

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

J.F., Appellant

and

**U.S. POSTAL SERVICE, WILMINGTON
PROCESSING & DISTRIBUTION CENTER,
New Castle, DE, Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 09-1660
Issued: May 12, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 22, 2009 appellant filed a timely appeal from a January 23, 2009 merit decision of the Office of Workers' Compensation Programs denying his claim for a recurrence of disability. The Board has jurisdiction over the merits of the case pursuant to 20 C.F.R. § 501.2(c) and 501.3(e).

ISSUE

The issue is whether appellant established that he sustained a recurrence of disability or of a medical condition on or after January 19, 1999 causally related to his November 25, 1998 employment injury.

On appeal, appellant contended that the medical evidence was sufficient to establish that he sustained a recurrence of his employment injury. He also argued that the employing establishment required him to perform dangerous tasks six months after he underwent lung surgery and that he worked in a stressful environment.

FACTUAL HISTORY

On November 25, 1998 appellant, then a 62-year-old custodian, sustained a traumatic injury while lifting a cardboard box into a dumpster at work. The overhead lifting of the box aggravated appellant's surgical wound from a January 15, 1998 surgery, when a cancerous tumor was removed from his lower left lung. The Office accepted the claim for right thoracic spine strain.

Appellant stopped working on the date of his injury. On December 3, 1998 his treating physician, Dr. Wayne Hentschel, an osteopath, released appellant to full-time, light duty with limitations on lifting, carrying and overhead work. After working light duty for several months, appellant returned to full duty.¹ The Office closed his case on January 19, 1999. Appellant retired on January 1, 2006.

On July 9, 2007 appellant filed a claim for a recurrence of disability (Form CA-2). He stated that he experienced the recurrence from 2005 through present but was claiming wage-loss compensation from 1998. Appellant stated that, following his injury, he worked light duty casing mail for several months. He claimed that he continued to experience aches and pains in the same area as his initial injury.

In a July 30, 2007 letter, the Office notified appellant of the deficiencies in his claim and requested he provide additional evidence. It resent the letter on August 7, 2007.

By decision dated September 10, 2007, the Office denied appellant's recurrence claim on the grounds that he did not submit sufficient medical or factual evidence to support his claim "for a recurrence of symptoms related to the originally accepted work injury requiring medical treatment and causing disability."

On April 10, 2008 appellant filed a request for reconsideration.

On May 10, 2007 Dr. Satoshi Ikeda, a Board-certified thoracic surgeon, stated that he treated appellant in November 2003 due to pain at his former surgical site. He treated appellant again on April 4, 2005 for a recurrence of pain with work.

In a June 21, 2007 medical note, Dr. David Driban, Board-certified in family medicine, stated that he had treated appellant since February 5, 2005. He reported that in 1999 appellant was diagnosed with bronchogenic lung cancer and underwent curative surgery with left upper lung lobectomy. Dr. Driban opined that appellant suffered left back and side pain in his surgery location due to a 1999 work injury where he was lifting cardboard boxes over his head. He stated that appellant had intermittent pain since the injury and still continued to experience problems.

On March 26, 2008 Dr. Ikeda reported appellant's complaints of chronic left chest pain near his previous surgical site beginning after he returned to work 10 years prior. Appellant stated that his pain was caused by lifting heavy objects and that he still continued to experience

¹ It is unclear from the record what date appellant returned to full duty.

the same pain. Physical examination revealed a well-healed surgical site and pinpointed pain in the chest in the midline on the thoracotomy side. A magnetic resonance imaging (MRI) scan had negative results.

On May 7, 2004 Dr. Anthony Curci, an osteopath, stated that appellant was currently under his care and that he was not to work any evening hours due to multiple medical problems.

By decision dated April 16, 2008, the Office denied modification of the September 10, 2007 decision, finding that appellant did not submit sufficient medical opinion to establish that he sustained a recurrence of disability causally related to the November 25, 1998 employment injury.

On October 28, 2008 appellant filed a request for reconsideration. He stated that he continued to experience recurrences of the pain he experienced in 1998 and that he was taking prescriptions for pain. Appellant contended that the submitted medical evidence showed that lifting heavy objects over his head after major surgery caused pain at the surgical site.

In a March 7, 2001 letter, Dr. Ikeda advised that appellant underwent surgery on January 15, 1998 for lung cancer and that he would follow-up with treatment every six months. On May 2, 2001 he reported appellant's complaints of continued pain at the thoracotomy site but only during hard labor. Chest x-rays did not show any evidence of recurrence and physical examination did not reveal any abnormalities. Dr. Ikeda provided a prescription note indicating that appellant could work light duty with no heavy mopping for long periods. On October 17, 2001 he advised that appellant still experienced occasional chest discomfort after his thoracotomy three and a half years ago. Physical examination was essentially unremarkable and a chest x-ray was adequate without evidence of recurrence.

In a February 26, 2003 report, Dr. Ikeda stated that appellant continued to have recurring episodes of pain sporadically since his surgery on January 15, 1998. He stated that he experienced a recurring episodic condition and that he would be required to be off of work intermittently whenever he experienced left chest pain.

In reports dated February 27, 2003 through March 22, 2004, Dr. Curci diagnosed lung cancer, chronic obstructive pulmonary disorder and pleurodynia beginning in 1997 and lasting for an unknown duration. He opined that appellant would occasionally be disabled due to the condition and that he would experience four to six episodes of disability a year during which time he would be unable to perform work of any kind.

On June 1, 2005 Dr. Driban stated that appellant was partially disabled from June 1 through July 1, 2005 due to pleurodynia secondary to lung surgery for lung cancer. He indicated that the condition was life long. Dr. Driban provided work restrictions including a total limitation on lifting, carrying, pushing, pulling and reaching over the shoulder due to back and chest pain and shortness of breath. He also limited appellant's sitting and standing to four hours a day due to back spasms.

In a 2005 medical report, Dr. John J. Kelly, a Board-certified internist, stated that appellant was discharged from the hospital on September 14, 2005 following an episode of chest pain. Appellant reported ongoing chronic, left-sided, pleuritic-type chest discomfort following

the resection of his lung cancer in the left lower lobe. He also reported some shortness of breath in the past couple weeks and dizziness and lightheadedness over the past couple days. Dr. Kelly noted that appellant's symptoms appeared to be coming on with work-related exertion activities. He stated that appellant underwent an exercise cardiolite stress test on September 14, 2005. Appellant achieved greater than 85 percent of his predicted maximum heart rate and no myocardial perfusion abnormalities were found. However, his ejection fraction was low-to-normal at 42 percent. Dr. Kelly attached a copy of the cardiolite stress test report.

In a January 23, 2009 decision, the Office denied modification of the prior decisions on the grounds that appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of his employment-related thoracic strain. It noted that the medical evidence addressed follow-up treatment of appellant's unrelated surgical procedure but did not discuss the presence of objective finds related to the November 25, 1998 employment injury.

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."² 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 he 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 conclusion with sound medical reasoning.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

A recurrence of a medical condition is defined in the Office's procedure manual as "the documented need for further treatment of the accepted condition when there has been no work stoppage."⁵

ANALYSIS

The Office accepted that appellant sustained a right thoracic spine strain on November 25, 1998 while lifting cardboard boxes into a dumpster at work. Appellant returned to light duty on December 3, 1998 and several months later returned to full duty. The Office closed appellant's case on January 19, 1999. The issue is whether appellant established that he

² *R.S.*, 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

³ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁴ *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁵ *J.F.*, 58 ECAB 124 (2006); *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(a) (January 1998).

subsequently experienced a recurrence causally related to his November 25, 1998 employment injury. The Board finds he has not met his burden of proof.

Appellant submitted medical reports from Dr. Ikeda who stated that appellant underwent surgery for lung cancer on January 15, 1998 and reported complaints of recurring pain at the thoracotomy site, particularly during hard labor. Dr. Ikeda stated that appellant experienced episodic conditions of pain that would require him to be off work intermittently. He treated appellant for pain at the former surgical site in November 2003 and again on April 4, 2005 for a recurrence of pain with work. In a March 26, 2008 report, Dr. Ikeda relayed appellant's complaints of continuing chronic left chest pain near his previous surgical site beginning after he returned to work 10 years prior. Appellant reported that the pain was caused by lifting heavy objects. Physical examination revealed pinpoint pain in the chest on the thoracotomy side.

The Board finds that Dr. Ikeda's medical reports are insufficient to establish appellant's claim as he did not provide an explanation, supported by medical rationale, of how appellant's recurrent episodes of pain or any resulting disability was related to the November 15, 1998 injury or the accepted thoracic strain.⁶ None of Dr. Ikeda's reports provide a firm medical diagnosis to account for the reported pain symptoms.⁷ On March 26, 2008 he noted appellant's complaints that his pain was caused by heavy lifting. However, appellant's belief that his employment caused or aggravated his condition is not sufficient to establish causal relationship.⁸ Dr. Ikeda stated that appellant experienced a recurrence of pain with work on April 4, 2005 and reported that he primarily experienced pain with hard labor. Here, it appears as though he is relating appellant's condition and resulting pain symptoms to appellant's employment activities after returning to work subsequent to his injury. The Board has held that, if a medical condition or disability results from exposure to new work factors after a claimant returned to work, the chain of causation from the accepted injury is broken and an appropriate new claim should be filed.⁹ Therefore, Dr. Ikeda's opinions that appellant's condition is related to his employment activities after returning to work are not sufficient to establish appellant's recurrence claim as they implicate a new injury.

In a May 7, 2004 medical report, Dr. Curci stated that appellant was not to work any evening hours due to multiple medical problems. In medical reports dated February 27, 2003 through March 22, 2004, he diagnosed lung cancer, chronic obstructive pulmonary disorder and pleurodynia. Dr. Curci opined that appellant would, intermittently, be totally disabled due to his conditions. He did not address, however, the November 25, 1998 employment injury, or provide an opinion as to the cause of the diagnosed conditions or address how they were related to the accepted thoracic strain. Dr. Curci did not express any opinion that appellant's intermittent disability was related to his employment injury. As he did not opine that a causal relationship

⁶ See *Annie L. Billingsley*, 50 ECAB 210 (1998).

⁷ See *C.F.*, 60 ECAB ____ (Docket No. 08-1102, issued October 10, 2008); *Robert Broome*, 46 ECAB 276 (1994).

⁸ See *Ruby I. Fish*, 46 ECAB 276 (1994).

⁹ See *Phillip L. Barnes*, 55 ECAB 426 (2004).

existed between the diagnosed conditions and the November 25, 1998 employment injury, his reports do not support appellant's recurrence claim.¹⁰

On June 1, 2005 Dr. Driban stated that appellant was partially disabled due to pleurodynia secondary to his lung cancer surgery and that the condition was life long. He also provided work restrictions. This report is also insufficient to establish appellant's recurrence claim. The only condition diagnosed by Dr. Driban was that of pleurodynia. He did not relate this condition to appellant's employment injury, but rather stated that it was secondary to appellant's nonwork-related cancer surgery. Dr. Driban did not address whether appellant required either further medical treatment or had any disability due to her November 25, 1998 thoracic strain. Thus, his opinion is of diminished probative value.¹¹

In a June 21, 2007 medical note, Dr. Driban stated that in 1999 appellant suffered left back and side pain in his surgery location due to a work injury were he was lifting cardboard boxes over his head. He opined that appellant continued to suffer intermittent pain since the injury. This report is also insufficient to establish appellant's claim. Although Dr. Driban described the employment injury and opined that appellant continued to suffer intermittent pain, he did not provide a diagnosis of appellant's condition to account for the pain symptoms.¹² He did not describe the history of appellant's employment injury, including whether it had worsened or contributed to a new condition over the years, or otherwise explain how the accepted 1998 thoracic spine strain continued to cause pain or disability almost 10 years after it occurred.¹³

In a 2005 medical report, Dr. Kelly stated that appellant was discharged from the hospital on September 14, 2005 after an episode of chest pain. Appellant reported ongoing chronic pleuritic-type chest discomfort following his surgery for lung cancer as well as shortness of breath, dizziness and light headedness. Dr. Kelly noted that appellant's symptoms appeared to be coming on with work-related exertion activities.

Dr. Kelly did not provide a specific diagnosis or present any medical evidence bridging the symptoms of appellant's present condition and the November 25, 1998 thoracic strain.¹⁴ Although he noted that appellant's symptoms appeared to be related to exertion activities at work, the only relevant issue is whether appellant experienced a spontaneous change in a medical condition resulting from his November 25, 1998 employment injury. As noted if appellant sustained an injury due to subsequent work activities after his injury, his claim does not meet the definition of a recurrence but implicates a new injury.¹⁵ Dr. Kelly did not provide a rationalized medical opinion explaining whether appellant was experiencing a diagnosed

¹⁰ See *Theresa L. Andrews*, 55 ECAB 719 (2004).

¹¹ See *Richard A. Neidert*, 57 ECAB 474 (2006).

¹² See *Robert Broome*, *supra* note 7.

¹³ See *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹⁴ See *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹⁵ See *Phillip A. Barnes*, *supra* note 9.

condition related to his November 25, 1998 employment injury. Thus, his report does not establish appellant's claim.¹⁶

The Board finds that appellant did not submit sufficient medical evidence establishing that he sustained a recurrence of medical condition or any resulting disability casually related to his November 25, 1998 employment injury.

On appeal, appellant contends that the employing establishment required him to perform dangerous tasks six months after he underwent lung surgery and that he worked in a stressful environment. These arguments pertain to matter over which there is no final Office decision. The issue on appeal is whether appellant sustained a recurrence of his November 28, 1998 traumatic injury.

CONCLUSION

The Board finds that appellant did not establish that he sustained a recurrence of disability or a recurrence of medical condition on or after January 19, 1999 causally related to his November 25, 1998 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 12, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹⁶ See *Carmen Gould*, 50 ECAB 504 (1999).