

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DERWIN D. DAWSON and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, TX

*Docket No. 03-1263; Submitted on the Record;
Issued July 28, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability causally related to his accepted employment injury.

On August 13, 1994 appellant, then a 37-year-old mailhandler, filed an occupational disease claim alleging that he sustained a lower back condition due to factors of his federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for an aggravation of lumbar and sacroiliac strain.¹ Appellant stopped work on August 1, 1994 and returned to limited-duty employment on October 26, 1998.²

Appellant again stopped work from March 23 to June 19, 1995.³ On October 26, 1998 appellant underwent a lumbar discogram and was subsequently hospitalized for lumbar discitis. The Office placed appellant on the periodic rolls effective December 6, 1998. Appellant resumed limited-duty employment for four hours per day on October 25, 1999 and for eight hours per day on February 12, 2001.

By decision dated November 20, 2001, the Office determined that appellant had no loss of wage-earning capacity based on its finding that his actual earnings as a modified city carrier effective February 12, 2001 fairly and reasonably represented his wage-earning capacity.

On March 6, 2002 appellant filed a claim for compensation for four hours per day from January 22 to March 1, 2002. In a decision dated June 12, 2002, the Office denied appellant's

¹ The Office previously accepted that appellant sustained sacroiliac strain due to a traumatic injury occurring on January 28, 1993.

² By decision dated January 17, 1995, the Office found that appellant had no loss of wage-earning capacity based on its determination that his actual earnings in his modified-duty position effective October 28, 1994 fairly and reasonably represented his wage-earning capacity.

³ The Office paid appellant compensation for this period.

claim on the grounds that the medical evidence was insufficient to establish that he sustained a recurrence of disability beginning January 22, 2002 causally related to his accepted employment injury.

By letter dated July 5, 2002, appellant requested a hearing on his claim. At the hearing, held on January 15, 2003, the hearing representative discussed the type of evidence necessary to establish a recurrence of disability and informed appellant that he would “hold the record open” in order to give appellant a chance to submit additional evidence.⁴

Appellant submitted a medical report dated January 17, 2003, received by the Office on February 13, 2003, from Dr. Roger S. Blair, a Board-certified neurologist, and his attending physician. In his January 17, 2003 report, Dr. Blair, in response to a request to list objective findings supporting appellant’s partial disability as of January 22, 2002, noted that he had “decreased ROM [range of motion] of the lumbar spine, mild tenderness and muscle spasm.” Dr. Blair explained that he decreased appellant’s work hours beginning January 2002 pending objective tests to determine the cause of his increasing back pain.

In a decision dated March 10, 2003, the hearing representative affirmed the Office’s June 12, 2002 decision. The hearing representative stated, “The claimant has been apprised of the deficiencies in the medical evidence and was given the opportunity to present new reports for consideration. He has failed to submit any new evidence.”

The Board finds that the case is not in posture for decision.

The Federal Employees’ Compensation Act⁵ provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim.⁶ Since the Board’s jurisdiction of a case is limited to reviewing evidence which is before the Office at the time of its final decision,⁷ it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board’s decisions are final as to the subject matter appealed,⁸ it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.⁹

⁴ The hearing representative instructed appellant to send additional evidence to the Office’s London, Kentucky address provided on the Notice of Hearing.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ 5 U.S.C. § 8124(a)(2).

⁷ See 20 C.F.R. § 501.2(c).

⁸ 20 C.F.R. § 501.6(c).

⁹ See *William A. Couch*, 41 ECAB 548, 553 (1990).

In this case, the hearing representative, in his March 10, 2003 decision, stated that appellant had been provided an opportunity to submit additional evidence but that no new evidence had been received. However, the record contains a January 17, 2003 report from Dr. Blair, received by the Office on February 17, 2003, over 20 days prior to the issuance of the hearing representative's March 10, 2003 decision. It is, therefore, clear from the record that the Office hearing representative received but did not review the report of Dr. Blair dated January 17, 2003 prior to rendering his decision. On remand, the Office should review all of the evidence of record. After such further development as it deems necessary, the Office shall issue an appropriate decision.

The decisions of the Office of Workers' Compensation Programs dated March 10, 2003 and June 12, 2002 are set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC
July 28, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member