

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

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**A.B., Appellant**

**and**

**U.S. POSTAL SERVICE, KEN CARYL RANCH  
POST OFFICE, Littleton, CO, Employer**

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**Docket No. 07-1231  
Issued: September 19, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 4, 2007 appellant filed an appeal of a January 23, 2007 decision of the Office of Workers' Compensation Programs denying 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 claim.

**ISSUE**

The issue is whether appellant has established that he sustained a recurrence of disability.

**FACTUAL HISTORY**

The Office accepted that on or before September 3, 1995 appellant, then a 39-year-old carrier technician, sustained a lumbar strain due to repetitive lifting, bending, twisting and reaching in the performance of duty. Appellant worked in a limited-duty position as a modified

clerk after his return to work on November 23, 1996 and continuing. He performed general clerical duties with lifting limited to 20 pounds. Appellant continued under medical treatment.<sup>1</sup>

On November 20, 2006 appellant filed a notice asserting that he sustained a recurrence of disability commencing October 2, 2006. He attributed the recurrence of disability to work tasks performed on October 2, 2006, including twisting, reaching, stooping, bending, kneeling and sitting. Appellant asserted that these tasks exceeded his light-duty restrictions. He stopped work on October 3, 2006. The record does not indicate if appellant returned to work.

In a December 7, 2006 letter, the Office advised appellant of the additional factual and medical evidence needed to establish his claim. The Office requested a rationalized medical report explaining how and why the accepted September 3, 1995 lumbar strain caused the claimed recurrence of disability. Appellant was afforded 30 days in which to submit such evidence.

By decision dated January 23, 2007,<sup>2</sup> the Office denied appellant's claim for a recurrence of disability on the grounds that causal relationship was not established. The Office found that appellant did not submit medical or factual evidence supporting the claimed recurrence of disability.<sup>3</sup>

### **LEGAL PRECEDENT**

The Office's implementing regulations define a recurrence of disability as "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>4</sup> The Office's procedure manual provides that a recurrence of disability includes a work stoppage caused by an objective, spontaneous, material change in the accepted condition, a recurrence or worsening of disability due to an accepted consequential injury; or withdrawal of a light-duty assignment made to accommodate the work-related condition, for reasons other than misconduct or nonperformance.<sup>5</sup>

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<sup>1</sup> Appellant filed November 3, 1997 claims for a herniated L4-5 disc, a November 13, 1997 claim for right carpal tunnel syndrome and a November 16, 1997 claim for a recurrence of disability caused by emotional stress. There are no final decisions of record regarding these claims. These claims are not before the Board on the present appeal.

<sup>2</sup> The record contains a January 31, 2007 Office letter stating that it had inadvertently listed the General Services Administration as the employing establishment in the January 23, 2007 decision. The Office sent a copy of the decision to the employing establishment. It does not appear that the Office reissued the January 23, 2007 decision, only that it corrected the typographical error.

<sup>3</sup> Appellant submitted new evidence accompanying his request for appeal. The Board may not consider new evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

<sup>4</sup> 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)1 (May 1997). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997). See also *Steven A. Andersen*, 53 ECAB 367 (2002).

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 the 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.<sup>6</sup> This 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 employment factors and supports that conclusion with sound medical reasoning.<sup>7</sup> An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.<sup>8</sup>

### ANALYSIS

The Office accepted that appellant sustained a lumbar strain due to work factors on or before September 3, 1995. He claimed to have sustained a recurrence of disability commencing October 2, 2006 causally related to the accepted condition. Appellant must demonstrate a spontaneous change in the nature and extent of his accepted lumbar strain without an intervening injury or new exposures.<sup>9</sup>

The record demonstrates that appellant attributed the claimed recurrence of disability to new work factors on October 2, 2006, not the accepted work activities occurring on or before September 3, 1995. Appellant asserted that on October 2, 2006 he performed twisting, reaching, stooping, bending, kneeling and sitting, causing the immediate onset of lumbar pain with sciatica. Appellant's statements and the factual record demonstrate that he was exposed to new work factors after he returned to work in November 1996. He alleged that these new incidents on October 2, 2006 worsened his back pain. Appellant thus asserts a new injury. He has not established that he sustained a recurrence of disability commencing October 2, 2006 related to the accepted work factors occurring on or before September 3, 1995. Therefore, appellant has not met his burden of proof in establishing a recurrence of disability.

### CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability as alleged.

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<sup>6</sup> *Albert C. Brown*, 52 ECAB 152 (2000); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>7</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001); *see Nicolea Brusio*, 33 ECAB 1138, 1140 (1982).

<sup>8</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001); *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>9</sup> *Philip L. Barnes*, *supra* note 4.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 23, 2007 is affirmed.

Issued: September 19, 2007  
Washington, DC

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

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