

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

A.B., Appellant)
and) Docket No. 07-473
U.S. POSTAL SERVICE, POST OFFICE,) Issued: May 16, 2007
Philadelphia, PA, Employer)

)

Appearances: Case Submitted on the Record
Appellant, pro se
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 11, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 2, 2006 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability beginning May 25, 2005 causally related to his February 28, 2000 employment injury.

FACTUAL HISTORY

On May 10, 2000 appellant, then a 40-year-old letter carrier, filed a claim alleging that on February 28, 2000 he developed low back pain while bending and lifting mail bins.¹ The Office accepted a sprain of the lumbosacral joint and ligament.

Appellant submitted a magnetic resonance imaging (MRI) scan of the lumbar spine dated March 8, 2000, which revealed slight annular bulging and mild lower lumbar facet arthropathy. A report from Dr. Corey K. Ruth, a Board-certified orthopedist, dated March 9, 2000, noted that appellant presented with pain in the right hip, mid and lower back with radicular symptoms. Dr. Ruth reported that appellant's history was significant for a lifting injury at work on October 31, 1993. He diagnosed post-traumatic thoracic and lumbosacral paraspinal muscle strain and right lumbar radiculopathy with possible herniated nucleus pulposus. Other reports from Dr. Ruth from March 14 to September 6, 2000, noted treatment for low back and radicular right leg pain. He diagnosed L4-S1 bulging discs and facet arthropathy with right lumbar radiculopathy. Dr. Ruth noted that appellant underwent lumbar facet injections with some symptom relief. Also submitted was a report from Dr. Wilbert R. Warren, a Board-certified internist, dated August 31, 2001. Dr. Warren treated appellant for right lumbar radiculopathy. Reports from Dr. Myron Sewell, a Board-certified internist, dated May 3 to June 14, 2002, noted appellant's treatment for chronic low back pain.

On August 19, 2005 appellant filed a CA-2a, notice of recurrence of disability, alleging that he developed back pain, numbness and leg pain on May 23, 2005 which he attributed to his accepted injury of February 28, 2000. Appellant's supervisor noted on the claim form that he had returned to a light-duty position. He stopped work on May 25, 2005.

Appellant submitted a duty status report from Dr. Sewell dated May 24, 2005. He noted clinical findings of right lower back tenderness and decreased range of motion and diagnosed lumbar strain sciatica. Dr. Sewell advised that appellant was lifting a 40-pound package and felt pain in the lower back. He noted that appellant was totally disabled. On June 13, 2005 Dr. Sewell noted clinical findings of muscle tenderness and decreased range of motion and diagnosed lumbar strain sciatica. He advised that appellant could return to work subject to various restrictions. In an attending physician's report dated July 1, 2005, Dr. Sewell noted that on May 23, 2005 appellant was lifting a package and experienced right leg numbness. He diagnosed lumbar strain with muscle spasms and noted with a check mark "yes" that appellant's condition was caused or aggravated by a work activity. Dr. Sewell indicated that appellant could return to a light-duty sedentary position.

Appellant came under the treatment of Dr. David L. Mattingly, an osteopath, who noted in a report dated August 31, 2005 that appellant sustained a back injury on February 28, 2000 while loading mail onto a truck. On May 23, 2005 appellant was lifting heavy packages while at work and pulled his low back causing low back pain. Dr. Mattingly noted findings of tenderness and positive straight leg raising on the right. In a report dated October 18, 2005, he noted that commencing May 23, 2005 appellant experienced episodes of low back pain and an inability to

¹ The record reflects that appellant filed a claim for a back injury sustained on October 28, 1993, which was accepted by the Office for a herniated disc, file number 03-0190463.

stand straight and diagnosed lumbar sprain and right radiculopathy. In reports dated November 18 and December 8, 2005, Dr. Mattingly noted appellant's continued complaints of low back pain and right lumbar radiculopathy.

By letter dated April 27, 2006, the Office advised appellant of the factual and medical evidence needed to establish his claim for a recurrence of disability. It requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed recurrent condition and specific employment factors.

Appellant submitted reports from Dr. Ruth dated March 9 to June 26, 2000, which noted treatment for low back pain and spasm. Dr. Ruth diagnosed L4-S1 lumbar facet arthropathy and L3-S1 bulging discs with right lumbar radiculopathy and performed lumbar facet injections. Also submitted was a duplicate copy of the March 8, 2000 MRI scan of the lumbar spine and a physical therapy evaluation of March 28, 2000.

In a decision dated October 2, 2006, the Office denied appellant's claim for a recurrence of disability.

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 requirements.²

Causal relationship is a medical issue,³ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

ANALYSIS

After his injury of February 28, 2000, appellant returned to a limited-duty position as a letter carrier. The Board finds that appellant has not submitted sufficient evidence to support a

² *Terry R. Hedman*, 38 ECAB 222 (1986). See 20 C.F.R. § 10.5(x) for the definition of a recurrence of disability.

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.

Appellant submitted a May 24, 2005 duty status report from Dr. Sewell who noted clinical findings of right lower back tenderness and decreased range of motion and diagnosed lumbar strain sciatica. However, Dr. Sewell advised that appellant was lifting a 40-pound package and felt pain in the lower back. He noted that appellant was totally disabled. On June 13, 2005 Dr. Sewell noted clinical findings of muscle tenderness and decreased range of motion and diagnosed lumbar strain sciatica. He attributed appellant's condition to a new traumatic event, lifting a package on May 23, 2005. The Office's federal regulation notes that a recurrence is defined as a spontaneous change in medical condition without a new exposure to work factors.⁵ On July 1, 2005 Dr. Sewell noted that on May 23, 2005 appellant was lifting a package and experienced right leg numbness. He diagnosed lumbar strain with muscle spasms and noted with a checkmark "yes" that appellant's condition was caused or aggravated by a work activity. Dr. Sewell indicated that appellant could return to a light-duty sedentary position. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁶ As noted, Dr. Sewell did not address any spontaneous change in appellant's back condition but noted a history of a new injury on May 23, 2005.

Appellant also submitted a report from Dr. Mattingly dated August 31, 2005, who noted that appellant experienced a back injury on February 28, 2000 while loading mail onto a truck. On May 23, 2005 appellant was lifting heavy packages at work and pulled his low back causing low back pain. In reports dated October 18 to December 8, 2005, Dr. Mattingly noted that commencing May 23, 2005 appellant experienced episodes of low back pain and an inability to stand straight and diagnosed lumbar sprain and right radiculopathy. He also reported a history of a new traumatic incident occurring on May 23, 2005 rather than a spontaneous change attributed to the 2000 injury. The Board notes that there is no "bridging evidence" which would relate the lumbar radiculopathy to the accepted employment injury.⁷ Dr. Mattingly does not address how the accepted lumbosacral sprain was exacerbated by appellant's employment to result in lumbar radiculopathy. The Office never accepted that appellant developed a lumbar radiculopathy as a result of his February 28, 2000 work injury and there is no medical evidence to support such a conclusion.⁸ The Board has found that unrationaled medical opinions on causal relationship have little probative value.⁹

⁵ 20 C.F.R. § 10.5(x).

⁶ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

⁷ For the importance of bridging evidence in establishing a claim of continuing disability see *Robert H. St. Onge*, 43 ECAB 1169, 1175 (1992).

⁸ See *Terry R. Hedman*, *supra* note 2.

⁹ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

The Board finds that there is insufficient evidence which substantiates that appellant experienced a spontaneous change in the nature and extent of the light-duty requirements or was required to perform duties which exceeded his medical restrictions. The light-duty position performed by appellant was in conformance with the medical restrictions set forth by his treating physician. The physician of record identified a traumatic incident on May 23, 2005 pertaining to lifting appellant performed that date. This would indicate a new injury rather than a recurrence of disability.

Appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit him from performing the light-duty position he assumed after he returned to work.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability on May 23, 2005 causally related to his accepted employment-related injury on February 28, 2000.

ORDER

IT IS HEREBY ORDERED THAT the October 2, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 2007
Washington, DC

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

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

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