

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

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L.C., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Cleveland, OH, Employer )

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**Docket No. 12-530  
Issued: May 21, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 13, 2011 appellant filed a timely appeal from a July 19, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 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 was disabled from February 9 to 11, 2011 as a result of his accepted back condition.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

OWCP accepted that on July 12, 2006 appellant, then a 44-year-old letter carrier, sustained a back injury in the performance of duty.<sup>2</sup> Appellant did not stop work. OWCP accepted his claim for lumbar strain and lumbar radiculitis.<sup>3</sup>

In a September 17, 2008 report, Dr. Mary E. Anthony, a Board-certified family practitioner, advised that appellant's work duties be limited to lifting less than 25 pounds.<sup>4</sup>

On February 15, 2011 appellant filed a claim for disability compensation for the period February 9 to 11, 2011. He indicated that he used 26.05 hours of leave without pay (LWOP) from February 8 to 11, 2011.<sup>5</sup>

In a letter dated February 22, 2011, OWCP advised appellant that there was insufficient medical evidence to support that he was unable to work from February 9 to 11, 2011 as a result of his accepted work injuries. It informed him that an increase in pain did not constitute objective evidence of disability and requested a comprehensive medical report that provided medical rationale, based on objective findings, to support his inability to work.

In a February 8, 2011 report, Dr. Anthony noted appellant's complaints of increased back pain due to longer work routes and overtime. The examination revealed nonantalgic gait and 5/5 strength in the lower extremities. Dr. Anthony diagnosed left radiculitis and lumbar pain. She stated that appellant was given a note off work.

In a March 1, 2011 report, Dr. Anthony noted appellant's history of chronic back issues and intermittent recurrent radicular symptoms. Appellant complained of increased pain and numbness in his left foot due to longer work hours and overtime. Dr. Anthony explained that although appellant's objective findings were normal, this fact did not negate his complaints of

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<sup>2</sup> On July 31, 2006 appellant filed a traumatic injury claim alleging that on July 12, 2006 he was walking down the driveway with about 15 pounds of mail in his mail satchel on the left side when his back popped out.

<sup>3</sup> Appellant had three prior accepted traumatic injury claims in 1989 (File No. xxxxxx914), 1990 (File No. xxxxxx271) and 2002 (File No. xxxxxx660). Following intermittent periods of disability, he returned to full duty on October 29, 2002. In a letter dated February 4, 2009, OWCP informed appellant that his previous claims had been combined into his present claim.

<sup>4</sup> On January 24, 2010 appellant requested that his claim be expanded to include herniated disc and included a September 23, 2009 medical report from Dr. Anthony to support his request. On August 9, 2010 OWCP referred appellant to Dr. Karl V. Metz, a Board-certified orthopedic surgeon, for a second-opinion examination to determine whether his herniated disc was causally related to the accepted 2006 injury. In a September 17, 2009 report, Dr. Metz reviewed appellant's history, including his diagnostic reports and conducted an examination. He stated that, based on his examination and review of the records, appellant's facet arthropathy and disc herniation were not related to the July 12, 2006 injury. On June 28, 2011 OWCP determined that a conflict of medical opinion existed between Dr. Anthony and Dr. Metz regarding whether appellant's claim should be expanded to include disc herniation and referred the claim for an impartial medical examination. No decision had been reached by OWCP at the time of this appeal and thus the Board has no jurisdiction to address it.

<sup>5</sup> OWCP paid compensation for 2.05 hours of LWOP for appellant's medical appointment on February 8, 2011.

increased pain. She explained that subjective findings did not always translate into objective findings and advised that appellant be given time off work to alleviate his symptoms.

In a March 8, 2011 report, Dr. Anthony stated that appellant was doing much better but still complained of numbness in his foot. She observed that appellant was alert, had well-maintained strength and nonantalgic gait. Dr. Anthony diagnosed left radiculitis.

In a decision dated April 6, 2011, OWCP denied appellant's claim for disability compensation for the period February 9 to 11, 2011.

On April 22, 2011 appellant requested a review of the written record. In an April 12, 2011 statement, he responded to OWCP's April 6, 2011 denial decision. Appellant explained that he had been dealing with symptoms of several back injuries over his 23 years of working as a letter carrier but had missed very little work as a result of these injuries.

In a March 12, 2011 report, Dr. Anthony related appellant's complaints of increased left foot pain and noted that he was now working full duty.

In an April 12, 2011 report, Dr. Anthony stated that she had treated appellant for chronic back injuries since 2006. She related that he had intermittent and now more constant numbness in his left leg. Dr. Anthony noted that a September 5, 2008 magnetic resonance imaging (MRI) scan revealed disc protrusions and arthritic changes and that in a February 8, 2011 examination appellant complained of increased pain and numbness in his left foot due to longer work routes and overtime. She explained that it was logical for him to experience increased pain symptoms related to longer work hours and overtime and with his long-standing history of back issues. Dr. Anthony opined that, because of appellant's history of back issues, arthritis and bulging discs, he should take time off work so that his symptoms did not worsen.

By decision dated July 19, 2011, an OWCP hearing representative affirmed the April 6, 2011 decision denying appellant's claim for disability compensation for the period February 9 to 11, 2011.<sup>6</sup>

### **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>7</sup> This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his 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

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<sup>6</sup> The hearing representative noted that appellant had submitted several requests to expand his claim to include disc herniation and facet arthropathy and instructed the district OWCP to weigh the medical evidence and issue a decision regarding the expansion of his claim.

<sup>7</sup> 20 C.F.R. § 10.5(x).

an assignment are altered so that they exceed his established physical limitations.<sup>8</sup> Moreover, when the claimed recurrence of disability follows a return to light-duty work, the employee may satisfy his burden of proof by showing a change in the nature and extent of the injury-related condition such that he is no longer able to perform the light-duty assignment.<sup>9</sup>

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing that the recurrence of disability is causally related to the original injury.<sup>10</sup> This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.<sup>11</sup> The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>12</sup>

### ANALYSIS

OWCP accepted that appellant sustained a back condition as a result of the July 12, 2006 employment incident. Appellant did not stop work but was medically restricted to lifting less than 25 pounds. He filed a claim for disability compensation for the period February 9 to 11, 2011. OWCP denied appellant's claim on the grounds of insufficient medical evidence to demonstrate that he was disabled as a result of his accepted back injury. The Board finds that he failed to meet his burden of proof to establish that his claimed disability on those days was causally related to his accepted back injury.

Appellant submitted various medical reports from Dr. Anthony who related appellant's complaints of increased back pain due to longer work routes and overtime. The examination revealed nonanalgesic gait and well-maintained strength. Dr. Anthony explained that the normal objective findings did not negate the fact that appellant had increased pain. She explained that subjective findings did not always translate into objective findings and recommended that appellant be given time off work. Although Dr. Anthony tried to explain the lack of objective findings, the Board has found that findings on examination are needed to support a physician's opinion that an employee is disabled for work.<sup>13</sup> However, she did not provide any objective medical findings to support appellant's disability but merely related that he experienced increased pain. Because the record fails to contain objective medical findings to support that

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<sup>8</sup> *Id.*

<sup>9</sup> *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

<sup>10</sup> 20 C.F.R. § 10.104(b); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>11</sup> *Helen K. Holt*, 50 ECAB 279 (1999).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (March 2011).

<sup>13</sup> *See S.F.*, 59 ECAB 525 (2008); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

appellant was disabled from work on the claimed days of disability due to his employment injury, the Board finds that he did not meet her burden of proof to establish his claim.<sup>14</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he was disabled from February 9 to 11, 2011 as a result of his accepted back injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 19, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>14</sup> On appeal, appellant did not contest the denial of his compensation claim but stated that the district OWCP was instructed to issue a decision regarding his request to expand his claim. As this issue is not before the Board at this time, the Board will not render a decision regarding the expansion of his claim.