

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUIS J. CONGEMI and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 99-1062; Oral Argument Held January 16, 2001;
Issued February 20, 2001*

Appearances: *appellant, pro se; Catherine P. Carter, Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a recurrence of disability commencing September 16, 1997, causally related to his October 17, 1995 accepted employment injury.

On October 31, 1995 appellant, then a 47-year-old stationary engineer, filed a claim alleging that he sustained back injury on October 17, 1995 when he tried to lift two large compressors as he crouched while working at floor level. Appellant stopped work on October 23, 1995, received continuation of pay and returned to full-time light duty on October 29, 1995.¹ The Office of Workers' Compensation Programs accepted that appellant sustained employment-related aggravation of his preexisting degenerative disc disease.

Appellant stopped work again on September 17, 1997; he used sick leave until he returned to light-duty work on September 19, 1997 and on September 29, 1997 he filed a claim for recurrence of employment-related temporary total disability commencing on September 16, 1997 causally related to his October 17, 1995 low back injury.

In support of his recurrence claim, appellant submitted a September 16, 1997 form report, in which Dr. Gary B. Niditch, his attending Board-certified neurologist, set forth his work activity restrictions and a prescription from Dr. Niditch for physical therapy. Appellant also submitted an October 1, 1997 report, in which he related appellant's 10-year history of back pain and provided physical examination and x-ray findings. Dr. Niditch diagnosed "[d]egenerative

¹ An x-ray taken on October 23, 1995 was reported as showing degenerative changes of "disc space narrowing at L4-5 with sclerosis of the endplates and traction osteophyte formation."

disease of the lumbar spine with herniated disc with L5 radiculopathy.” He also noted that appellant had no history of any specific back injury.

By letter to appellant dated November 12, 1997, the Office acknowledged receipt of his recurrence claim and requested that he submit additional information, including factual and medical evidence relating appellant’s recurrence claim to his October 17, 1995 accepted back injury.

On November 20, 1997 the Office received a response, in which appellant described his work duties following his original injury and contended that after his return to work his lower back pain never completely subsided. He also claimed that now he suffered continuous lower back pain and left leg weakness and alleged that the left leg weakness first occurred after the 1995 employment incident. However, no further medical evidence to support his recurrence claim was submitted.

By decision dated January 2, 1998, the Office rejected appellant’s recurrence claim finding that he had failed to meet his burden of proof to establish that his 1997 disability was causally related to his October 17, 1995 back injury. The Office found that Dr. Niditch’s report did not address causal relationship with appellant’s earlier 1995 accepted injury.

On December 15, 1998 appellant through his representative, requested reconsideration of the January 2, 1998 decision. Appellant alleged that, in addition to the accepted condition of aggravation of preexisting degenerative disc disease, on October 17, 1995, he also sustained a herniated disc and argued that it was causally related because following the October 17, 1995 injury he experienced no relief, but only a gradual increase in pain. In support appellant submitted copies of documents already in the case record and new medical evidence from the following physicians: Dr. Keith E. Larkin, a Board-certified orthopedic surgeon; Dr. John F. Schuhmacher, a Board-certified neurosurgeon; Dr. John D. Brooks, a radiologist; and Dr. R. Dale Davison, a Board-certified diagnostic radiologist.

In an October 26, 1998 report to the employing establishment, Dr. Larkin noted appellant’s complaints of back pain and provided his findings made upon physical examination.

In a September 4, 1998 consultation report, Dr. Schuhmacher provided Dr. Larkin with his findings made upon physical examination; he reviewed the results of diagnostic studies and diagnosed “[d]egenerative lumbar disc disease L4-5 and L5-S1 with left-sided L5-S1 disc bulge/paracentral herniation.”

In reports dated July 29, 1998 and March 9, 1994, Drs. Brooks and Davison respectively described degenerative changes in appellant’s lumbar spine as shown by x-rays.

By decision dated January 22, 1999, the Office denied modification of the January 2, 1998 decision finding that the evidence submitted in support of the request was insufficient to warrant modification.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability commencing September 16, 1997, causally related to his October 17, 1995 accepted employment injury.

An individual who claims a recurrence of disability due to an accepted employment injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. 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.² Causal relationship is a medical issue and can be established only by medical evidence.³

Further, an employee returning to light duty, as in the instant case or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of reliable, probative, and substantial evidence and to show that he or she cannot perform the light duty.⁴ As part of his burden, the employee must show a change in the nature or extent of the injury-related conditions or a change in the nature or extent of the light-duty requirements.⁵ Appellant has shown none of this.

In this case, appellant returned to work in a light-duty capacity on October 29, 1995 and worked successfully in that capacity until September 16, 1997 when he filed a recurrence claim. In support of this claim appellant submitted several medical reports dating from before the original 1995 injury to the present from Drs. Niditch, Larkin, Schuhmacher, Brooks and Davison, which merely related appellant's complaints of disabling back and leg pain, described their findings upon examination and recommended a course of treatment. However, while some of these reports contain conclusory statements that lend some support to appellant's recurrence claim,⁶ they are either silent on the crucial issue of causal relationship with his October 17, 1995 injury, or attribute appellant's symptomatology to a condition that has not been accepted by the Office as occurring due to the October 17, 1995 incident. As these reports do not contain rationalized medical opinion evidence which supports that appellant's condition and temporary total disability on or after September 16, 1997 is causally related to the October 17, 1995 accepted employment-related condition of aggravation of degenerative disc disease, these reports are insufficient to establish appellant's recurrence claim.⁷ Further, as these reports lack

² *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

³ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁴ *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁵ *Id.*

⁶ Medical conclusions unsupported by rationale are of diminished probative value. See *Vicky L. Hannis*, 48 ECAB 538 (1997); *Jacquelyn L. Oliver*, 48 ECAB 232 (1996); *William C. Thomas*, 45 ECAB 591 (1994).

⁷ See *Lillian M. Jones*, 34 ECAB 379 (1982); *Naomi A. Lilly*, 10 ECAB 560 (1959).

rationalized medical opinion evidence addressing causal relation, they are also insufficient to establish that appellant sustained a herniated lumbar disc on October 17, 1995 as he asserts on appeal.

Appellant also submitted a September 16, 1997 form report from Dr. Niditch, in which he indicated that appellant was totally disabled and set forth his current work restrictions. However, Dr. Niditch failed to provide any history of injury and failed to respond to the form request for a “diagnosis due to injury.” Therefore, this form is incomplete and is consequently insufficient to establish appellant’s recurrence claim.⁸

As appellant has not demonstrated through the submission of rationalized medical opinion evidence that there was a change in the nature or extent of his injury-related condition occurring on or around September 16, 1997 and as he has not submitted factual evidence to establish that a change occurred in the nature or extent of his light-duty job requirements, he has failed to establish his recurrence claim.

The decision of the Office of Workers’ Compensation Programs dated January 22, 1999 is hereby affirmed.

Dated, Washington, DC
February 20, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁸ See *supra* note 3.