U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLEBERT SIMMON and U.S. POSTAL SERVICE,
AIRPORT MAIL FACILITY, Jamaica, NY

Docket No. 99-482; Submitted on the Record;
Issued April 24, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained a recurrence of disability beginning November 6, 1997 due to his October 14, 1994 employment injury.

The Office of Workers' Compensation Programs accepted that appellant's October 14, 1994 employment injury, sustained by handling mail, resulted in a right hip strain and low back derangement with sciatica. Appellant received continuation of pay from October 19, 1994 until he returned to limited duty on November 4, 1994. Appellant also received compensation for temporary total disability for a recurrence of disability from June 11, 1995, when he again stopped work, until he returned to limited duty on September 4, 1997 as a modified casual mailhandler.

On November 6, 1997 appellant again stopped work. On November 10, 1997 he filed a claim for a recurrence of disability beginning November 6, 1997 due to his October 14, 1994 employment injury. Appellant explained the circumstances of the alleged recurrence of disability:

> "On November 6, 1997 I was sitting casing the mail when suddenly I was attacked by a sharp pain in my lower back. I continued working but the pain worsen[ed]. I got up and reported to the supervisor. The doctor was on site so I went to see him. … The MDO advised me to go home after filling out some forms. The doctor advised me to see my family doctor. … The pain was very severe on January 6, 1997 and as a result I have not been able to return to work."

By letter dated November 26, 1997, the Office advised appellant that it needed further information on his claim for a recurrence of disability, including a medical report containing an opinion, supported by medical rationale, as to whether and how his present condition was causally related to his October 14, 1994 injury. By decision dated February 26, 1998, the Office

found that the evidence failed to establish that appellant's claimed recurrence of disability was causally related to his October 14, 1994 employment injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[1] As part of this burden, appellant must furnish rationalized medical opinion evidence, based on a complete and accurate factual and medical history, showing a causal relationship between the claimed recurrence of disability and an accepted employment injury.[2] Causal relation and disability are medical issues that must be resolved by competent medical evidence.[3]

The Board finds that appellant has not established that he sustained a recurrence of disability beginning November 6, 1997 due to his October 14, 1994 employment injury.

The only medical report addressing appellant's disability beginning November 6, 1997 was a note from an unidentified employing establishment physician dated November 6, 1997 and indicating appellant was not fit for duty. This report did not indicate whether appellant's disability was related to his October 14, 1994 employment injury, and is therefore insufficient to establish appellant's claim for a recurrence of disability due to this injury. Appellant also submitted a report dated November 19, 1997 from a physician's assistant stating that appellant was completely disabled. However, a physician's assistant is not a "physician" within the meaning of the Federal Employees' Compensation Act and therefore not competent to give a medical opinion.[4] Two other reports from this physician's assistant also contain a doctor's name but not the doctor's signature,[5] and, even if these reports could be considered competent medical evidence, they indicate that appellant was only partially disabled from September 4, 1997 to the dates of the reports, December 10, 1997 and January 7, 1998. As appellant has not submitted competent medical evidence showing that he was disabled beginning November 6, 1997 due to his accepted October 14, 1994 employment injury, he has not met his burden of proof.

[1] *Terry R. Hedman*, 38 ECAB 222 (1986).

[2] *Armando Colon*, 41 ECAB 563 (1990).

[3] *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *Ausberto Guzman*, 25 ECAB 362 (1974).

[4] *Guadalupe Julia Sandoval*, 30 ECAB 1491 (1979).

[5] The report of a physician's assistant can be considered competent medical evidence if it is countersigned by a physician. *Wiley L. Wall*, 35 ECAB 413 (1983).

The decision of the Office of Workers' Compensation Programs dated February 26, 1998 is affirmed.

Dated, Washington, D.C.
April 24, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member