

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

A.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New York, NY, Employer**

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**Docket No. 10-843
Issued: January 21, 2011**

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 February 3, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 7, 2009, which denied 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 met his burden of proof to establish that he sustained a recurrence of disability on July 28, 2008 causally related to the accepted employment injury of January 20, 2001.

FACTUAL HISTORY

On January 20, 2001 appellant, then a 42-year-old motor vehicle operator, was involved in an automobile accident while in the performance of duty. The Office accepted his claim for cervical sprain and left shoulder contusion. It authorized a discectomy at C4-5 which was performed on September 6, 2005. Appellant stopped work on January 21, 2001.

From January 23 to 28, 2001 appellant was initially treated by Dr. Sachen Kamath, a Board-certified family practitioner, for neck and left shoulder pain which occurred after a car accident at work. Dr. Kamath diagnosed musculoskeletal sprain and neck and left shoulder pain. On February 2, 2001 he was treated by Dr. Anil Maheshwarr, a Board-certified internist, who diagnosed cervical sprain and C7 radiculopathy and returned appellant to work on March 15, 2001. A February 21, 2001 magnetic resonance imaging (MRI) scan of the cervical spine revealed extensive cervical spondylosis causing bilateral bony foraminal encroachment from C3 to C7 with right-sided foraminal encroachment at C7-T1 and no evidence of disc herniation.

On May 2, 2005 appellant filed a CA-2a, notice of recurrence of disability, alleging that on March 29, 2005, he sustained disability due to left arm and neck pain causally related to the January 20, 2001 work injury. On June 11, 2005 the Office accepted his claim.

On May 4, 2005 appellant came under the treatment of Dr. Mark E. Stephen, a Board-certified orthopedic surgeon, diagnosed cervical herniated nucleus pulposus with radiculopathy and recommended surgery. On September 6, 2005 Dr. Stephen performed a decompressive anterior discectomy at C4-5 and anterior spinal arthrodesis at C4-5. Appellant was treated by Dr. Kamath from May 6, 2005 to May 3, 2006, for persistent neck pain. Dr. Kamath noted that appellant was disabled for work from April 1, 2005 to May 3, 2006 and could return to full duties on May 5, 2006.

On August 4, 2008 appellant filed a CA-2a, notice of recurrence of disability, alleging that on July 28, 2008, he sustained disability due to neck and left shoulder pain radiating down his left arm into his hands related to his January 20, 2001 work injury. He stopped work on July 29, 2008. Appellant noted that he returned to his regular duties after the 2001 injury.

By letter dated August 20, 2008, the Office advised appellant of the factual and medical evidence needed to establish a recurrence of disability. It requested that he submit a physician's reasoned opinion addressing the relationship of his claimed disability to specific employment factors. No additional information was received.

In an October 1, 2008 decision, the Office found that the evidence submitted did not establish that appellant sustained a recurrence of disability on July 28, 2008 causally related to his January 20, 2001 work injury.

On October 10, 2008 appellant requested reconsideration. In an undated statement, he indicated that he was without pain for one year following back surgery and then began to have discomfort in his left arm, tingling and numbness. On July 27, 2008 the pain was so severe that appellant could not turn his head and stopped working. In an October 9, 2008 report, Dr. Anthony Petrizzo, an osteopath, treated appellant for persistent neck and posterior shoulder pain. Appellant reported a history of neck and arm pain subsequent to an anterior cervical disc fusion in September 2005 for injuries sustained in a motor vehicle accident in 2001. Dr. Petrizzo noted findings of decreased motion in extension and rotation on the left, paracervical and parahomboid spasm, full motor strength from C5-8 bilaterally, symmetrical deep tendon reflexes at C5-7 bilaterally, arm numbness on the left with dyesthesias into the digits. He diagnosed cervical spondylosis with radiculopathy and recommended anti-inflammatories.

In a November 12, 2008 letter, the Office requested that Dr. Petrizzo address whether appellant sustained a recurrence of disability on July 28, 2008 and whether he was capable of working in any capacity.

In an August 25, 2008 report, Dr. Kamath noted treating appellant since January 23, 2001 for cervical spine disc herniations. He noted that appellant reaggravated his symptoms on February 15, 2007 related to his cervical spine and disc herniations from his January 20, 2001 injury. Appellant had pain and stiffness on the left side of his neck and upper back with limited movement of his left shoulder which disabled him. Dr. Kamath reiterated that appellant's current symptoms were due to the work injury of January 20, 2001 and that he was totally disabled.

Dr. Petrizzo responded to the Office's November 12, 2008 letter and noted treating appellant on October 9 and 24, 2008. He referenced these reports for further information. On December 18, 2008 Dr. Petrizzo diagnosed cervical spondylosis with significant foraminal stenosis and noted appellant's symptoms had persisted since July 28, 2008 despite conservative care. He listed work restrictions related to appellant's pain. An October 17, 2008 computerized tomography (CT) scan of the cervical spine revealed status post anterior cervical disc fusion at C4-5 and multilevel disc disease.

In a January 13, 2009 decision, the Office denied modification of the October 1, 2008 decision.¹

On September 18, 2009 appellant requested reconsideration and submitted additional medical evidence. He also asserted that his claim should accept all the conditions diagnosed by his physicians. On April 23, 2009 Dr. Petrizzo noted a history of appellant's treatment from October 9 to December 18, 2008 and that he underwent an anterior cervical discectomy and fusion at C4-5 on September 6, 2005 with subsequent intermittent persistent neck and upper extremity symptoms. He diagnosed cervical spondylosis with radiculopathy and noted appellant was not working due to his symptoms. Dr. Petrizzo treated him on February 9 and March 5, 2009 for persistent neck pain and radiculopathy and diagnosed cervical spondylosis with radiculopathy. Based on the subjective and objective findings and a review of ancillary studies, appellant had significant spondylosis and multilevel central cervical spinal cord stenosis and foraminal narrowing secondary to spondylosis. Dr. Petrizzo opined that, more probably than not, appellant's condition was caused by the motor vehicle accident sustained at work and any return to work was guarded. A May 1, 2009 report from Dr. Kamath noted that appellant underwent surgery in 2005 and his symptoms continued to wax and wane. He found that appellant was totally disabled due to the cervical disc herniations and cervical spinal stenosis related to the accident of January 20, 2001.

In a December 7, 2009 decision, the Office denied modification of the October 1, 2008 decision.

¹ Appellant appealed to the Board but subsequently requested that his appeal be dismissed. In a February 13, 2009 order, the Board dismissed the appeal. Docket No. 09-135.

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 a new exposure to the work environment.²

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability are causally related to the accepted injury.³ This burden includes the necessity of 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 supports that conclusion with sound medical reasoning.⁴ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on an appellant’s unsupported belief of causal relation.⁵

ANALYSIS

The Office accepted that appellant sustained a cervical sprain and left shoulder contusion and authorized a discectomy at C4-5 which was performed on September 6, 2005. Appellant stopped work on January 21, 2001 and returned to regular full duty on March 19, 2001. On August 4, 2008 he filed a claim for a recurrence of disability occurring on July 28, 2008 and stopped work. The Board finds that the medical record lacks a well reasoned narrative from appellant’s physicians addressing how his disability on or after July 28, 2008 was due to his accepted employment injury.⁶

Appellant submitted reports from Dr. Petrizzo dated October 9 and 24, 2008, who treated him for neck and shoulder pain. Dr. Petrizzo diagnosed cervical spondylosis with radiculopathy and noted appellant had not worked secondary to neck pain. The record does not establish that the Office accepted that cervical spondylosis and radiculopathy resulted from the accepted 2001 injury.⁷ The Board notes that these reports fail to address whether appellant sustained a recurrence of disability on July 28, 2008 causally related to the accepted employment injury. Dr. Petrizzo did not explain why appellant was unable to work that day due to his accepted injury. The brief one page report does not adequately address causal relation. The Board has found that vague and unrationalized medical opinions on causal relationship are of diminished

² 20 C.F.R. § 10.5(x).

³ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *see Dominic M. DeScala*, 37 ECAB 369 (1986).

⁴ *See Nicolea Brusio*, 33 ECAB 1138 (1982).

⁵ *Ausberto Guzman*, 25 ECAB 362 (1974).

⁶ The Board has held that, for conditions not accepted by the Office as being employment related, it is the employee’s burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office’s burden to disprove such relationship. *See Alice J. Tysinger*, 51 ECAB 638 (2000).

⁷ As noted above, the Office accepted appellant’s claim for cervical sprain and left shoulder contusion. *See id.*

probative value.⁸ The evidence from Dr. Petrizzo is insufficient to meet appellant's burden of proof.

In a December 18, 2008 note, Dr. Petrizzo provides a diagnosis of diagnosed cervical spondylosis with significant foraminal stenosis and noted appellant's symptoms persisted since July 28, 2008. The report did not explain why appellant became disabled from performing his work as of July 28, 2008. Dr. Petrizzo noted that appellant could work with restrictions related to his pain. In an April 23, 2009 report, he provided a narrative addressing treatment of appellant. Dr. Petrizzo noted that appellant had significant spondylosis with multilevel central cervical spinal cord stenosis and foraminal narrowing secondary to spondylosis. He opined that, more probably than not, this was caused by the work-related motor vehicle accident. While this report provides some support for causal relationship, it is insufficient to establish the claimed recurrence of injury. Dr. Petrizzo did not address appellant's history of work prior to July 28, 2008 or why he became disabled that date. He noted that appellant stated he was not doing well when examined on October 9, 2008. The opinion provided is speculative support for causal relationship as Dr. Petrizzo stated his opinion was "more probably than not."⁹ Dr. Petrizzo provided insufficient medical rationale explaining causal relationship. Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant submitted an August 25, 2008 one page report from Dr. Kamath, who noted that since February 15, 2007 appellant had a reaggravation of his symptoms related to his cervical spine and disc herniations from his work injury on January 20, 2001. Dr. Petrizzo opined that appellant's current symptoms were related to the January 20, 2001 work injury and he was totally disabled. He did not explain why appellant was able to work but became disabled in late July 2008. The nature of any reaggravation was not addressed and raises the possibility work factors prior to July 28, 2008 contributed to the claimed disability. Dr. Kamath did not describe a spontaneous change in appellant's medical condition commencing July 28, 2008, due to his accepted condition. The Board has found unrationalized medical opinions on causal relationship of diminished probative value.¹⁰ The May 1, 2009 narrative report from Dr. Kamath noted that appellant's neck and left shoulder symptoms subsequent to the work accident on January 20, 2001 continued to wax and wane but did not address the relevant period of claimed disability. He noted appellant was never the same after the motor vehicle accident but did not address the history of employment up to the claimed disability. Dr. Kamath opined only that appellant's symptoms related to the cervical disc herniations and spinal stenosis was directly related to the motor vehicle accident on January 20, 2001. While this report provides some support for causal relationship there is insufficient reasoning from him addressing causal relationship in relation to disability as of July 28, 2008. The opinion of Dr. Kamath is insufficient to establish the claimed recurrence of disability.

⁸ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁹ See *Jennifer Beville*, 33 ECAB 1970 (1982) (where the Board found a physician's statement that appellant's complaints "could have been" related to an employment incident to be speculative and of limited probative value).

¹⁰ See *Jimmie H. Duckett*, *supra* note 8.

Appellant did not submit sufficient medical evidence to establish a recurrence of disability on July 28, 2008 causally related to his January 20, 2001 work injury.

CONCLUSION

The Board finds that appellant did not sustain a recurrence of disability commencing July 28, 2008.

ORDER

IT IS HEREBY ORDERED THAT the December 7, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 21, 2011
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