

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

M.F., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Kansas City, KS, Employer

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**Docket No. 06-1102
Issued: August 4, 2006**

Appearances:
Houston Ford, Jr., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On April 11, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 13, 2005 and March 21, 2006 merit decisions denying his recurrence of disability claim. 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 a recurrence of disability on or after August 6, 2004 due to his April 25, 2004 employment injury.

FACTUAL HISTORY

On April 25, 2004 appellant, then a 46-year-old mail handler and power equipment operator, filed a traumatic injury claim alleging that he sustained injury on that date when a forklift fell more than four feet to the ground while he was still on it. He stopped work on April 25, 2004.

The Office accepted that appellant sustained cervical and lumbar sprains and strains and paid appropriate compensation for periods of disability.¹

On May 14, 2004 appellant returned to his regular, full-time work.²

On November 8, 2005 appellant filed a claim alleging that he sustained a recurrence of disability on August 6, 2004 due to his April 25, 2004 employment injury. He indicated that he experienced back pain since April 25, 2004 but that on August 6, 2004 the pain became “more excruciating and constant.”³

Appellant submitted October 28, 2004 magnetic resonance imaging (MRI) scan testing showing that he had disc protrusions at L4-5 and L5-S1 with neural compression.

By letter dated December 10, 2004, the Office requested that appellant submit additional factual and medical evidence in support of his claim.

Appellant submitted a report of October 25, 2004 x-ray testing that revealed results which were similar to those found in the report of October 28, 2004 MRI scan testing.

By decision dated May 13, 2005, 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 disability on or after August 6, 2004 due to his April 25, 2004 employment injury.

Appellant requested a hearing before an Office hearing representative which was held on January 24, 2005. He testified that he had continuous pain in his low back since the April 25, 2004 injury and developed pain shooting into his left leg beginning in June 2004. Appellant indicated that he awoke on October 16, 2004 with unusually severe pain running from his back down his left leg.

Appellant submitted October 20, 2004 progress notes in which Dr. Dahlia S. Saldana, an attending Board-certified internist, noted that he reported he “got up to go to work” on October 16, 2004 and had back and left leg pain. She diagnosed degenerative disc disease at L4-5 and L5-S1 and acute radicular symptoms in the left leg. Dr. Saldana stated, “I am not sure whether the back problem is from the April 25, 2004 injury or this is just a flare-up of

¹ The record contains the findings of April 30, 2004 x-ray testing showing that appellant had preexisting moderately severe degenerative changes between L4 and S1 of the low back.

² Appellant’s regular work required lifting up to 70 pounds and engaging in pushing, pulling, kneeling, bending and stooping.

³ It is unclear from the record whether appellant stopped work at this time.

degenerative disc disease since April 27, 1999.” In a note dated November 2, 2004, she indicated that appellant should be off work from October 20 to November 5, 2004.⁴

In a report dated August 18, 2005, Dr. E. Scott Frankel, an attending Board-certified internist, stated that appellant reported that his back was “doing great” and that he had minimal discomfort. He diagnosed L4-5 and L5-S1 degenerative disc and joint disease and indicated that appellant could resume his regular work duties.⁵

By decision dated and finalized March 21, 2006, the Office hearing representative affirmed the Office’s May 13, 2005 decision.

LEGAL PRECEDENT

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.⁶ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁷ Where no such rationale is present, medical evidence is of diminished probative value.⁸

ANALYSIS

The Office accepted that appellant sustained cervical and lumbar sprains on April 25, 2004. He claimed that he sustained a recurrence of disability on August 6, 2004 due to his April 25, 2004 employment injury. Appellant did not submit sufficient medical evidence to establish that he sustained an employment-related recurrence of disability on or after August 6, 2004.

Appellant submitted October 20, 2004 progress notes in which Dr. Saldana, an attending Board-certified internist, noted that he reported he “got up to go to work” on October 16, 2004 and had back and left leg pain. She diagnosed degenerative disc disease at L4-5 and L5-S1 and acute radicular symptoms in the left leg, but she provided no indication that these conditions

⁴ Appellant also submitted progress notes dated between April and November 2004 in which Dr. Saldana variously diagnosed cervical and lumbar sprains and strains, radicular symptoms of the left leg, and degenerative disc disease of the back.

⁵ In a July 7, 2005 report, Dr. Frankel made note of appellant’s April 25, 2004 injury and noted essentially normal findings of examination. He diagnosed low back and left buttock pain and L4-5 and L5-S1 degenerative disc and joint disease. Dr. Frankel prescribed medication and referred appellant to a physical therapy program.

⁶ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

⁷ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁸ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

were related to the April 25, 2004 employment injury.⁹ In fact, Dr. Saldana explicitly indicated that she did not know the cause of the conditions when she stated that she was “not sure whether the back problem is from the April 25, 2004 injury or if this is just a flare-up of degenerative disc disease since April 27, 1999.” In a note dated November 2, 2004, she indicated that appellant should be off work from October 20 to November 5, 2004, but she did not identify the reason for this apparent period of disability or otherwise indicate that it was necessitated by an employment-related condition.

Appellant also submitted an August 18, 2005 report in which Dr. Frankel, an attending Board-certified internist, stated that he reported that his back was “doing great” and that he had minimal discomfort. He diagnosed L4-5 and L5-S1 degenerative disc and joint disease and indicated that appellant could resume his regular work duties. Dr. Frankel did not provide any indication that appellant suffered any period of disability on or after August 6, 2004 due to his April 25, 2004 employment injury.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.¹⁰ Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability on or after August 6, 2004 due to his April 25, 2004 employment injury.

⁹ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

¹⁰ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' March 21, 2006 and May 13, 2005 decisions are affirmed.

Issued: August 4, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board