

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

PAUL WASYLYK, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bloomfield, NJ, Employer**

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**Docket No. 05-263
Issued: June 14, 2005**

Appearances:
Paul Wasylyk, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 8, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 29, 2004 which denied his claim for a recurrence of disability. 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 established a recurrence of disability as of May 20, 2004 causally related to his July 23, 1984 employment injury.

FACTUAL HISTORY

On July 24, 1984 appellant, then a 35-year-old letter carrier, filed a claim alleging that on July 23, 1984 he fell off a step and twisted his back while delivering mail. The Office accepted appellant's claim for back strain, spondylosis and a depressive disorder. Appellant returned to light-duty work for the employing establishment four hours a day commencing May 26, 1992, and worked at this position for twelve years.

On June 18, 2004 appellant filed a recurrence of disability of the July 23, 1984 employment injury as of May 20, 2004 when he stopped work. The employing establishment controverted the claim. By letter dated July 2, 2004, the Office requested that appellant submit further information. In a letter dated July 17, 2004, appellant indicated that on May 20, 2004 he was home and poured a cup of coffee and turned to sit at the table and experienced a sharp pain in his lower left back and thigh which rendered him bedridden with very little mobility. He noted that he had no other injuries to the same area of the body since the original injury of July 23, 1984. He noted that he had sustained an exacerbation of his back injury which led to back surgery in May 1991.

In an attending physician's report dated June 17, 2004, Dr. Eugene M.J. Pugatch, an attending neurologist, diagnosed a herniated lumbar disc, lumbar radiculopathy and noted that this was a further complication of the work injury sustained in 1984. He stated that appellant was totally disabled commencing May 17, 2004. In a report dated July 23, 2004, he indicated that appellant had a herniated lumbar disc with paravertebral spasm, compounding his prior injuries. He stated that appellant's period of total disability commenced May 24, 2004.¹

The employing establishment submitted evidence that appellant was on scheduled vacation for the week of May 17 through 24, 2004 and that, when he was scheduled to return to work on May 24, 2004, he called in sick.

By decision dated September 29, 2004, the Office denied appellant's recurrence of disability.

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.²

ANALYSIS

Appellant has not met his burden of proof to establish that he sustained a recurrence of total disability due to his accepted injury. No medical evidence of record provides rationalized medical support for the fact that he could no longer perform his part-time, limited-duty position. Dr. Pugatch indicated that appellant was disabled and that it was related to his July 23, 1984 work injury. However, he attributed appellant's disability to a herniated disc, a condition which

¹ Appellant also submitted Dr. Pugatch's prescription for physical therapy dated June 7, 2004 and notes from the physical therapist. A physical therapist is not a "physician" within the meaning of section 8101(2) of the Federal Employees' Compensation Act and cannot render a medical opinion. *Vickey C. Randall*, 51 ECAB 357, 360 (2000).

² *Wilfredo Carrillo*, 50 ECAB 99 (1998).

has not been accepted by the Office as related to the 1984 injury. Moreover, he did not explain why appellant could not perform the limited-duty assignment that he was working at the time he stopped work.

As appellant failed to submit a rationalized medical opinion explaining why he could no longer perform his limited-duty assignment in 2004, the Office properly found that he had not established a recurrence of disability on or after May 20, 2004.

CONCLUSION

The Board finds that the Office properly determined that appellant had not established a recurrence of disability as of May 20, 2004 causally related to his July 23, 1984 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 29, 2004 is affirmed.

Issued: June 14, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member