

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

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**BRIAN S. BUCHANAN, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Manchester, NH, Employer**

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**Docket No. 03-1846  
Issued: January 12, 2004**

*Appearances:*  
*Arend R. Tensen, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On July 15, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 29, 2003 denying 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 the case.<sup>1</sup>

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability beginning October 8, 2001 due to his November 2, 1995 employment injury.

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<sup>1</sup> With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

## **FACTUAL HISTORY**

On November 7, 1995 appellant, then a 47-year-old rural letter carrier, filed a traumatic injury claim alleging that on November 2, 1995, while he was lifting a mail tub he stepped on broken floor tiles and fell, injuring his ribs and back. The Office accepted appellant's claim for multiple contusions and lumbar strain. Appellant stopped work on November 2, 1995.

On July 14, 1998 the employing establishment offered appellant a modified distribution clerk position which complied with his medical restrictions of lifting of no greater than 50 pounds and no tolerance for repositioning (bending and twisting). On July 24, 1998 appellant accepted this offer with the condition that the Garnet Hill accountabilities would not be included in his work load and noted that the clerks union had filed a grievance.

On October 22, 2001 appellant filed a CA-2a, notice of recurrence of disability, stating that, on October 8, 2001, he experienced low grade pain in the low back at L3-4, hip pain, and numbness of the left knee. He noted that there was no specific reason for the pain and stopped work on October 8, 2001 and returned in December 2001.

Appellant submitted New Hampshire Workers' Compensation forms from October 1 to November 15, 2001, which indicated that he experienced an acute flare-up of low back pain at the end of September 2001 with radiation down the left thigh. A medical report from Dr. Aaron D. Solnit, a Board-certified family practitioner, dated October 9, 2001, noted that appellant drove to New York for the funeral of his nephew who was killed in the World Trade Center disaster and, at this time, noticed a gradual onset of left leg numbness and pain in the anterior thigh. Dr. Solnit noted that appellant's history and examination were suggestive of a herniated disc at L3-4. He opined that appellant's initial injury of November 2, 1995 was work related but that this current flare-up was not. In a report of October 15, 2001, Dr. Solnit noted that appellant was better but continued to experience pain in his left hip and buttocks. He diagnosed radicular pain in L3-4 with the etiology most likely being a herniated disc. Dr. Solnit's report of October 26, 2001 diagnosed chronic low back pain, which was acutely exacerbated and new radicular pain in the left leg. He noted that appellant's underlying condition was work related but that the current exacerbation was not work related. In an attending physician's report dated November 9, 2001, Dr. Solnit diagnosed low back pain and noted that appellant's condition since October 8, 2001 was not caused or aggravated by an employment activity, however, his underlying condition was related to his original injury.

Dr. Gilbert J. Fanciullo, a Board-certified anesthesiologist, in a report dated October 19, 2001, noted that appellant experienced an exacerbation of his low back pain in early October and stopped work. He diagnosed lumbar radiculopathy, acute exacerbation and recommended physical therapy and continuing acupuncture.

In a letter dated December 10, 2001, the Office requested detailed factual and medical evidence from appellant, stating that the information submitted was insufficient to establish that he sustained a recurrence on October 8, 2001.

Appellant submitted an attending physicians report from Dr. Solnit dated November 27, 2001, which diagnosed an acute L3 disc injury and again noted that the underlying condition was work related; however, the exacerbation of his condition was not related.

In a report dated November 15, 2002, Dr. Carolyn Harnois, a general practitioner, noted evaluating appellant for a flare-up of back pain and leg pain commencing in October 2001. She diagnosed lumbar radiculopathy, acute exacerbation which seemed to be improving. Dr. Harnois released appellant from her care. Also submitted were numerous attending physician's reports from an acupuncturist recommending further treatment from November 27 to December 24, 2001.

In a decision dated January 15, 2002, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that the October 8, 2001 recurrence of disability was causally related to the injury of November 2, 1995.

Appellant requested an oral hearing before an Office hearing representative, which was held on January 30, 2003. He submitted a report from Dr. Solnit dated October 26, 2001, which noted his treatment for appellant's original injury in 1995 and the exacerbation of his condition in October 2001. He indicated that appellant was not responding well to conservative treatment and could not work at that time. Dr. Solnit opined that appellant's underlying condition was work related and that the current exacerbation was not or at least was not directly a result of his current employment. Dr. Solnit's reports of December 20 and 26, 2001 advised that appellant stopped work because of a worsening of his employment-related condition; however, the acute worsening was not due to a work-related injury. He noted that appellant returned to his previous light-duty job and he recommended further acupuncture treatment. The magnetic resonance imaging (MRI) scan dated December 18, 2001 revealed a left lateral disc herniation involving the neuroforamen.

In a report dated January 11, 2002, Dr. Roy M. Barnes, a Board-certified family practitioner, advised that appellant experienced an exacerbation of his low back pain with new findings of L3 radiculopathy. He noted that appellant was unable to work in October and November 2001, but returned to work in December 2001. Dr. Barnes advised that acupuncture had been beneficial to appellant and recommended further treatments. He prepared New Hampshire Workers' Compensation forms which diagnosed chronic low back pain and recommended appellant return to modified full-duty work.

Also submitted was a report from Dr. Leonard M. Rudolf, a Board-certified orthopedist, dated January 29, 2002, which noted a history of appellant's low back injury and exacerbation in October 2001 and diagnosed back and left leg symptoms likely secondary to the L3-4 disc herniation. He opined that there was a relationship between his original injury and his current condition but there was no way to prove it.

In a decision dated April 29, 2003, the Office hearing representative affirmed the January 15, 2002 decision on the grounds that the evidence was insufficient to establish that the recurrence of disability on October 8, 2001 was causally related to the employment injury of November 2, 1995.

## LEGAL PRECEDENT

When an employee who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 show that he 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 requirements.<sup>2</sup>

## ANALYSIS

Appellant has not submitted sufficient evidence to support a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements. The Office accepted appellant's claim for multiple contusions and lumbar strain and paid appropriate compensation.

In an October 9, 2001 medical report, Dr. Solnit noted that appellant drove to New York and noticed the gradual onset of left leg numbness and pain in the anterior thigh. He attributed appellant's condition to his drive to New York and opined that appellant's initial injury of November 2, 1995 was work related "but that this current flare-up is not." In his report of October 26, 2001, Dr. Solnit advised that appellant continued to experience pain and diagnosed chronic low back pain, acutely exacerbated and again opined that appellant's "underlying condition is work related but that the current exacerbation is not." His attending physicians report dated November 9, 2001, also found that the condition for which he had been treating appellant since October 8, 2001 was not caused or aggravated by an employment activity. None of Dr. Solnit's reports, most contemporaneous with the recurrence claim, attributed the cause of appellant's recurrence of symptoms to the accepted employment injury. Rather, Dr. Solnit reported that appellant experienced an exacerbation of his condition after driving to the funeral of a nephew and not related to the accepted work injury.<sup>3</sup>

Other reports from Dr. Solnit do not support that the recurrence of disability on October 2, 2001 is causally related to the November 2, 1995 work injury. The physician indicated that appellant's "underlying condition is work related, although the current exacerbation is not or at least is not directly a result of his current employment."

Reports from Drs. Fanciullo, Harnois and Barnes dated October 19, November 15, 2001 and January 11, 2002, respectively, noted that appellant experienced an exacerbation of his low back pain in early October and stopped work, however, neither physician listed a specific date of a recurrence of disability nor did they note a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from

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<sup>2</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>3</sup> See *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971) (where the Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence).

performing his modified-duty position.<sup>4</sup> Therefore these reports are insufficient to meet appellant's burden of proof.

Also submitted was a report from Dr. Rudolf dated January 29, 2002 which noted a history of appellant's low back injury and exacerbation in October 2001 and diagnosed back and left leg symptoms likely secondary to the L3-4 disc herniation. He opined that there was a relationship between his original injury and his current condition but there was "no way to prove it." Although, he provided some support for causal relationship in a conclusory statement he did not provide a rationalized opinion regarding the causal relationship between appellant's recurrence of disability on October 8, 2001 and the employment incident of November 2, 1995. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.<sup>5</sup> Additionally, these notes are vague regarding the time of the onset of the claimed recurrence of disability and are unrationalized regarding how the November 2, 1995 employment injury would have caused a particular period of disability beginning in October 2001.<sup>6</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

### CONCLUSION

Appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit him from performing the light-duty position he assumed after his return to work.

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<sup>4</sup> See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>5</sup> *Id.*

<sup>6</sup> See *Jimmie H. Duckett*, *supra* note 4.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 29, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member