

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

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**WILLIAM W. SMITH, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Oakland, CA, Employer**

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**Docket No. 05-237  
Issued: December 29, 2005**

*Appearances:*

*Brook L. Beesley*, for the appellant  
*Miriam D. Ozur, Esq.*, for the Director

Oral Argument December 13, 2005

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On November 2, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 17, 2004 merit decision denying his claim for increased disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), 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 increased disability on or after July 15, 2002 due to his November 1, 1999 employment injury.

**FACTUAL HISTORY**

On November 2, 1999 appellant, then a 30-year-old letter carrier, filed a traumatic injury claim alleging that he injured his back when he lifted heavy mail trays at work on November 1, 1999. The Office accepted that he sustained a lumbar strain. He began working for the employing establishment in a limited-duty position on a full-time basis which initially did

not require lifting more than 15 pounds. The Office paid compensation for periods of partial disability.

The results of magnetic resonance imaging testing obtained on December 17, 1999 showed chronic degeneration of the lumbosacral spine with a mild disc protrusion at L5-S1. In a report dated January 25, 2000, Dr. Angela Soohoo, an attending physician Board-certified in physical medicine and rehabilitation, indicated that appellant had full range of motion of the lumbosacral spine and a negative neurological examination, but with some pain radiating into the left leg.

On September 20, 2000 Dr. Stanton Schiffer, an attending Board-certified neurosurgeon, performed a discectomy and transpedicular decompression of the nerve root at L5-S1, a procedure which was authorized by the Office.

In a report dated November 27, 2001, Dr. Jerrold M. Sherman, a Board-certified orthopedic surgeon who served as an Office referral physician, indicated that appellant was able to work eight hours per day. In a report dated December 12, 2001, Dr. Schiffer indicated that appellant remained totally disabled.

The Office referred appellant to Dr. Arthur E. Lyons, a Board-certified neurosurgeon, for an impartial medical examination and opinion regarding the nature of his employment-related medical condition. In a report dated June 21, 2002, Dr. Lyons indicated that appellant remained partially disabled due to his November 1, 1999 employment injury.

On June 3, 2002 appellant began working at the employing establishment as a video coding system technician for eight hours per day. The position involved reading addresses into a headset and did not require lifting or handling mail. It allowed sitting or standing as needed for comfort and included a five-minute break every hour.<sup>1</sup> On April 23, 2002 Dr. Schiffer had determined that appellant was capable of performing the position.<sup>2</sup>

In a report dated July 29, 2002, Dr. Schiffer stated that appellant reported persistent left leg pain, but did not wish to proceed with back surgery. He recommended that appellant “work half time” and indicated that he was transferring his care to another physician.<sup>3</sup>

On July 30, 2002 appellant filed a claim alleging that he sustained a recurrence of partial disability on July 15, 2002 due to his November 1, 1999 employment injury. He asserted that his

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<sup>1</sup> By decision dated August 5, 2002, the Office determined that appellant’s actual wages as a video coding system technician represented his wage-earning capacity.

<sup>2</sup> In a report dated February 27, 2002, Dr. Schiffer indicated that appellant could return to full-time work on March 11, 2002 in a job that did not require lifting more than 10 pounds, repetitive stooping or standing for more than 15 minutes at a time. He stated that appellant could deliver mail via a driving route.

<sup>3</sup> In a note dated July 29, 2002, Dr. Schiffer indicated that appellant could work 4 hours per day and that he could not lift more than 10 pounds.

back and leg pain had increased in frequency and that he could only work four hours per day in his limited-duty position.<sup>4</sup>

In a form report dated September 9, 2002, Dr. Schiffer stated that appellant had an employment-related herniated disc at L5-S1 and indicated that he could not work more than 4 hours per day, stand for more than 15 minutes at a time, or sit for more than 30 minutes at a time. In a report dated September 25, 2002, Dr. Schiffer stated that in March 2002 he had given appellant work restrictions which allowed mail delivery on a driving route and casing for 3½ hours, but which did not allow standing for more than 15 minutes at a time, sitting for more than 30 minutes at a time, or repetitive bending, stooping, pushing or pulling. He noted that during a July 29, 2002 office visit appellant complained of persistent lower back and left leg pain and noted, “Due to [appellant’s] continued complaints and exacerbation of symptoms with a trail of full-time duty, I recommended to him that he return to work, but work only four hours per day (continuing with the same restrictions), beginning on July 30, 2002.”

In a form report dated October 7, 2002, Dr. Soohoo indicated that appellant had chronic low back pain and a left radiculopathy due to his November 1, 1999 injury and stated that he could only work four hours per day with the ability to change positions as needed.

By decision dated October 28, 2002, the Office denied appellant’s claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of partial disability on or after July 15, 2002 due to his November 1, 1999 employment injury.

Dr. Soohoo continued to produce reports indicating that appellant could only work four hours per day. In an October 7, 2002 report, submitted to the Office in November 2002, Dr. Soohoo stated that appellant would have permanent residuals related to his degenerative lumbar spinal stenosis if he did not have a further laminectomy procedure and concluded that therefore he must modify his work activities on a permanent basis. In a report dated November 25, 2002, Dr. Soohoo stated that appellant reported tenderness over the left sacral area with intermittent pain radiation into the left leg. She continued to recommend that appellant work four hours per day. Dr. Soohoo produced several similar reports between December 2002 and March 2003.

In a report dated December 19, 2002, Dr. Allen Shah, an attending physician Board-certified in physical medicine and rehabilitation, indicated that appellant exhibited some mild decreased sensation in his left lower extremity and reported some numbness and tingling and pain upon motion in the extremity. Dr. Shah recommended that appellant continue “current work restrictions” and that he be referred to a chronic pain clinic.<sup>5</sup>

In a February 7, 2003 report, Dr. Thomas R. Stephenson, an attending Board-certified surgeon, discussed the degenerative disease of appellant’s low back and indicated that the work

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<sup>4</sup> In mid July 2002, appellant began working for four hours per day in his position as a video coding system technician.

<sup>5</sup> In additional reports dated in January and February 2003, Dr. Shah indicated that appellant could only work four hours per day due to his lumbar radiculopathy.

restrictions recommended by Dr. Schiffer on September 25, 2002 appeared to be appropriate for appellant. In an April 22, 2003 report, Dr. Robert J. Jamasbi, an attending Board-certified anesthesiologist, noted that appellant continued to report pain in his low back which radiated into his left leg and indicated that he agreed with his work restrictions which were necessitated by his employment injury. Appellant continued to receive treatment from Dr. Jamasbi through mid 2004, but his reports did not contain any further explanation of appellant's work restrictions.

Appellant requested a hearing before an Office hearing representative which was held on July 15, 2004. By decision dated and finalized September 17, 2004, the Office hearing representative affirmed the Office's October 28, 2002 decision.

### **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 job requirements.<sup>6</sup> The Board has held that these principles apply not only to the situation where an employee claims a recurrence of total disability, but also to the situation, such as appellant's, where the claim for a recurrence is that the extent of partial disability increased.<sup>7</sup>

### **ANALYSIS**

The Office accepted that appellant sustained an employment-related lumbar strain on November 1, 1999. On June 3, 2002 appellant began working at the employing establishment in a limited-duty position as a video coding system technician for eight hours per day. The position involved reading addresses into a headset and did not require lifting or handling mail; it allowed sitting or standing as needed for comfort and included a five-minute break every hour. In mid July 2002 appellant began working in the position for four hours per day and claimed that he sustained a recurrence of increased partial disability on July 15, 2002 due to his November 1, 1999 employment injury such that he could only work four hours per day.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of increased partial disability on or after July 15, 2002 due to his November 1, 1999 employment injury.

Appellant submitted a July 29, 2002 report in which Dr. Schiffer, an attending Board-certified neurosurgeon, stated that he reported persistent left leg pain, but that he did not wish to proceed with back surgery.<sup>8</sup> He recommended that appellant "work half time" in his position as

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<sup>6</sup> *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>7</sup> *See Mary A. Howard*, 45 ECAB 646 (1994).

<sup>8</sup> On September 20, 2000 Dr. Schiffer had performed a discectomy and transpedicular decompression of the nerve root at L5-S1.

a video coding system technician. In a form report dated September 9, 2002, Dr. Schiffer stated that appellant could not work more than 4 hours per day, stand for more than 15 minutes at a time, or sit for more than 30 minutes at a time. In a report dated September 25, 2002, Dr. Schiffer noted that during a July 29, 2002 office visit appellant complained of persistent lower back and left leg pain and stated, “Due to [appellant’s] continued complaints and exacerbation of symptoms with a trail of full-time duty, I recommended to him that he return to work, but work only four hours per day (continuing with the same restrictions), beginning on July 30, 2002.”

The Board notes that the reports of Dr. Schiffer are of limited probative value on the relevant issue of the present case in that he did not provide adequate medical rationale in support of his conclusion on causal relationship.<sup>9</sup> In April 2002 Dr. Schiffer specifically indicated that appellant could perform the duties of the video coding system technician position for eight hours per day.<sup>10</sup> He did not explain how appellant’s employment-related medical condition had changed such that by mid July 2002 appellant was only able to work for four hours per day in the position. Dr. Schiffer’s descriptions of appellant’s condition, including his low back and leg symptoms, are similar both before and after mid July 2002. He did not describe with detail objective findings which showed that appellant’s medical condition had worsened during this period such that he could only perform the duties of the video coding system technician position for four hours per day. Such medical rationale is necessary given the limited nature of the position.<sup>11</sup> Dr. Schiffer did not explain why appellant’s complaints would not be solely due to a nonwork-related condition, such as his degenerative disc disease of the low back.<sup>12</sup>

In a form report dated October 7, 2002, Dr. Soohoo, an attending physician Board-certified in physical medicine and rehabilitation, indicated that appellant had chronic low back pain and a left radiculopathy due to his November 1, 1999 injury and stated that he could only work four hours per day with the ability to change positions as needed. Dr. Soohoo produced several similar reports dated through March 2003. However, she also failed to explain her opinion that appellant sustained increased disability in mid 2002 due to his November 1, 1999 employment injury. Dr. Soohoo did not describe appellant’s November 1, 1999 employment injury in any detail or explain which objective findings showed that his employment-related condition had worsened such that he could only work for four hours per day. Dr. Soohoo suggested that appellant’s additional work restrictions beginning in July 2002 were necessitated by a nonwork-related condition. In an October 7, 2002 report, she stated that appellant would have permanent residuals related to his degenerative lumbar spinal stenosis if he did not have a further laminectomy procedure and concluded that therefore he must modify his work activities on a permanent basis.

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<sup>9</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>10</sup> Appellant began to work in the position on June 3, 2002.

<sup>11</sup> On appeal appellant has suggested that the sitting required by the position caused him to sustain a new back and lower extremity condition, but he filed a claim for recurrence of increased disability rather than for a new injury.

<sup>12</sup> It should emphasized that appellant’s claim has only been accepted for a lumbar strain.

Appellant also submitted reports dated between December 2002 and February 2003 in which Dr. Shah, an attending physician Board-certified in physical medicine and rehabilitation, noted his back and left leg symptoms and recommended that he continue working four hours per day. In a February 7, 2003 report, Dr. Stephenson, an attending Board-certified surgeon, discussed the degenerative disease of appellant's low back and indicated that the work restrictions recommended by Dr. Schiffer on September 25, 2002 appeared to be appropriate for appellant. In reports dated between April 2003 and July 2004, Dr. Jamasbi, an attending Board-certified anesthesiologist, noted that appellant continued to report pain in his low back which radiated into his left leg and indicated that he agreed with his work restrictions which were necessitated by his employment injury.

The reports of these physicians are deficient for the same reasons as the reports of Dr. Schiffer and Dr. Soohoo. These physicians did not describe objective findings which showed that appellant's medical condition had worsened on or after July 15, 2002 such that he could only perform the duties of the video coding system technician position for four hours per day, nor did they explain why appellant's condition would not be solely due to his nonwork-related degenerative disc disease.<sup>13</sup>

For these reasons, appellant did not meet his burden of proof to establish that he sustained increased disability on or after July 15, 2002 due to his November 1, 1999 employment injury.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained increased disability on or after July 15, 2002 due to his November 1, 1999 employment injury.

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<sup>13</sup> It should be noted that appellant did not allege a change in the nature and extent of the light-duty job requirements that necessitated working for fewer hours.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' September 17, 2004 decision is affirmed.

Issued: December 29, 2005  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board