

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN J. LOPEZ and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Oklahoma City, OK

*Docket No. 03-2136; Submitted on the Record;  
Issued January 14, 2004*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant established that he sustained a recurrence of disability commencing June 4, 2002 causally related to the accepted May 29, 2002 thoracic back strain.

On June 26, 2002 appellant, then a 31-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on May 29, 2002 he suffered thoracic back strain due to turning a heavy box of dough in the freezer. Appellant was seen at the employing establishment health unit that day and was returned to work with lifting no more than 40 pounds for 3 days. Appellant stated that he stopped work on May 30, 2002 and returned on June 3, 2002 at which time he returned to his regular shift. The employing establishment indicated that it did not make any accommodations or adjustments to appellant's regular duties as the "employee" stated that "he was fine and able to perform duties."

On November 25, 2002 the Office of Workers' Compensation Programs accepted that, on May 29, 2002, appellant sustained a thoracic back strain. The employing establishment stated that appellant's temporary job was terminated on June 5, 2002.

On June 26, 2002 appellant also filed a notice of recurrence of disability (Form CA-2a) alleging that on June 3, 2002 he sustained a recurrence of total disability causally related to the May 29, 2002 accepted thoracic back strain. He claimed that "I believe after working a full shift the strain recurred on June 3, 2002." Appellant stated that he could not turn his head, and went to the emergency room where a doctor prescribed muscle relaxants and no work for three days. The employing establishment stated that appellant's temporary job was terminated on June 5, 2002.

On August 13, 2002 the Office received a June 3, 2002 employee health record. In a June 3, 2002 entry it was noted that appellant "Feels better today but was off work May 30 and 31, 2002. Needs return to work slip. Still feels some sharp pain when he bends forward.

Will place him on restricted duty to no lifting 25 pounds or repeated reaching and pushing while bending for three days” by a doctor whose signature is illegible.<sup>1</sup>

By letter dated November 25, 2002, the Office requested factual and medical information from appellant. Specifically, whether he suffered any new injuries at work or elsewhere since he last returned to work and to provide a narrative medical report from his attending physician which included a history of the original injury as reported by him, any diagnostic test results, a firm diagnosis, results of x-rays and laboratory studies; a physician’s opinion regarding the relationship between the need for continuing medical treatment and the accepted work-related condition; and the physician opinion which is crucial to the claim, of why appellant was unable to work.

By another letter dated November 25, 2002, the Office advised appellant that it had received his Form CA-7, claim for compensation for the period commencing June 3, 2002. The Office advised that medical evidence establishing disability for work during the period claimed was needed.<sup>2</sup> The Office allotted appellant 30 days within which to submit additional information. Appellant did not submit any medical evidence within the time allotted.

By decision dated April 3, 2003, the Office denied appellant’s recurrence of disability claim on the grounds that the evidence of record failed to establish that the claimed recurrence on June 4, 2002 was causally related to the May 29, 2002 accepted thoracic back strain.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability commencing on June 4, 2002, causally related to his May 29, 2002 accepted thoracic back strain.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the accepted employment injury and supports that conclusion with sound medical reasoning.<sup>3</sup>

The medical evidence submitted in support of his claim for recurrence of disability commencing June 4, 2002 consists of a health unit record containing a June 3, 2002 entry. The June 3, 2002 entry referred to appellant going to an emergency room, feels better but was off

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<sup>1</sup> The record supports that the employing establishment and appellant agree that appellant performed his regular work on June 3, 2002.

<sup>2</sup> On November 5, 2002 the Office received appellant’s September 11, 2002 Form CA-7 claiming compensation from June 4, 2002 to present.

<sup>3</sup> *Lourdes Davila*, 45 ECAB 139 (1993); *Louise G. Malloy*, 45 ECAB 613 (1994).

work on May 30 and 31, 2002 and will be placed on restricted duty of lifting no more than 25 pounds or pushing or bending for three days by a doctor whose signature is illegible.<sup>4</sup>

The June 3, 2002 note does not provide a rationalized explanation of the causal relationship between the May 29, 2002 accepted thoracic back strain and appellant's claimed condition commencing June 3, 2002. By letter dated November 25, 2002, the Office advised appellant of the medical evidence needed to establish his claim for recurrence of disability for work, but such evidence was not submitted within the allotted time.

Consequently, as appellant has not established that he sustained a recurrence of disability commencing June 4, 2002 causally related to the May 29, 2002 accepted thoracic back strain he has failed to meet his burden of proof.

The April 3, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
January 14, 2004

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> The record supports that the employing establishment and appellant agree that appellant performed his regular work on June 3, 2002.