

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

T.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
College Point, NY, Employer**

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**Docket No. 10-70
Issued: September 21, 2010**

Appearances:

*Thomas S. Harkins, Esq., for the appellant
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 October 9, 2009 appellant, through counsel, filed a timely appeal of the May 6, 2009 merit decision of the Office of Workers' Compensation Programs denying his recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained a recurrence of disability commencing August 24, 2007 causally related to his January 2, 2001 employment-related injuries.

On appeal, counsel contends that the medical evidence is sufficient to establish that the claimed recurrence of total disability and diagnosed conditions are causally related to the accepted injuries.

FACTUAL HISTORY

On January 2, 2001 appellant, then a 58-year-old letter carrier, filed a traumatic injury claim alleging that he cut his left hand and experienced pain in his left arm, elbow, wrist, shoulder and knee and lower back when he fell on the ice at the employing establishment entrance on that date. The Office accepted his claim for neck, elbow and forearm sprains. Following his January 2, 2001 injuries, appellant returned to limited-duty work. Subsequently, he returned to full-duty work.

Appellant stopped work on August 24, 2007 and filed a recurrence of disability claim beginning that date. In a September 20, 2007 statement, he noted that, on the morning of August 24, 2007, he experienced numbness in his left leg. At 12:45 p.m. on that date, appellant set out to walk two blocks to get lunch. After walking one-half block, he experienced a shooting, throbbing and stabbing pain from his neck down to his toes. From January 2, 2001 to August 24, 2007, appellant experienced sporadic neck and shoulder pain and numbness in his left fingers, toes and thigh. He became a supervisor in 2003 because he could no longer carry mail due to numbness and pain in his left leg and shoulder.

In a September 3, 2007 magnetic resonance imaging (MRI) scan report of appellant's cervical spine, Dr. Eliezer Offenbacher, a Board-certified radiologist, found that he had straightening of the cervical lordosis, spondylosis most notable at C5-6 and C6-7 with a focal central disc herniation deforming the thecal sac but no significant cord compression and a mild posterior bulge at C7-T1 without significant neural impingement. In a September 10, 2007 MRI scan report of appellant's lumbar spine, he found that he had mild levoscoliosis and spondylosis from L2-3 through L5-S1 associated with mild impingement on the thecal sac.

In reports dated September 11 to November 19, 2007, Dr. Carlisle L. St. Martin, an attending neurosurgeon, reviewed a history of appellant's January 2, 2001 employment injury and medical treatment. On August 24, 2007 appellant experienced severe left knee pain after walking one block to get lunch. Dr. St. Martin listed normal findings on physical examination and diagnosed cervical herniated nucleus pulposus with a history of a lumbar pinched nerve. He found that appellant was totally disabled for work. Dr. St. Martin advised that on August 24, 2007 appellant sustained a reinjury consisting of pain related to preexisting cervical and lumbar disc disease. Dr. St. Martin indicated with an affirmative mark that the diagnosed condition was caused by an employment activity. Appellant's job involved walking on inspections of mail routes. He was found totally disabled from August 24 to December 31, 2007.

On September 20, 2007 the employing establishment controverted appellant's claim, noting he was getting lunch at the time of the claimed recurrence of disability and was not in the performance of duty.

By letter dated December 14, 2007, the Office requested that appellant submit a rationalized medical opinion from an attending physician explaining how his current condition was causally related to the January 2, 2001 injury.

In reports dated September 5 and December 27, 2007, Dr. St. Martin reiterated a history of the January 2, 2001 employment-related injury, the August 24, 2007 lunch incident and his

diagnosis of cervical herniated nucleus pulposus. He opined that appellant was totally disabled from August 24, 2007 through December 27, 2007.

By decision dated January 18, 2008, the Office denied appellant's recurrence of disability claim on the grounds that the medical evidence of record was insufficient to establish total disability on August 24, 2007 due to his accepted January 2, 2001 injury.

On January 13, 2009 appellant, through counsel, requested reconsideration. A July 8, 2008 progress note from Dr. B.R. Raju, a Board-certified internist, addressed appellant's emotional condition. In February 19 and March 31, 2008 nerve conduction study reports of appellant's left upper and lower extremities, Dr. Augustine C. Romano, a clinical neurophysiologist, advised that he had prolonged median nerve distal motor latency absent right tibial H reflex and prolonged left tibial nerve H reflex. The March 31, 2008 study results were suspicious of early left carpal tunnel syndrome and bilateral S1 radiculopathies. A February 11, 2008 report from Dr. Raphael P. Davis, a Board-certified neurologist, reviewed a history of appellant's January 2, 2001 injury, medical treatment and social and family background. He listed essentially normal findings on neurological examination with motor and sensory deficits. Dr. Davis advised that appellant had cervical and lumbar muscle spasms with radicular features and was obese. He found that appellant could not work due to the diagnosed conditions. In a May 8, 2008 report, Dr. Davis reviewed a history of the January 2, 2001 injury, August 24, 2007 lunch incident and appellant's medical treatment. He reviewed MRI scans of the cervical and lumbar spines. Dr. Davis diagnosed diffuse spondylotic disease involving both the cervical and lumbar area with multiple levels of disc degeneration and stenosis.

By decision dated May 6, 2009, the Office denied modification of the January 18, 2008 decision. The evidence submitted by appellant was found insufficient to establish that he sustained a recurrence of disability commencing August 24, 2007 due to his January 2, 2001 injury.

LEGAL PRECEDENT

A recurrence of disability is defined as the 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, which caused the illness. The 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.¹

An employee who claims a recurrence of disability 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 employment injury.² The claimant has the

¹ 20 C.F.R. § 10.5(x).

² *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.³ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.⁴ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁵

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁶ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁷ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁸

ANALYSIS

The Office accepted that appellant sustained neck, elbow and forearm sprains on January 2, 2001 while in the performance of duty. Appellant claimed a recurrence of disability commencing August 24, 2007. The Board finds that appellant has failed to submit sufficient medical evidence to establish that his disability was caused or aggravated by his accepted injuries.

The diagnostic test reports of Dr. Offenbacher and Dr. Romano addressed appellant's cervical, lumbar and left upper and lower extremity conditions. This evidence, however, failed to address how these conditions and appellant's claimed recurrence of disability commencing August 24, 2007 were causally related to the January 2, 2001 injury. The Board has held that a physician's opinion, which does not address causal relationship, is of diminished probative value.⁹ Neither Dr. Offenbacher nor Dr. Romano provided any opinion explaining how appellant's cervical, lumbar and left upper and lower extremity symptoms in 2007 were due to the accepted sprains of 2001. The physicians did not provide any opinion addressing his

³ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁴ *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

⁵ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

⁶ *See Ricky S. Storms*, *supra* note 4; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁷ For the importance of bridging information in establishing a claim for a recurrence of disability, *see Richard McBride*, 37 ECAB 748 at 753 (1986).

⁸ *See Ricky S. Storms*, *supra* note 4; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁹ *See A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

disability for work commencing August 24, 2007. The Board finds that the reports of Dr. Offenbacher and Dr. Romano are insufficient to establish his claim.

Dr. St. Martin's September 20 to November 19, 2007 form reports are also of limited probative value. While he specifically found that appellant had cervical herniated nucleus pulposus and was totally disabled for work from August 24 to December 27, 2007, he did not address how or why the diagnosed condition and resultant disability were causally related to the January 2, 2001 injury.¹⁰ The Board notes that the Office accepted soft tissue injuries to the neck, elbow and forearms. A cervical herniated nucleus pulposus was not accepted as resulting from the January 2, 2001 injury. Appellant has the burden of proof to establish such causal relationship.¹¹

In form reports dated September 20 to November 19, 2007, Dr. St. Martin reviewed a history that on August 24, 2007 appellant sustained a reinjury of pain related to a preexisting injury or disease. He indicated with an affirmative mark that his diagnosed cervical and lumbar disc disease was caused by walking on route inspections. Dr. St. Martin opined that appellant was totally disabled from August 24 to December 31, 2007. Reports which only address causal relationship with a checkmark without more by way of medical rationale explaining how the incident caused the injury are insufficient to establish causal relationship and are of diminished probative value.¹² Dr. St. Martin did not adequately explain how the diagnosed conditions or total disability was caused or contributed to by the January 2, 2001 employment-related injuries. Rather, he noted appellant's job duty of walking on inspection routes, a new work exposure subsequent to the injury accepted in this case.¹³

Dr. St. Martin's September 5 to December 27, 2007 narrative reports provided a history of the January 2, 2001 injury and August 24, 2007 incident of appellant walking one block to get lunch. After reporting normal findings on physical examination, he diagnosed cervical herniated nucleus pulposus with a history of a lumbar pinched nerve. Again, Dr. St. Martin did not adequately address how appellant's accepted neck sprain had changed such that he became disabled as of August 24, 2007. The Board finds that his reports are insufficient to establish appellant's claim.

Similarly, the reports of Dr. Davis are insufficient to establish appellant's claim. After reviewing a history of the January 2, 2001 employment-related injuries, the August 24, 2007 lunch incident, appellant's medical treatment and MRI scans of the cervical and lumbar spines, he opined that appellant had diffuse spondylosis involving both the cervical and lumbar area with multiple levels of disc degeneration and stenosis. Dr. Davis did not explain how the accepted sprains in 2001 were competent to cause total disability for work as of August 24, 2007.

¹⁰ *Id.*

¹¹ *T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009); *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

¹² See *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

¹³ To the extent appellant attributes his disability to his employment activities in 2007, this decision does not preclude him from submitting such claim to the Office.

On February 11, 2008 he found that appellant was disabled due to muscular cervical and lumbar spasms with radicular features and obesity. Dr. Davis again related a history of the January 2, 2001 injury, medical treatment and social and family background. He listed essentially normal findings on neurological examination with motor and sensory deficits. Dr. Davis did not address whether appellant's disability commencing August 24, 2007 was caused or aggravated by his injury. He failed to offer a sufficient opinion on causation and his reports do not establish that appellant sustained a recurrence of disability causally related to the accepted injury.

Dr. Raju's July 8, 2008 progress note addressed appellant's emotional condition. He did not provide any opinion addressing the accepted January 2, 2001 employment injury.¹⁴ The Board finds that Dr. Raju's opinion is insufficient to establish appellant's claim.

Appellant failed to submit rationalized medical evidence establishing that his disability commencing August 24, 2007 resulted from the residuals of his accepted neck, elbow and forearm sprains.¹⁵ He has not met his burden of proof.¹⁶ Appellant's contention on appeal that the medical evidence is sufficient to establish his claim is not supported by the evidence of record. His contention that he sustained the claimed recurrence of disability and consequential conditions is a medical question that must be resolved by the submission of probative medical evidence.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of disability commencing August 24, 2007 causally related to his January 2, 2001 employment injury.

¹⁴ *A.D.*, *supra* note 9.

¹⁵ *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹⁶ *Tammy L. Medley*, 55 ECAB 182 (2003).

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2009 and January 18, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 21, 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