

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

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**J.M., Appellant**

**and**

**U.S. POSTAL SERVICE, GENERAL MAIL  
FACILITY, Brooklyn, NY, Employer**

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**Docket No. 08-924  
Issued: September 16, 2008**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge

COLLEEN DUFFY KIKO, Judge

JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 11, 2008 appellant, through his attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated April 3 and December 26, 2007 denying appellant's claim for a recurrence. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether appellant has established that he sustained a recurrence of disability on January 4, 2007 causally related to his June 19, 2004 accepted work injury.

**FACTUAL HISTORY**

On July 9, 2004 appellant, then a 35-year-old mark-up clerk, filed a traumatic injury claim alleging that, on June 19, 2004, "due to requirement of clean-up/shut down of operational duties performed by myself," he sustained major stiffness and soreness in his lower back. By letter dated August 31, 2004, the Office accepted appellant's claim for lumbar strain. Appropriate medical and compensation benefits were paid. Appellant had a magnetic resonance

imaging (MRI) scan on December 7, 2004 which was interpreted as showing degenerative discs with bulging annular fibrosis at L4-5 and L5-S1 and slight to mild bilateral facet arthropathy at L4-5 and L5-S1. In a note dated January 23, 2006, Dr. Suresh Patel, a Board-certified internist, indicated that appellant could return to work full duty on January 30, 2006. Appellant returned to work full duty for the employing establishment on January 30, 2006.

In a duty status report dated November 17, 2006, Dr. Patel listed appellant's diagnosis as herniated nucleus pulposus L4-5 and L5-S1. He limited appellant to intermittent lifting/carrying of less than 10 pounds and intermittent sitting, standing, bending, stooping, twisting, pulling, pushing, grasping, fine manipulation and reaching above his shoulder.

On January 5, 2007 appellant filed a claim alleging a recurrence of the June 19, 2004 employment injury on January 4, 2007. In a statement accompanying the claim, he alleged that he returned to work full-time full duty on January 30, 2006, but that this position was abolished in mid-February due to the operational needs of the employing establishment. Appellant noted that he was reassigned to a position with a full-duty accommodation based on his job injury to his lower back. He indicated that he worked in this position but that in May 2006 he was placed on an off-duty status for one week in order to update his limitations. Appellant noted that he did so and accepted an offer performing the same duties on May 30, 2006. He noted that he was now filing a recurrence of disability claim based on the employing establishment's unforeseen withdrawal of his modified-duty assignment. The employing establishment controverted the claim for recurrence. It contended that it offered appellant a limited-duty assignment on May 6, 2006 after he had worked full duty for several months. The employing establishment noted that he was instructed to file a Form CA-2a back then, but refused to do so. It contended that appellant decided to file the recurrence claim because he was dissatisfied that his job offer had been changed.

By letter dated January 25, 2007, the Office requested that appellant submit further information. By letter dated February 9, 2007, appellant submitted further information including limited-duty offers by the employing establishment. On May 15, 2006 the employing establishment offered appellant a position boxing mail with a work restriction of no lifting/pulling/pushing more than 10 pounds, no walking tasks and a chair with back support. Appellant accepted this position. On January 4, 2007 the employing establishment made an offer for appellant to work as a modified clerk. The physical requirements of this position involved no lifting over 10 pounds. Appellant accepted the offer, but stated, "I am accepting this job offer under mental duress. I have not been afforded an ample opportunity to review it." Appellant asked the Office to reopen his original case and return him to his original accommodations.

By decision dated April 3, 2007, the Office denied appellant's claim for recurrence of disability.

On April 30, 2007 appellant requested an oral hearing before an Office hearing representative, which was held on October 22, 2007. He testified that when he was released to work on January 30, 2006 he was under no restrictions, that he returned to work as a mark-up clerk but that the unit was disbanded and he was placed in a position that involved "continuous standing and laboring." Appellant testified that he noted that, after he said something, he was "immediately moved to a nonlaborious position." He noted that he worked in that assignment

for 11 months, but that he was reassigned in January 2007 to a different facility, and that after a week in the new assignment he was given a job that involved standing. Other temporary assignments followed and on February 14, 2007 he was placed on a nonduty status. The record was kept open for 30 days to allow appellant the opportunity to submit medical evidence in support of his claim. No new medical evidence was received.

The employing establishment filed comments in response to the hearing. The employing establishment contended that appellant returned to full unrestricted duty in January 2006 and that there was no medical documentation that substantiated his claim of a recurrence of disability.

By decision dated December 26, 2007 the hearing representative affirmed the Office's April 3, 2007 decision denying appellant's claim for a recurrence of disability.

### **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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>1</sup> An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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 who supports that conclusion with sound medical reasoning.<sup>2</sup>

### **ANALYSIS**

In the instant case, the Office accepted that appellant sustained a lumbar strain as a result of his work duties on June 19, 2004. Although there is evidence in the record that appellant had a herniated nucleus pulposus, the Office never accepted that this condition was the result of his June 19, 2004 injuries. Appellant's claim was accepted solely for lumbar strain. He returned to full-duty work on January 30, 2006. Dr. Patel noted no restrictions at that time. Subsequently, he indicated that appellant had work restrictions, and there is evidence that the employing establishment accommodated these restrictions for some time. However, there was no evidence that these new restrictions were necessitated because of a recurrence in his lumbar strain; nor is there any evidence of a spontaneous change in appellant's medical condition which resulted from the previous injury without an intervening injury or new exposure to the work environment that caused the injury. In fact, appellant had successfully returned to full-duty work and has not presented any medical evidence showing that he was unable to perform his assigned duties or that the employing establishment withdrew his job as he contends. He has submitted no physician reports that state he is disabled due to a recurrence of his accepted injury. Accordingly appellant has not established a recurrence of disability.

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<sup>1</sup> 20 C.F.R. § 10.5(x).

<sup>2</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

**CONCLUSION**

The Board finds that appellant has not established that he sustained a recurrence of disability on January 4, 2007 causally related to his June 19, 2004 accepted work injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 26 and April 3, 2007 are affirmed.

Issued: September 16, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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