

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

RONALD J. SAINE, Appellant

and

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Oakland, CA,
Employer**

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**Docket No. 04-1304
Issued: September 7, 2004**

Appearances:
Ronald J. Saine, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On April 19, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 24, 2004 denying his recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of total disability on or after June 9, 2003 causally related to his October 1, 2002 employment injury of lumbar radiculopathy.

FACTUAL HISTORY

On October 1, 2002 appellant, then a 51-year-old mail handler, filed a notice of occupational disease alleging that he developed sciatica beginning on October 1, 2001 due to his

employment duties. The Office accepted appellant's claim for lumbar radiculopathy on October 31, 2002 and paid appropriate compensation benefits.

Appellant underwent a magnetic resonance imaging (MRI) scan on April 28, 2002 which demonstrated a broad-based disc bulge at L5-S1 with a superimposed right paracentral disc protrusion and inferior extrusion of disc material causing impingement and displacement of the right S1 nerve root.

Appellant's attending physician, Dr. Tipkins Hood, a Board-certified orthopedic surgeon, completed a narrative report on January 27, 2003. Dr. Hood noted appellant's history of injury and medical treatment, stating that appellant had received two epidural injections which relieved some of his back pain. On physical examination he found that appellant had limited range of motion of the lumbar spine, positive straight leg raising and sensory numbness to pinprick and light touch in the S1 nerve distribution down the right side of the foot and leg. Dr. Hood found that appellant was unable to heel or toe walk because of unsteadiness in gait and pain in the right leg and right hip and sciatica. He diagnosed low back pain with right sciatica, and herniated disc based on MRI scan. Dr. Hood stated that appellant could perform light-duty work and recommended an ergonomic chair. He indicated that appellant would eventually require surgical intervention.

Dr. Hood completed a form report on March 18, 2003 providing appellant's work restrictions as lifting up to 20 pounds for 6 hours a day, 6 hours a day of sitting, walking and standing and no climbing, kneeling, bending, stooping, twisting, pulling or pushing.

Appellant accepted a light-duty position at the employing establishment on April 1, 2003. His employment duties included hand stamping and hand canceling letters, flats and parcels. Appellant was required to lift up to 20 pounds intermittently, stand, sit, walk and utilize his hands for 6 hours each and no climbing, kneeling, bending, stooping, twisting, pushing or pulling.

The Office referred appellant for a second opinion examination on April 7, 2003. In a report dated April 30, 2003, Dr. Jerrold M. Sherman, a Board-certified orthopedic surgeon, noted appellant's history of injury¹ and provided his findings on physical examination including normal range of motion of the lumbar spine, no tenderness or muscle spasm, normal deep tendon reflexes and no muscle wasting. He stated that appellant could walk on his heels and toes and had a normal gait. Dr. Sherman found that appellant had a normal spine examination and diagnosed resolved lumbar spine radiculopathy and opined that appellant did not require further medical treatment. He completed a work restriction evaluation and concluded that appellant could work eight hours a day with no restrictions.

On May 6, 2003 the Office requested that Dr. Hood review Dr. Sherman's report and provide a narrative report comment on the finding that appellant had no residuals of his employment injury.

¹ Dr. Sherman incorrectly stated that appellant had had no injections of the lumbar spine.

Dr. Hood completed a work restriction evaluation on May 13, 2003 and repeated his earlier physical limitations. On July 14, 2003 Dr. Hood prescribed a transcutaneous electrical nerve stimulation [TENS] unit for appellant's condition of herniated disc with back pain. In a note dated July 21, 2003, Dr. Hood indicated that appellant was disabled from July 21 to April 31, 2003 and that he was a "herniated disc" patient. He stated that appellant was to receive therapy and injections.²

On December 23, 2003 the Office received a recurrence of disability claim from appellant alleging a recurrence of total disability on June 9, 2003 due to his November 1, 2001 employment injury.

The Office requested additional factual and medical evidence by letter dated January 7, 2004. In support of his claim, appellant submitted a note dated February 7, 2004 signed by a physician whose signature is illegible indicating that appellant was totally disabled from February 5 through 9, 2004 and that he could return to work on February 10, 2004. By decision dated February 24, 2004, the Office denied appellant's claim finding that he failed to establish a recurrence of total disability on or after June 9, 2003 due to his accepted employment injury of October 1, 2001.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 show that he 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 requirements.³

ANALYSIS

The Office accepted appellant's claim for lumbar radiculopathy resulting from duties of his federal employment. Appellant returned to light-duty work on April 1, 2003 in accordance with the restrictions of his attending physician, Dr. Hood, a Board-certified orthopedic surgeon. Appellant then filed a notice of recurrence of disability alleging that on or after June 9, 2003 he sustained a period of total disability due to his October 1, 2001 employment injury.

Appellant did not submit any evidence regarding a change in the nature and extent of his light-duty job requirements and therefore has not established that his alleged recurrence of total disability resulted from such a change in his light-duty work.

² The Board notes that this disability slip does not appear to be complete. A second sentence states, "Patient will ...," but does not continue.

³ *Terry R. Hedman*, 38 ECAB 222 (1986).

In regard to a change in the nature and extent of his injury-related condition, appellant has submitted limited medical evidence. Dr. Hood completed a work restriction evaluation on May 13, 2003 maintaining the March 18, 2003 work restrictions. This form report does not support a change in the nature and extent of appellant's injury-related condition as his work restrictions did not vary.

On July 14, 2003 Dr. Hood prescribed a TENS unit due to appellant's condition of herniated disc with back pain. This note is not sufficient to establish a change in the nature and extent of appellant's diagnosed condition. Dr. Hood has provided a diagnosis of herniated disc at L5-S1, a condition not accepted by the Office, beginning in January 2003. This note provides no evidence that appellant's employment-related condition has changed such that he is no longer capable of performing his light-duty job requirements and is totally disabled beginning on July 14, 2003.

In a note dated July 21, 2003, Dr. Hood indicated that appellant was disabled from July 21 to April 31, 2003 and noted he was a "herniated disc" patient. He stated that appellant was to receive therapy and injections. This note is not sufficient to meet appellant's burden of proof in establishing a recurrence of total disability due to his accepted employment injury of lumbar radiculopathy. Although Dr. Hood opined that appellant was totally disabled, he did not provide any physical findings explaining how and why he reached this conclusion. Dr. Hood did not describe a change in the nature and extent of appellant's employment-related condition and therefore this note is not sufficient to establish the alleged recurrence of disability. Moreover, as a herniated disc is not an accepted condition, appellant has the burden of proof to establish causal relationship to the employment injury.⁴ This he has not done.

Appellant also submitted a note dated February 7, 2004 signed by a physician whose signature is illegible indicating that appellant was totally disabled from February 5 through 9, 2004 and that he could return to work on February 10, 2004. This note does not provide a diagnosis, physical findings or any other medical evidence supporting that appellant was totally disabled from his light-duty position due to a change in the nature and extent of his injury-related condition such that he could no longer perform the light-duty position. For these reasons, this note is not sufficient to establish that appellant sustained a recurrence of total disability.

CONCLUSION

The Board finds that appellant not submitted sufficient medical evidence to establish either a change in the nature and extent of his injury-related condition or a change in the nature and extent of his light-duty job requirements. Therefore, appellant has not met his burden of proof in establishing a recurrence of disability on or after June 9, 2003 causally related to his October 1, 2001 employment injury.

⁴ See *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

ORDER

IT IS HEREBY ORDERED THAT the February 24, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 7, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member