

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

STEVEN L. FELIX, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Portland, OR, Employer**

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**Docket No. 06-549
Issued: May 8, 2006**

Appearances:
Steven L. Felix, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 11, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 23 and November 18, 2005 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 due to his accepted employment injury, a lumbosacral strain.

FACTUAL HISTORY

On November 16, 1997 appellant, then a 30-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a back injury due to his work duties over a period of time. Appellant claimed that his condition was caused by performing such duties as lifting mail packages, loading mail trays into trucks and carrying mailbags for extended periods. He engaged in stooping and bending, pushed heavy carts, climbed stairs and walked on uneven

surfaces. Appellant first became aware of his condition and its relation to his employment on October 30, 1997. He stopped worked on October 30, 1997 and returned to his regular work on December 3, 1997. The Office accepted that appellant sustained an employment-related lumbosacral strain.¹

On July 12, 2004 appellant filed a claim (Form CA-2a) alleging that he sustained a recurrence of disability. He asserted that he experienced back pain since the time of his “original injury.”² Appellant did not stop work.

Appellant submitted the findings of June 21, 2004 x-ray testing which showed moderately severe degenerative disc disease at L5-S1 and the findings of June 26, 2004 bone scan testing which revealed mild intensity uptake to the right of the midline at L5-S1, likely related to the chronic degenerative disc disease. In a report dated June 21, 2004, Dr. Ezra Rabie, an attending Board-certified preventive medicine physician, stated that on examination appellant exhibited some mild tenderness in the lower back in the midline with forward flexion. He indicated that x-ray testing showed some moderately severe degenerative disc disease at L5-S1 and diagnosed “chronic low back pain, rule out degenerative disc or joint disease.” In a report dated July 12, 2004, Dr. Rabie stated that appellant reported that his symptoms had “improved slightly” and that he was performing his regular duties. He indicated that x-ray testing showed degenerative disc disease especially at L5-S1. Dr. Rabie stated that “we reviewed again the natural history of this problem and the fact that it is of spontaneous onset” and indicated that appellant could perform his regular work.

By letter dated November 22, 2004, the Office requested that appellant submit additional factual and medical evidence in support of his recurrence of disability claim.

Appellant submitted a February 23, 2005 report from Dr. Derrick Yoshinaga, an attending osteopath, who stated that he complained of having problems with low back pain “off and on at work since his lumbar strain at work on October 30, 1997.” He noted that appellant reported that he had increased pain when he had to twist repetitively or lift heavy mail cases into his truck. Some tenderness was noted on examination of the right paravertebral muscles along L4-5, the right sacroiliac joint, and the right gluteal muscle. Dr. Yoshinaga diagnosed lumbosacral strain and degenerative disc disease at L5-S1.

In a report dated January 6, 2005, Dr. Joseph A. Cimino, an attending chiropractor, stated that he had treated appellant since May 1998. He noted that the findings of x-rays from November 3, 1997 and June 21, 2004 showed degenerative disc disease of the lumbar and thoracic spines. In a report dated February 6, 2005, Dr. Rabie indicated that appellant complained of low back pain and diagnosed “lumbosacral pain” and lumbar disc degeneration.

By decision dated March 23, 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 due to his accepted 1997 employment injury.

¹ The Office indicated that the lumbar strain resolved no later than December 3, 1997.

² Appellant did not identify the date of his original injury or the date of his recurrence of disability.

In a March 21, 2005 report, Dr. Yoshinaga indicated that appellant reported changing from a “metered route” to a “walking route” and that the change helped with his back pain. He stated that March 10, 2005 magnetic resonance imaging (MRI) scan testing showed degenerative disc disease primarily between L3-4 and L5-S1.³ Dr. Yoshinaga noted that appellant still had tenderness of the right paravertebral muscles along L4-5, the right sacroiliac joint, and the right gluteal muscle, but that the pain was not as acute as previously found. He concluded that appellant had multilevel degenerative disc disease.

In a letter dated April 16, 2005, Dr. Yoshinaga described his treatment of appellant’s back condition since February 23, 2005. He noted that appellant reported having problems with low back pain “off and on since the lumbar strain at work on October 30, 1997” and indicated that he complained of increased low back pain when he twisted while delivering mail. Dr. Yoshinaga stated that appellant reported that his change from a “metered route” to a “walking route” was much better for his low back because he did not have to repetitively twist. He again indicated that on his prior examinations appellant exhibited tenderness of the right paravertebral muscles along L4-5, the right sacroiliac joint, and the right gluteal muscle. Dr. Yoshinaga indicated that MRI scan and x-ray testing showed multiple levels of lumbar degenerative disc disease. He stated that appellant would be able to perform his job “without any residuals problems” and noted, “At this time, he has a combined condition with a probable lumbosacral strain due to repetitive twisting and due to his preexisting degenerative disc disease at multiple levels as described above.”

Appellant requested a review of the written record by an Office hearing representative. By decision dated and finalized November 18, 2005, the Office hearing representative affirmed the March 23, 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.⁴ 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.⁵ Where no such rationale is present, medical evidence is of diminished probative value.⁶

³ The record contains the findings of this MRI scan testing.

⁴ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

⁵ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁶ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

ANALYSIS

The Office accepted in late 1997 that appellant sustained a lumbosacral strain due to his repetitive work duties and, after stopping work on October 30, 1997, returned to his regular work on December 3, 1997. On July 12, 2004 appellant filed a claim alleging that he sustained a recurrence of disability.⁷

The Board finds that appellant did not submit sufficient medical evidence to meet his burden of proof to establish that he sustained a recurrence of disability due to his accepted employment injury.

Appellant submitted several reports of Dr. Rabie, an attending Board-certified preventive medicine physician. In a report dated July 12, 2004, he stated that appellant reported that his symptoms had “improved slightly” and that he was performing his regular duties. Dr. Rabie indicated that x-ray testing showed degenerative disc disease especially at L5-S1.⁸ Although he stated that “we reviewed again the natural history of this problem and the fact that it is of spontaneous onset,” his reports are of limited probative value on the relevant issue of the present case in that he provided no opinion that appellant sustained a recurrence of disability due to the accepted 1997 employment injury, a lumbosacral strain.⁹ In fact, Dr. Rabie did not provide any discussion of appellant’s accepted employment injury and indicated that appellant could perform his regular work.

Appellant submitted several reports of Dr. Yoshinaga, an attending osteopath, but these reports also do not contain a clear opinion that he sustained a recurrence of disability due to his accepted employment injury. In a letter dated April 16, 2005, Dr. Yoshinaga described his treatment of appellant’s back condition since the physician first saw him on February 23, 2005.¹⁰ He noted that appellant reported having problems with low back pain “off and on since the lumbar strain at work on October 30, 1997” and indicated that he complained of increased low back pain when he twisted while delivering mail.¹¹ Dr. Yoshinaga stated that on examination appellant exhibited tenderness of the right paravertebral muscles along L4-5, the right sacroiliac joint, and the right gluteal muscle and indicated that MRI scan and x-ray testing showed multiple levels of lumbar degenerative disc disease.

⁷ Appellant did not stop work and did not identify the specific date of his alleged recurrence of disability.

⁸ The record also contains a June 21, 2004 report in which Dr. Rabie reported limited findings on examination.

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 Dr. Dr. Yoshinaga summarized the findings of his February 23 and March 21, 2005 reports. It does not appear that he examined appellant again in April 2005.

¹¹ Dr. Yoshinaga stated that appellant reported that his change from a “metered route” to a “walking route” was much better for his low back because he did not have to repetitively twist.

Dr. Yoshinaga noted, "At this time, he has a combined condition with a probable lumbosacral strain due to repetitive twisting and due to his preexisting degenerative disc disease at multiple levels as described above." Although he suggested that appellant's recent work duties may have contributed to his back symptoms, he provided no indication that appellant sustained a recurrence of disability due to his accepted employment injury.¹² It should be noted that appellant's degenerative disc disease has not been accepted as related to the employment injury accepted in late 1997 or to any other employment factor. In addition, Dr. Yoshinaga stated that appellant would be able to perform his job "without any residuals problems."¹³

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.¹⁴ 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 due to his accepted employment injury, a lumbosacral strain.

¹² The Board notes that appellant has not filed a claim for a new occupational disease and this matter is not currently before the Board. Moreover, the medical evidence of record does not clearly support the existence of such a condition.

¹³ Appellant also submitted a report of a chiropractor but this report would not be considered medical evidence as it does not appear that the chiropractor treated a subluxation as demonstrated to exist by x-ray testing. *See Jack B. Wood*, 40 ECAB 95, 109 (1988).

¹⁴ *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 18 and March 23, 2005 decisions are affirmed.

Issued: May 8, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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