

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

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**D.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Boston, MA, Employer**

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**Docket No. 07-1554  
Issued: February 15, 2008**

*Appearances:*  
*John Whitehouse, Esq., for the appellant*  
*Office of the 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 May 21, 2007 appellant timely appealed a merit decision of the Office of Workers' Compensation Programs dated May 3, 2007, denying his claim for a recurrence of total disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether appellant sustained a recurrence of disability on and after April 3, 2004 causally related to his accepted employment injuries of November 17, 1997.

**FACTUAL HISTORY**

On December 1, 1997 appellant, then a 37-year-old letter carrier, filed an occupational disease claim alleging that on November 17, 1997 he felt a tightening in his neck and back after lifting at work.<sup>1</sup> He stopped work on November 18, 1997 and returned to limited-duty work on

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<sup>1</sup> The record reflects that appellant was involved in a nonwork-related motor vehicle accident on August 4, 1997 and had returned to work with restrictions on November 11, 1997.

December 9, 1997. The Office accepted appellant's claim for a low back strain and paid appropriate benefits for intermittent disability, including a February 26, 2002 recurrence.

On October 22, 2004 appellant filed a claim alleging that he sustained a recurrence of total disability on April 3, 2004, which attributed to pain radiating from two herniated discs in his lower right back. He noted working five hours a day with a 30-pound restriction and reported outside employment working as a bartender every other Saturday. Appellant stopped work on April 3, 2004.

In support of his claim, appellant submitted medical reports dated May 6 to August 5, 2004 from Dr. James Leffers, a Board-certified orthopedic surgeon, who advised that appellant: had chronic low lumbosacral spine strain/pain; was disabled for intermittent periods; and was able to return to light-duty work with a 20-pound restriction.

In an October 7, 2004 medical report, Dr. Sapna Aggarwal, a Board-certified internist, noted that appellant had been working for four hours with no lifting over 30 pounds. Appellant experienced chronic low back pain of insufficient resolution. Based on the history and her clinical examination, Dr. Aggarwal opined that appellant's "post-traumatic injuries sustained secondary to the work-related accident that occurred on November 17, 1997 have continued." In an undated report, he noted that appellant was seen on October 7, 2004 and that he could return to work for five hours a day with a 30-pound restriction.

The record reflects that, prior to filing the recurrence claim, the Office referred appellant to Dr. Richard A. Alemian, a Board-certified orthopedic surgeon, for a second opinion examination. In an October 25, 2004 medical report, Dr. Alemian noted appellant's history and presented examination findings. He diagnosed chronic low back strain by history and a left-sided disc protrusion at L5-S1 per an October 1998 magnetic resonance imaging (MRI) scan. Dr. Alemian opined that he could not relate appellant's present complaints of pain in the lower right side or the objective findings of scoliosis and tight hamstrings to either the November 17, 1997 injury or the 2002 recurrence. He recommended an MRI scan. As appellant had no symptomatology involving the left side, Dr. Alemian did not think that any advancement in the disc protrusion on the left side would have any bearing on his present condition. On December 8, 2004 he reported that a November 15, 2004 MRI scan report indicated early degenerative disc disease at L5-S1 with a broad-based protrusion present, slightly asymmetric to the right side and touching the descending right S1 nerve root; a radial tear on the left side; and facet hypertrophy at L5-S1. Dr. Alemian opined that the MRI scan was consistent with appellant's lower right side symptomatology. Appellant could continue working five hours a day with no repetitive bending, pushing, pulling or lifting with a weight restriction of 20 pounds. On December 27, 2004 Dr. Alemian opined that appellant's accepted work injury of November 17, 1997 had resolved. He explained that a low back strain was a soft tissue injury which resolved and did not last for many months or years. Dr. Alemian diagnosed degenerative disc disease, facet hypertrophy at L5-S1 and a radial tear on the left side. He referred to the MRI scan report of November 15, 2004 and stated that "this is what this gentleman's back pain is due to. It is not due to a back strain that occurred in 1997 or in the year 2002. Therefore, if you are asking specifically about the back strain in 1997 and the year 2002, those were not the cause of his pain when I examined him.... Back strains resolve in a matter of basically weeks to a few months."

Dr. Alemian concluded that appellant did not have any residual effect from his back strain of November 17, 1997.

By letter dated December 30, 2004, the Office advised appellant of the factual and medical evidence needed to submit to establish a recurrence of total disability claim.

In response, appellant submitted a copy of the November 15, 2004 MRI scan report.

By decision dated February 23, 2005, the Office denied appellant's recurrence of total disability claim. It found that the medical evidence of record failed to establish that he sustained a recurrence of total disability beginning April 3, 2004 causally related to his November 17, 1997 employment injury. The Office further noted that the weight of the medical evidence established that appellant had recovered from the November 17, 1997 work injury.

In a February 16, 2006 letter, appellant, through his attorney, requested reconsideration of the February 23, 2005 decision. In reports dated November 19, 2003 to April 15, 2005, Dr. Panos Panagakos, a Board-certified orthopedic surgeon, noted that appellant continued to have low back pain with multiple exacerbations. On examination, he found local lumbosacral spine tenderness with accompanying spasm and restricted mobility with no radicular findings. Dr. Panagakos stated that this situation was chronic and stable. He opined that the 1997 work injury started a series of back pain episodes and was likely the causative issue of appellant's subsequent difficulties. Dr. Panagakos opined that appellant remained disabled from any type of heavy work but could perform modified work. On April 15, 2005 he noted that appellant had been under his care since February 21, 2000. Dr. Panagakos stated that a recent MRI scan confirmed a herniated disc at L5-S1, which confirmed the clinical findings of positive straight leg raise and numbness along his right lower leg. He noted that appellant had many flare ups of his condition since the November 1997 injury and opined that they were causally related to the November 1997 work injury and that he could work six hours daily with a lifting restriction of 30 pounds.

In reports dated October 7 and December 2, 2004, Dr. Aggarwal opined that appellant's injuries, secondary to the November 17, 1997 injury, had continued. On February 3, 2005 he noted that appellant fell the previous week while picking up a postal load and was unconscious for a few seconds. Dr. Aggarwal provided an assessment of chronic low back pain.

By decision dated May 16, 2006, the Office denied modification of the February 23, 2005 decision.

On February 6, 2007 appellant requested reconsideration. He contended that his claim should be treated as an occupational disease claim and not a recurrence claim. On April 11, 2007 appellant stated that he had recurrences in the past that were accepted and that he was being treated for the same injury at this time. He submitted duplicative copies of medical evidence of record.

In an April 16, 2004 disability note, Dr. Jorge E. Tello, an internist, advised that appellant was out of work since April 5, 2004 due to a lumbar radiculopathy. In an undated report, Dr. Panagakos noted that appellant sustained two work-related low back sprains in September 1994 and November 1997 and became disabled due to an exacerbation of

symptomatology associated with an increase in his work activities in 2002. He noted that appellant returned to work in April 2004 but became disabled due to an increase in low back pain associated with work activities. Dr. Panagakos noted the results of the November 2004 MRI scan and appellant's objective findings of right lower back and leg pain. He opined that appellant's chronic low back pain, degenerative disc disease and protruding disc at L5-S1, were caused and aggravated by his employment activities over a period of years. Dr. Panagakos explained that appellant's history and multiple exacerbations resulted in periodic disability and the need for conservative measures. He stated that, in the weeks and months preceding April 2004, appellant was required to lift and carry approximately 60 buckets of mail weighing up to 35 pounds on a daily basis. Dr. Panagakos stated that low back strains were, by definition, stretching or tearing of the ligamentous structure supporting the lumbar vertebra, resulting in instability, susceptibility to further injury and chronic low back pain with objective findings of disc pathology. He stated that there was a close temporal relationship between appellant's work activities and the increase in symptoms. Moreover, the rigors of his employment, *i.e.*, bending, lifting and carrying bundles of mail, among other activities, over a period of years contributed to the degenerative changes of the lumbar spine demonstrated by the MRI scan.

Appellant submitted a February 23, 2007 report from Jay Bernasconi, a physical therapist, and a November 29, 2006 report from Dr. George P. Whitelaw, a Board-certified orthopedic surgeon, who discussed a right shoulder injury of January 25, 2005.

By decision dated May 3, 2007, the Office denied modification of the May 16, 2006 decision.

### **LEGAL PRECEDENT**

A 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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>2</sup> This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>3</sup>

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-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 cannot perform such limited-duty work. As part of this burden, the

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<sup>2</sup> 20 C.F.R. § 10.5(x).

<sup>3</sup> *Id.*

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 limited-duty job requirements.<sup>4</sup>

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.<sup>5</sup> While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and that such a relationship must be supported with affirmative evidence, explained by medical rationale and be based on a complete and accurate medical and factual background of the claimant.<sup>6</sup> Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.<sup>7</sup>

### ANALYSIS

The November 17, 1997 injury was accepted for a low back strain. Appellant returned to limited-duty work. He claimed a recurrence of total disability on April 3, 2004 causally related to the accepted employment injury. Appellant must demonstrate either that his condition has changed such that he could not perform the activities required by his modified job or that the requirements of the limited-duty job changed or were withdrawn. The record contains no evidence that the limited-duty job requirements were changed or withdrawn. The record also does not establish that appellant's employment-related condition changed to the point that it precluded him from engaging in light-duty work.

Appellant submitted numerous reports which predate the alleged recurrence of April 3, 2004, including Dr. Goodman's June 17, 1998 report, Dr. Panagakos' reports dated July 10, 2000 to August 6, 2003 and Dr. Tello's disability notes dated June 25, 2002 and October 23, 2003. Since these reports predate the alleged recurrence of April 3, 2004, they are not relevant to the claimed recurrence beginning April 3, 2004. Appellant also submitted evidence from Dr. Whitelaw and Mr. Bernasconi, which discussed appellant's right shoulder condition. Mr. Bernasconi's report cannot be considered as medical evidence as a physical therapist is not considered a physician under the Federal Employees' Compensation Act.<sup>8</sup> Dr. Whitelaw's report is insufficient as it does not address the causal relationship between the claimed recurrence of appellant's back condition and the accepted work injury of November 17, 1997. Dr. Tello's

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<sup>4</sup> *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>5</sup> *James H. Botts*, 50 ECAB 265 (1999).

<sup>6</sup> *Conard Hightower*, 54 ECAB 796 (2003).

<sup>7</sup> *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>8</sup> 5 U.S.C. §§ 8101-8193; 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 (2000) (a physical therapist is not a physician under the Act).

disability note and the reports from Dr. Leffers are insufficient because neither physician addressed the issue of causal relation between the claimed recurrence and the accepted work injury.

In an October 7, 2004 report, Dr. Aggarwal opined that appellant's "post-traumatic injuries sustained secondary to the work-related accident that occurred on November 17, 1997 have continued." He reiterated his opinion in reports of October 7 and December 2, 2004. On February 3, 2005 Dr. Aggarwal noted that appellant fell down the prior week while picking up a postal load and diagnosed chronic low back pain. However, he did not address how appellant's condition or disability on or after April 3, 2004 related to the 1997 injury. There is insufficient medical rationale explaining how and why appellant's low back condition would disable appellant nearly seven years after the November 17, 1997 employment injury. The Board has held that medical reports not supported by medical rationale are of limited probative value.<sup>9</sup>

Appellant submitted numerous reports from Dr. Panagakos. In an April 7, 2005 report, Dr. Panagakos opined that the 1997 work injury started a series of back pain episodes and was likely the causative issue of appellant's subsequent difficulties. On April 15, 2005 he noted that appellant had suffered many flare ups of his condition since the November 1997 work injury. Dr. Panagakos opined that such flare ups were causally related to the November 1997 work injury. Although he opined that appellant's continuing residuals and total disability were caused by the November 1997 work injury, Dr. Panagakos did not provide a definitive diagnosis or medical rationale explaining the basis for his stated conclusion. These reports are insufficient to establish appellant's claim. In an undated report, he opined that appellant's chronic low back pain, degenerative disc disease and protruding disc at L5-S1 were caused and aggravated by his employment activities over a period of years. Dr. Panagakos stated that, in the weeks and months preceding April 2004, appellant was required to lift and carry approximately 60 buckets of mail weighing up to 35 pounds on a daily basis. He stated that low back strains were, by definition, stretching or tearing of the ligamentous structure supporting the lumbar vertebra, resulting in instability, susceptibility to further injury and chronic low back pain with objective findings of disc pathology. Dr. Panagakos stated that there was a close temporal relationship between work activities and increased symptoms and that the rigors of his employment, *i.e.*, bending, lifting and carrying bundles of mail, among other activities, over a period of years contributed to the degenerative changes of the lumbar spine demonstrated by the MRI scan. However, he did not explain appellant's light-duty position on April 3, 2004 or how appellant's medical condition had changed or worsened to prevent him from fulfilling his light-duty job requirements. Dr. Panagakos' opinion is not well reasoned with regard to how the November 17, 1997 work injury and specific work activities exacerbated appellant's symptomatology to the point of disability. A temporal relationship, alone, is not sufficient to establish causal relation. The mere fact that a condition manifests itself or worsens during a period of federal employment raises no inference of causal relationship between the two.<sup>10</sup> Causal relationship must be established by sound medical reasoning explaining the nature of the relationship between the

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<sup>9</sup> *Lucrecia M. Nielson*, 42 ECAB 583 (1991).

<sup>10</sup> *See, e.g., Steven R. Piper*, 39 ECAB 312 (1987). Not all heart attacks that occur at work, for example, are caused by work.

diagnosed condition and the established incident or factor of employment.<sup>11</sup> Dr. Panagakos did not explain how the rigors of appellant's employment caused or contributed to the degenerative changes in appellant's spine. This diminishes the value of his opinion.

The Board finds that appellant has not submitted sufficient rationalized medical evidence establishing that he was totally disabled on or after April 3, 2004 due to his November 17, 1997 employment-related low back strain. There is also no evidence showing that appellant experienced a change in the nature and extent of the limited-duty requirements or was required to perform duties which exceeded his medical restrictions.

**CONCLUSION**

The Board finds that appellant failed to establish that he sustained a recurrence of disability on or about April 3, 2004 causally related to his accepted employment injury of November 17, 1997.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs decision dated May 3, 2007 is affirmed.

Issued: February 15, 2008  
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>11</sup> See *Helen K. Holt*, 50 ECAB 279 (1999).