U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILBERT H. MILLS and U.S. POSTAL SERVICE,
POST OFFICE, New York, N.Y.

Docket No. 97-1704; Oral Argument Held April 14, 1998;
Issued July 9, 1998

Appearances: *Angela V. Green*, for appellant; *Sheldon G. Turley, Jr.*, for the Director,
Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of total disability on February 12, 1990 causally related to his accepted employment injuries.

On December 14, 1974 appellant, then a 22-year-old window clerk, filed a notice of injury or occupational disease which the Office of Workers' Compensation Programs accepted for a lumbosacral strain. Appellant filed a notice of a recurrence of disability on August 20, 1982 which the Office also accepted. On May 17, 1984 appellant filed another notice of recurrence of disability alleging that he suffered a recurrence of disability on August 30, 1983. The Office accepted this claim for a low back derangement and awarded appropriate temporary total disability compensation benefits.

Appellant returned to work in a limited-duty position on September 13, 1986 and his compensation was reduced accordingly.

On February 28, 1990 appellant filed a notice of recurrence of disability beginning February 12, 1990.

In support, appellant submitted numerous reports from his attending physicians, Dr. Otto Knoller, a family practitioner, and Dr. Knolly E. Millett, a Board-certified family practitioner. Appellant's physicians submitted two varieties of reports. They submitted attending physician's reports which indicated only that appellant suffered a reaggravation of a lumbosacral sprain and that he was totally disabled. The physicians also submitted disability certificates indicating that appellant was unable to work due to low back syndrome. Neither the attending physician's

reports nor the disability certificates contained any medical rationale addressing the relationship of appellant's condition to his accepted employment injuries.

On May 23, 1991 Dr. Susie M. Chow, a doctor of osteopathy, performed a work restriction evaluation. She indicated that appellant could perform intermittent sitting, standing, and walking 8 hours per day and that appellant could lift 0 to 10 pounds. On August 1, 1991 Dr. Chow indicated that appellant could definitely perform the same limited-duty with no lifting, pushing, pulling over 10 pounds, and alternating sitting and standing. She found no basis for a recurrence of disability because appellant's job duties were very light.

By decision dated October 20, 1993, the Office denied appellant's claim because the evidence of record failed to demonstrate a recurrence of disability associated with his accepted injury. Appellant subsequently requested a hearing.

On January 10, 1994 Dr. Howard E. Finklestein, a Board-certified orthopedic surgeon, provided a second opinion at the request of the Office. Dr. Finklestein reviewed appellant's history of injury dating back to 1974. He also noted appellant's symptomology. Dr. Finklestein reviewed the medical evidence of record, including the objective testing of record, and conducted a complete physical examination. He noted an incongruity between appellant's seated and supine leg raising tests that suggested that the limited range of back motion alleged by appellant was not supported by objective evidence. He further indicated that observation of appellant's movement from the seated to the standing position failed to substantiate the limited range of low back motion claimed by appellant. He, therefore, found no objective evidence of disability and recommended that appellant return to his limited-duty position.

By decision dated October 13, 1994, the Office hearing representative affirmed the Office's October 20, 1993 decision denying benefits. The Office relied on Dr. Finklestein's opinion, as the only well-reasoned opinion of record, to establish that appellant was not totally disabled from work and his light-duty position.

On October 15, 1995 appellant requested reconsideration. In support, appellant continued to submit attending physician's reports and disability certificates from his treating physicians.[1] These reports remained devoid of any medical rationale addressing the relationship of appellant's condition to his accepted employment injuries.

By decision dated January 10, 1996, the Office denied appellant's request for reconsideration as untimely.

Appellant appealed this decision and the Director, Office of Workers' Compensation Programs, filed a motion to remand urging that the Office erred in denying appellant's October 15, 1995 request for reconsideration as timely. By order dated November 27, 1996, the Board agreed and set aside the Office's January 10, 1996 decision denying the appellant's request for reconsideration as untimely. Consequently, the Board remanded the case for further action.

[1] Appellant also submitted two of these reports from Dr. Isiah H. Pinckney, a family practitioner.

Appellant continued to submit attending physician's reports and disability certificates from his attending physicians. The reports remained devoid of any medical rationale.

By decision dated March 13, 1997, the Office reviewed the merits of the case and denied appellant's request for reconsideration. The Office found that the evidence submitted in support of the request was not sufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office again found that Dr. Finklestein's report, which found that appellant was not totally disabled and could perform his previous light duty, constituted the weight of the evidence.

The Board finds that appellant has not sustained his burden of proof in establishing that he sustained a recurrence of total disability on February 12, 1990 causally related to an employment injury or any other factor of his employment.

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 either 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.[2] In the instant case, appellant has failed to establish either a change in the nature or extent of her light-duty requirements or a change in her accepted injury-related condition.

The record shows that after the recurrence of appellant's August 30, 1983 employment injury, appellant began performing a permanent light-duty position on September 13, 1986. On February 28, 1990 appellant filed a claim alleging that he was totally disabled from February 12, 1990. He attributed his claimed disability to his August 30, 1983 employment-related back injury.

There is no evidence of record establishing any change in the nature or extent of appellant's permanent light-duty position, which began in 1986, as a cause of appellant's claimed disability on February 12, 1990.

The medical evidence of record is also insufficient to establish that appellant was disabled from his light-duty position due to a change in the nature or extent of his accepted back injuries.

In support of his claim for a recurrence of disability, appellant submitted numerous attending physician's reports and disability certificates from his treating physicians, Drs. Knoller and Pinckney, family practitioners, and from Dr. Millett, a Board-certified family practitioner. The attending physician's reports only indicated that appellant reaggravated his lumbosacral sprain, while the disability certificates only indicated that appellant was totally disabled due to

[2] *See Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 859, 864 (1989); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

low back syndrome. Neither the reports nor the disability certificates provided any medical rationale explaining how appellant's problems and claimed total disability were related to his accepted back injuries. Therefore, this evidence is of limited probative value and is insufficient to establish appellant's claim.[3]

In contrast, Dr. Finklestein, a Board-certified orthopedic surgeon, provided a well-rationalized opinion indicating that appellant was not totally disabled or unable to return to his limited-duty position. Dr. Finklestein explained that his conclusion was based on appellant's inconsistent seated and supine leg raising tests and his observation of appellant low back movement when moving from the seated to standing position. He further indicated that he thoroughly reviewed appellant's work and medical history prior to rendering his conclusion.[4]

Appellant, therefore, failed to meet his burden of proof in establishing that he sustained a recurrence of disability causally related to his accepted employment injuries or any other factors of his employment.

The decision of the Office of Workers' Compensation Programs dated March 13, 1997 is affirmed.

Dated, Washington, D.C.
July 9, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[3] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it is unsupported by medical rationale).

[4] Similarly, Dr. Chow, a doctor of osteopathy, found that appellant was not totally disabled and could perform his limited-duty position.