

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

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**D.K., Appellant**

**and**

**U.S. POSTAL SERVICE, VEHICLE  
MAINTENANCE FACILITY, Youngstown, OH,  
Employer**

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**Docket No. 06-843  
Issued: November 8, 2006**

*Appearances:*

*John P. Lutsek, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 28, 2006 appellant filed a timely appeal of merit decisions of the Office of Workers' Compensation Programs dated November 25, 2005 and February 9, 2006 denying his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether appellant has established that he sustained a recurrence of disability on August 25, 2004 causally related to his accepted injuries of June 6, 1995 and July 20, 1996.

**FACTUAL HISTORY**

On June 7, 1995 appellant, then a 32-year-old mechanic, filed a traumatic injury claim alleging that on June 6, 1995 he injured his back while pulling wheels from a mail truck; Office File No. A9-403927. The Office accepted his claim for low back strain. Appellant returned to work limited duties on July 19, 1995. On July 20, 1996 he filed a traumatic injury claim alleging

that on that date he sustained an acute lumbar strain as a result of unhooking a wheel lift from a vehicle that was hooked to a wrecker; Office File No. A9-0418215. By letter dated November 5, 1996, the Office accepted this claim for acute lumbar strain, exacerbation prior back injury. Appellant returned to work with intermittent periods of disability until he was released to full duty effective July 2, 2004. His claims were doubled by the Office.

On August 26, 2004 appellant filed a claim alleging a recurrence of disability due to his June 6, 1995 injury on August 25, 2004. He noted daily back pain, reduced range of motion and multiple yearly flare ups.

By letter dated October 28, 2004, the Office requested that he submit further information.

Appellant sought treatment from Dr. John L. Dunne, an osteopath, since March 18, 2003. In an August 26, 2004 report, Dr. Dunne noted that since last seen appellant had some progressive deterioration of his low back and leg complaints." In an August 27, 2004 note, Dr. Dunne noted that appellant's x-rays showed degenerative changes at L5 and no instability patterns. On examination appellant had "severe back and left leg pain with reduced motion as before." In a September 16, 2004 progress report, Dr. Dunne noted that appellant's magnetic resonance imaging (MRI) scan was abnormal at levels L3-4 and L5-6. In an October 15, 2004 note, he stated that appellant's two "disc herniation need to be recognized in the Workers' Comp[ensation] claim. This is all due to his work and long[-]standing deteriorating low back condition." In a November 1, 2004 report, Dr. Dunne stated:

"[Appellant] has not worked on my recommendation since August 26, 2004 when he was experiencing increasing back and right leg pain after having returned to full-duty for three days. [He] has long[-]standing low back problems. He has been evaluated by a number of physicians over the years. [Appellant's] very physically demanding job is slowly worsening his condition to the point now where he has two herniated discs and [appellant] will likely require surgical intervention for repair. I had originally returned him to work in July but he remained on a light-duty position through the entire month of July and then went on vacation the first two weeks in August. [Appellant] had been back three days from vacation onto a full-duty job as a mechanic when his increased back and leg pain brought him into the office on [August 26, 2004]. His pain levels have slowly quieted down a bit. I am going to allow him to return to a light-duty position if one is still available for him.

"The original injury goes back to June 6, 1995 and is well documented in [appellant's] medical records. Current examination with recent MRI [scan] results which are enclosed along with prior MRI [scan] reports show disc herniation at L3-4 and L4-5 with nerve root involvement. I believe the slow deterioration of [appellant's] back is directly attributable to his work activities given the awkward position he works and the type of work that he does. He does not have any outside hobbies or interests that would lead him to develop back pain. We will be requesting neurodiagnostic studies of the lower extremity and return to Dr. Musser who has recently seen [appellant] for a spine surgeon consultation."

In an October 28, 2004 report, Dr. Douglas H. Musser, an osteopath, diagnosed lumbar strain/sprain, lumbar spine. Appellant indicated that he injured his back on August 26, 2004. He also told Dr. Musser that he had a significant reoccurrence of back pain with increasing pain and discomfort. Dr. Musser noted that comparison of current x-rays to 1996 films revealed a herniated disc at L3-4 and L4-5. He noted significant pain as a result.

In a decision dated December 2, 2004, the Office denied appellant's claim finding the medical evidence was not sufficient to establish that appellant's disability from work beginning August 26, 2004 was due to the accepted injuries.

In a medical report dated December 10, 2004, Dr. Dunne opined:

"I believe that the medical records clearly document that [appellant] has experienced regular exacerbations and then remissions of a long[-]standing low back injury from 1995. Physicians in 1996 and later have recognized the severity of [his] complaints and actually have made a diagnosis of the disc herniation with nerve root involvement consistent with his documented sciatic complaints. My medical records do clearly and objectively identify that [he] has severe pain associated with reduced lumbar range of motion, sciatic distribution of his leg complaints, positive neural tension signs and lack of functions solely related to his well recognized and long[-]standing back condition under his [w]orker's [c]ompensation claim.

"In my opinion [appellant's] 1995 lumbosacral injury should have been amended and we have requested the amendment of disc herniation L3-4 and L4-5 as solely related to the original injury in this claim and the further deterioration of that accepted condition due to his ongoing work activities for the [employing establishment]. Also, it is my opinion that [his] current physical condition prevents him from performing his full job duties for the [employing establishment] solely as a result of the impairment arising from the 1995 injuries and subsequent deterioration of that condition due to the regular exacerbations [appellant] suffers in the workplace as well-documented over the past eight years of medical records. In my opinion [appellant] requires a specialty consultation for pain management as he is currently not a surgical candidate. Further, I do not think it is a wise decision on [his] part to return to the workplace and attempt to do his regular job but I understand his need to do so."

By letter dated December 15, 2004, appellant requested an oral hearing which was held on August 10, 2005. He discussed how his injuries occurred and his medical treatment. Appellant noted that his back symptoms never resolved following the original injury, but that there were times when they lessened and he could function. He submitted progress reports from Dr. Dunne and Dr. Musser. Appellant also submitted an October 24, 2005 report by Dr. Michael T. Engle, a Board-certified physiatrist, who diagnosed lumbar radiculopathy and lumbar spondylosis. Dr. Engle requested approval for a series of two fluoroscopically guided transforaminal lumbar epidural steroid injections.

In a decision dated November 25, 2005, an Office hearing representative affirmed the December 2, 2004 decision finding that appellant did not meet his burden of proof to establish a recurrence of disability commencing August 26, 2004 causally related to his employment injuries of June 6, 1995 and July 20, 1996.

By letter dated January 4, 2006, appellant requested reconsideration. He submitted progress notes from Dr. Dunne, dated November 21 and December 15, 2005 and January 12, 2006. On December 15, 2005 Dr. Dunne reported the diagnoses of herniated lumbar discs and lumbar spondylosis. He stated:

“In my opinion the above conditions arose solely out of [appellant’s] work activities of 18 years of being a mechanic for the [employing establishment] in which he routinely was lifting entire wheel assemblies that must weight well over 85 pounds, engine tops, transmissions working at very awkward postures. [He] does have a 1995 low back injury that did result in chronic low back pain. [Appellant’s] activities in 2004 at work further deteriorated his existing condition and did cause the new onset of disc herniation as has been documented by my examinations and by the consultations of Dr. Brocker and Dr. Musser, [n]eurosurgeon and [o]rthopedic [s]pine [s]pecialists respectively and also with Dr. Engle from a pain management standpoint.

“I have reviewed the hearing representative’s discussion and I think that there are just simply errors of omission. This document repeatedly states that I have not provided any reasonable medical explanation of the relationship between [appellant’s] current conditions and the original work injuries.

“Perhaps physicians and lawyers really do speak a different language but my medical records clearly document the long[-]standing nature of [appellant’s] low back complaints as they are directly related to his work activities. My records consistently document that [his] pain is exacerbated by his work activities and there is no other relationship outside of [appellant’s] work activities of constant bending and lifting of heavy machinery, *etc.* that could have possibly caused his current conditions. This has been stated very clearly on more than one occasion within the records and in letters to [appellant’s] representative. If the interested parties wish to make it a new claim for legal purposes. From medical purposes it is all one injury but we will process [appellant’s] request as a new claim.

By decision dated February 9, 2006, the Office denied modification of the November 25, 2005 decision.

### **LEGAL PRECEDENT**

A claimant seeking compensation under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his claim by the weight of the substantial,

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

reliable and probative evidence.<sup>2</sup> In this case, appellant has the burden of establishing that he sustained a recurrence of disability causally related to his accepted employment-related injuries of June 6, 2005 and July 20, 1996. Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>3</sup>

An employee 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 he claims compensation is causally related to the accepted injury. The burden of proof requires that a claimant furnish 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 medical reasoning.<sup>4</sup>

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.<sup>5</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>6</sup> An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incident is sufficient to establish a causal relationship.<sup>7</sup>

### ANALYSIS

In the instant case, appellant alleged that he sustained a recurrence of disability on August 25, 2004 causally related to his accepted injuries of June 6, 1995 and July 20, 1996. The medical evidence submitted does not establish such a recurrence of disability due to the accepted employment injuries.

Dr. Musser noted significant changes in appellant's x-rays since 1996. Specifically he diagnosed herniated discs at two levels. Dr. Musser did not provide a rationalized explanation, however, as to how these herniated discs were caused or contributed to by his employment injuries of 1995 and 1996. The Board noted that the injuries were only accepted for "acute

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<sup>2</sup> *Joan R. Donovan*, 54 ECAB 615 (2003).

<sup>3</sup> 20 C.F.R. § 10.5(x).

<sup>4</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>5</sup> *See Joan R. Donovan*, *supra* note 2; *see also John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

<sup>6</sup> *Mary A. Ceglia*, 55 ECAB \_\_\_\_ (Docket No. 04-113, issued July 22, 2004).

<sup>7</sup> *Dennis M. Mascarenas*, 40 ECAB 215, 218 (1997).

lumbar strain.” Dr. Engle did not relate appellant’s lumbar radiculopathy and lumbar spondylosis to the accepted injuries. Dr. Dunne noted that appellant’s 1995 injury resulted in chronic low back pain. However, he also noted that appellant’s work activities since the original injuries exacerbated his low back condition. Specifically, Dr. Dunne noted his continued bending and lifting of heavy machinery as a cause of his current back condition. A recurrence is defined as the inability to work caused by a spontaneous change in medical condition which results from a previous injury or illness without an intervening injury or new exposure in the work environment that caused the illness.<sup>8</sup> Dr. Dunne’s medical reports do not provide a rationalized explanation relating appellant’s current low back condition to a spontaneous change in his medical condition. Rather, he indicated that he may have sustained a new occupational injury. Accordingly, appellant has not established a recurrence of disability causally related to his accepted injuries.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained a recurrence of his accepted injuries of June 6, 1995 and July 20, 1996 on August 25, 2004.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers’ Compensation Programs dated February 9, 2006 and November 25, 2005 are affirmed.

Issued: November 8, 2006  
Washington, DC

David S. Gerson, Judge  
Employees’ Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees’ Compensation Appeals Board

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<sup>8</sup> 20 C.F.R. § 10.5(x); *see also Donald T. Pippin*, 54 ECAB 631, 635 (2003).