

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

K.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Gaithersburg, MD, Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 09-555
Issued: September 18, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On December 22, 2008 appellant filed a timely appeal from a December 8, 2008 merit decision of the Office of Workers' Compensation Programs' Branch of Hearings and Review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability beginning December 28, 2007 causally related to his accepted employment injury.

FACTUAL HISTORY

On May 25, 2001 appellant, a 52-year-old mail handler, filed an occupational disease claim (Form CA-2) for neck and shoulder pain as well as numbness in his right hand. He attributed his condition to tasks he performed at work, namely lifting heavy bags of mail and pushing equipment. The Office accepted appellant's claim for lumbar strain, cervical spinal

stenosis, degeneration of the cervical intervertebral disc and neck sprain. Appellant returned to regular duty October 17, 2002.

On March 12, 2008 appellant claimed recurrence of disability beginning December 28, 2007 and that he had stopped work on January 15, 2008. He alleged that he sustained chronic and continuous back spasms, conditions he attributed to lifting, pushing and twisting work activities, which had gotten worse over time.

On May 19, 2008 the Office denied appellant's claim because the evidence of record was insufficient to establish that his claimed disability was due to his accepted work injury.

Appellant disagreed and requested an oral hearing.

Appellant submitted a report from his insurance company that showed a list of processed claims. He also submitted a report dated March 18, 2008 signed by Dr. Richard Genato, a Board-certified physiatrist, who reported appellant underwent an intra-articular zygapophyseal joint injection under fluoroscopic injection.

In a report dated October 4, 2001, Dr. Russell Buchanan, a Board-certified neurosurgeon, diagnosed spinal stenosis and cervical disc disease. Also Dr. Raymond Banfer, Board-certified in family medicine, reported findings consisting of paraspinal tenderness and spasms. He diagnosed cervicalgia and opined by checking a box yes, that appellant's condition was caused by his employment. Dr. Banfer also noted that repetitive work aggravated appellant's neck condition. He opined that appellant was totally disabled from work.

A hearing was held October 17, 2008 at which appellant testified that he had applied for disability retirement, but that the employing establishment had indicated it could not accommodate him. He testified that he was in the hospital for a bulging disc and arthritis in his back. Appellant also reported that he had been working regular duty when he stopped work.

On December 8, 2008 the hearing representative affirmed the Office's May 19, 2008 decision because the evidence of record did not establish that he sustained 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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."¹ A person 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 she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee 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

¹ R. S., 58 ECAB ___ (Docket No. 06-1346, issued February 16, 2007); 20 C.F.R. § 10.5 (x).

conclusion with sound medical reasoning.² Where no such rationale is present, medical evidence is of diminished probative value.³

ANALYSIS

Appellant claimed recurrence of disability beginning December 28, 2007. As noted above, his burden is to 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 sound medical reasoning.⁴ The Board finds the evidence of record is insufficient to satisfy appellant's burden and, therefore, the Office properly denied his recurrence claim.

The reports from Drs. Buchanan, Genato and Banfer, taken as a group are of diminished probative value as none of them contained a rationalized medical opinion concerning the causal relationship between appellant's alleged current disability and his accepted condition.⁵ A rationalized medical opinion is based on a complete factual and medical background and is supported by medical rationale.⁶

The Board notes that Dr. Buchanan's report pertained to appellant's condition in 2001. As such, this report is of limited probative value in establishing that appellant sustained a spontaneous recurrence of disability in December 2007. Dr. Genato's March 18, 2008 report indicated that appellant had undergone an injection, but offered no opinion causally relating a diagnosis to his accepted injury, and no opinion as to his disability status.

While Dr. Banfer in his March 18, 2008 report did provide a diagnosis of cervicalgia and indicated by check mark that this diagnosis was related to appellant's employment, he added that appellant's repetitive work aggravated his neck condition. This opinion regarding causal relationship is deficient because it fails to provide medical rationale explaining the causal relationship between the accepted injury and appellant's current condition.⁷ Moreover, it implicates new work factors, rather than a spontaneous return of the accepted condition.

The Office advised appellant that it was his responsibility to submit substantive competent medical evidence in support of his recurrence claim. As there was no probative rationalized evidence of record, it properly denied appellant's recurrence claim.

² *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ See *Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁴ *Supra* note 2.

⁵ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

⁶ *Froilan Negron Marrero*, 33 ECAB 796 (1982).

⁷ Reports which support causal relationship with a checkmark are insufficient to establish the claim, as the Board has held that without further explanation or rationale a checked box is not sufficient to establish causation. *Debra S. King*, 44 ECAB 203 (1992).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability beginning December 28, 2007 causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 8 and May 19, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 18, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board