

"With the testimony as provided at the hearing, and after review of the comments from both the employing agency and the claimant, it is determined that the claimant did perform heavy lifting of buckets of mail, weighing in excess of 40 pounds, during his shift on July 22 and beginning on July 23, 2001.

"The question then is whether the claimant had a medical condition causally related to his employment duties.... The claimant was taken to the emergency room ... on July 23, and was diagnosed with a lumbar sprain by Dr. Sea. Dr. Sea advised of knowledge of a prior back injury in the service and of knowledge of lifting heavy buckets of mail. The subsequent reports from Oschner Clinic, although signed by a physician's assistant, continue to indicate that the claimant has a lumbar sprain related to the work injury. While the evidence is *prima facie* evidence that the claimant had a lumbar sprain causally related to his employment, a sprain usually resolves in six to eight weeks. The medical evidence in file suggests that the condition continued for months thereafter, and as such additional medical evidence and opinion is required to clarify if the

claimant's current condition is related to the work injury, and if not, when any injury-related disability ceased.

“Upon return of the case file, the Office should issue a [s]tatement of [a]ccepted [f]acts<sup>1</sup> and refer the claimant for a second opinion evaluation with an appropriate specialist. The physician should be advised to review the medical evidence of record, examine the claimant, perform any diagnostic tests deemed necessary, and provide a rationalized medical opinion on the relationship of the claimant's condition to the work injury, specifically addressing whether any aggravation was permanent [or] temporary in nature. If temporary, a date of cessation of the temporary aggravation should be provided. Upon receipt and review of this report, and after any further necessary development, the Office should render a *de novo* decision with regard to the claimant's entitlement to compensation benefits.”<sup>2</sup>

The wording of the hearing representative's February 6, 2003 decision suggests that she found that appellant sustained a work-related lumbar sprain during the several days leading up to July 22, 2001 causally related to lifting heavy buckets of mail and that she remanded the case for the Office to determine whether appellant's continuing back problems were related to the employment injury on or about July 22, 2001 and, if not, the time when any disability related to the employment injury ceased. The hearing representative also stated that the Office should prepare a new statement of accepted facts. However, the record does not indicate that the Office prepared a new statement of accepted facts nor did it ask the second opinion physician the questions proposed by the hearing representative. The Office therefore never elicited an answer to the issue, whether appellant's back strain was temporarily or permanently aggravated by the injury, and if only temporarily aggravated when such aggravation ceased. The Office, after further development, determined in its July 2, 2003 decision that appellant had not established any medical condition causally related to a July 22, 2001 work incident. The Office based its decision on the opinion of Dr. Cenac, a Board-certified orthopedic surgeon who served as an Office referral physician.<sup>3</sup>

Appellant's case is remanded to the Office for further development and a *de novo* decision which shall include clear findings of fact and a precise basis for its decision. Specifically, the Office should determine whether appellant's lumbar sprain sustained on or about July 22, 2001 is an accepted injury as ostensibly determined by the Office hearing representative in her February 6, 2003 decision, and, if so, the date that any disability due to the

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<sup>1</sup> The statement of accepted facts is not of record.

<sup>2</sup> The Office hearing representative also indicated that appellant's claim should be developed as an occupational disease claim as appellant had claimed his back injury occurred over the two or three days leading up to and including July 22, 2001.

<sup>3</sup> It does not appear that Dr. Cenac provided a clear opinion whether appellant sustained an employment-related back injury on or about July 22, 2001, but rather merely indicated that appellant did not have an employment-related back injury at the time of his evaluation in mid 2003.

employment injury ceased and whether appellant is entitled to compensation for the employment injury, and whether his continuing back problems are causally related to the employment injury.<sup>4</sup>

The July 2, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC  
January 7, 2004

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>4</sup> If the Office deems it necessary to refer appellant for further medical evaluation, it should prepare a new statement of accepted facts to include an accurate description of appellant's work duties (including lifting duties). It should be noted that appellant alleged his back injury occurred in the 2 or 3 days leading up to and including July 22, 2001, rather than solely on the shift starting on July 22, 2001.