

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

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**DUWAYNE VANDRUFF, Appellant**

**and**

**U.S. POSTAL SERVICE, JAMES C. BROWN,  
JR. POSTAL FACILITY, Las Vegas, NV,  
Employer**

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**Docket No. 05-1210  
Issued: August 22, 2005**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On May 9, 2005 appellant filed a timely appeal of a March 24, 2005 decision of the Office of Workers' Compensation Programs affirming the denial of his claim for a recurrence of disability commencing August 7, 2003 causally related to an accepted January 9, 2001 injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.d(3), the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant has established that he sustained a recurrence of disability commencing August 7, 2003 causally related to an accepted January 9, 2001 lumbar strain.

**FACTUAL HISTORY**

The Office accepted that on January 9, 2001 appellant, then a 52-year-old distribution clerk, sustained a lumbar strain while lifting a tray of mail. At the time of injury, he was

performing limited-duty work due to upper extremity conditions, including bilateral carpal tunnel syndrome but had no limitations regarding his back.

Appellant was followed initially by Dr. Victor Klausner, an osteopath, consulting to the employing establishment. He submitted chart notes from January 9 to March 6, 2001 diagnosing lumbar myofascitis superimposed on preexisting degenerative disc disease. Dr. Klausner prescribed physical therapy and duty restrictions. In March 2001, he referred appellant to Dr. Firooz Mashood, a Board-certified physiatrist. In a March 19, 2001 report, Dr. Mashood related appellant's complaints of lumbar pain with radiation into the left posterior thigh and lateral calf. He diagnosed status post thoracolumbar sprain/strain with left-sided back pain and preexisting degenerative disc disease at L5-S1. Dr. Mashood released appellant to full duty with no restrictions pertaining to the lumbar injury.

In an April 2, 2001 Report of Termination of Disability and/or Payment (Form CA-3), the employing establishment noted that, after a period of "temp[orary] modified work," appellant returned to full duty on March 21, 2001.

In a January 22, 2003 slip, Dr. Garish Daulat, an attending osteopath, held appellant off work indefinitely due to back pain.

On August 18, 2003 appellant filed a claim alleging that he sustained a recurrence of disability commencing August 7, 2003, causally related to the January 9, 2001 lumbar strain. He stopped work on August 7, 2003 and did not return. Appellant noted that the date of the recurrence was "unknown" but that the onset of his symptoms was "gradual," with occasional back problems through 2001, worsening in late 2002. On the reverse of the form, an employing establishment supervisor stated that, at the time of the claimed recurrence of disability, appellant was under work restrictions only for bilateral carpal tunnel syndrome. The supervisor noted that following the January 9, 2001 lumbar strain, he was "provided limited duty originally for his back and then the limited duty was because of his carpal tunnel, a total[ly] different set of restrictions."

In a February 10, 2004 letter, the Office advised appellant of the type of medical and factual evidence needed to establish his claim for recurrence of disability. The Office explained the necessity of submitting a rationalized report from his attending physician explaining how and why the accepted January 9, 2001 lumbar strain would cause the claimed recurrence of disability commencing August 7, 2003. The Office noted that the medical rationale submitted should explain if the January 9, 2001 incident caused any aggravation of a preexisting condition.

In response, appellant submitted treatment records from Dr. David J. Oliveri, an attending Board-certified physiatrist, dated from 1996 through 2003. Chart notes and electrodiagnostic test results dated August 14, 1996 to August 5, 2002 mention only his upper extremity conditions. In an August 5, 2003 report, Dr. Oliveri noted that appellant's lumbar pain was constant, increased with walking, with radiation into the mid-back and posterior hamstring pain. On examination he found very limited lumbar motion and diminished sensation in the lateral aspect of both feet. Dr. Oliveri diagnosed "rule out lumbar internal disc disruption with low back pain and posterior thigh pain/paresthesias." In a September 2, 2003 letter, he opined that appellant was permanently and totally disabled for work due to his many musculoskeletal conditions, including

lumbar pain, possible lumbar disc disruption, carpal tunnel syndrome, a cumulative trauma disorder of the upper extremities and arthritis of the left thumb.

An August 12, 2003 lumbar magnetic resonance imaging (MRI) scan showed a broad-based posterior disc bulge at L2-3 with mild effacement of the thecal sac, stable since 2001 and annular bulging at L5-S1 with mild bilateral narrowing of the neural foramen secondary to facet arthropathy.

By decision dated April 28, 2004, the Office denied appellant's claim for recurrence of disability on the grounds that he submitted insufficient rationalized medical evidence to establish the claimed causal relationship between his condition beginning August 7, 2003 and the accepted January 9, 2001 lumbar strain. The Office noted that appellant failed to submit medical evidence distinguishing a preexisting degenerative disc condition observed by Dr. Mashood in March 2001 from the effects of the January 9, 2001 lumbar strain.

In a May 27, 2004 letter, appellant requested a hearing before a representative of the Office Branch of Hearings and Review, which was held December 21, 2004. Prior to the hearing, he submitted a March 3, 2004 report from Dr. Oliveri, opining that the January 9, 2001 injury was a "valid lumbar disc injury with associated lower extremity paresthesias" resulting in permanent impairment and ongoing symptoms.

At the hearing, appellant's attorney asserted that Dr. Oliveri's March 3, 2004 report was sufficient to establish causal relationship. He also contended that the L4-S1 instability demonstrated by the August 2003 lumbar MRI scan was work related as there was no evidence to the contrary. Appellant testified that he had no back problems prior to the January 9, 2001 injury or any subsequent lumbar injuries. He noted that his occasional lumbar symptoms after January 9, 2001 responded to medication he was already taking for his bilateral carpal tunnel syndrome. Appellant contended that he did not return to full duty after the January 9, 2001 injury. The hearing representative left the record open for 45 days to allow appellant to submit additional medical evidence.

Appellant submitted a February 1, 2005 letter from Dr. Oliveri, who noted treating him beginning in 1996 for upper extremity complaints, with the first mention of lumbar pain in August 2003. He opined that the August 12, 2003 lumbar MRI scan showed no significant changes since a 2001 scan. Dr. Oliveri opined that he had not "been provided information to suggest that [appellant's] lumbar spine condition [was] related to something other than his industrial exposures." He had related that his postal duties "involved repetitive lifting of weights anywhere from 25 pounds up to 75 pounds. Repetitive bending and lifting is not an unusual factor in the development of lower back pain." Appellant also reviewed Dr. Klausner's reports through March 6, 2001. Dr. Oliveri diagnosed "[r]ule out lumbar internal disc disruption with lower back pain and posterior thigh pain/paresthesias."

By decision dated and finalized March 24, 2005, the Office hearing representative affirmed the April 28, 2004 decision, finding that appellant submitted insufficient medical evidence to establish the claimed recurrence of disability. The hearing representative noted that Dr. Oliveri did not explain how and why the accepted lumbar strain could have evolved into the L4-S1 condition observed on the MRI scan. The hearing representative noted that he attributed

appellant's lumbar symptoms, in part, to work factors after the January 9, 2001 strain. She noted that appellant could file an occupational disease claim regarding the relationship of his low back condition and his employment activities.

### **LEGAL PRECEDENT**

A recurrence of disability is defined by Office regulations as an inability to work, caused by a spontaneous change in a medical condition resulting from a previous injury or illness without an intervening injury or new exposure to the work factors that caused the original injury or illness.<sup>1</sup> If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken, and an appropriate new claim should be filed.<sup>2</sup>

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability 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 employment factors and supports that conclusion with sound medical reasoning.<sup>3</sup> An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.<sup>4</sup>

### **ANALYSIS**

Appellant established that he sustained a lumbar strain on January 9, 2001 due to lifting a tray of mail at work. The record demonstrates that he returned to full duty on March 21, 2001 with no restrictions pertaining to the lumbar strain.<sup>5</sup> On August 18, 2003 appellant claimed a recurrence of disability commencing August 7, 2003, asserting that his gradually worsening lumbar symptoms beginning in 2001 were causally related to the accepted lumbar strain. In order to prevail, appellant must submit sufficient rationalized medical evidence to support a causal relationship between his condition on and after August 7, 2003 and the accepted lumbar strain.<sup>6</sup>

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<sup>1</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB \_\_ (Docket No. 03-205, issued June 19, 2003).

<sup>2</sup> Federal (FECA) Procedure Manual, Chapter 2.1500.3 (May 1997); *supra* note 1; *Donald T. Pippin*, *supra* note 1.

<sup>3</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001); *see Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>4</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001); *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>5</sup> Although appellant contended that he did not return to full duty after the January 9, 2001 injury, he did not submit factual evidence corroborating this assertion. In the August 18, 2003 claim form, an employing establishment supervisor explained that appellant had no work restrictions pertaining to his back, that any limitations were due only to bilateral carpal tunnel syndrome, "a total[ly] different set of restrictions." The form does not indicate that he had any work restrictions pertaining to his lumbar spine as of August 7, 2003.

<sup>6</sup> *Ronald A. Eldridge*, *supra* note 3.

In support of his claim for recurrence of disability, appellant submitted several reports from Dr. Oliveri, an attending Board-certified physiatrist. The Board notes that Dr. Oliveri did not provide medical rationale explaining how or why appellant had to stop work on August 7, 2003 due to the accepted January 9, 2001 lumbar strain. In reports from August 5 to November 18, 2003, he listed: “rule out lumbar internal disc disruption with low back pain and posterior thigh pain/paresthesias.” This diagnosis does not identify a particular pathology as it only offers a possible explanation for appellant’s symptoms. Dr. Oliveri did not explain how this diagnosis was related to the accepted lumbar strain. As the diagnosis itself was in tentative form, such an explanation is crucial to the claim. In the absence of an explanation of his diagnosis, Dr. Oliveri’s opinion supporting causal relationship is of diminished probative value.<sup>7</sup> On March 3, 2004 Dr. Oliveri opined that the January 9, 2001 injury was not a muscle sprain but a lumbar disc injury with lower extremity paresthesias. This indicates a change in Dr. Oliveri’s opinion from a “rule out” diagnosis to a definite disc injury. However, he did not explain which clinical findings led him to this conclusion. He did not address how a soft tissue injury would cause or contribute to a lumbar disc condition. The Board finds that his opinion is insufficient to establish that the January 9, 2001 injury caused disability on or after August 7, 2003.<sup>8</sup>

In a February 1, 2005 letter, Dr. Oliveri stated that he had not “been provided information” indicating that appellant’s possible lumbar disc disruptions were not work related. However, he did not attribute the low back condition specifically to the January 9, 2001 sprain. Rather, he attributed appellant’s low back pain to “[r]epetitive bending and lifting” from 25 to 75 pounds. Dr. Oliveri thus indicated that appellant’s lumbar condition was due to continued occupational exposures over a period of time following the accepted January 9, 2001 lumbar sprain, which was caused by a single traumatic lifting incident. As noted, exposure to new work factors which caused or aggravated appellant’s disc condition would be the basis for an occupational claim rather than the spontaneous recurrence of disability due to the accepted injury and an appropriate new claim should be filed.<sup>9</sup> There is no claim of record pertaining to any occupational exposures after January 9, 2001.

At the hearing, appellant’s attorney contended that Dr. Oliveri’s opinion supporting causal relationship was uncontroverted and sufficient to meet his burden of proof. While appellant is correct that there is no medical opinion of record opposing Dr. Oliveri’s; this does not overcome the lack of rationale expressed in support of causal relationship. Therefore, the fact that Dr. Oliveri’s reports are uncontroverted does not establish that the medical evidence is sufficient to meet his burden of proof.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained a recurrence of disability commencing August 7, 2003 causally related to the accepted January 9, 2001 lumbar

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<sup>7</sup> *Beverly A. Spencer*, 55 ECAB \_\_\_\_ (Docket No. 03-2033, issued May 3, 2004).

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

<sup>9</sup> Federal (FECA) Procedure Manual, Chapter 2.1500.3 (May 1997), *supra* note 1; *Donald T. Pippin*, *supra* note 1.

strain, as he submitted insufficient rationalized medical evidence to establish the claimed causal relationship.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated and finalized March 24, 2005 is affirmed.

Issued: August 22, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board