

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES D. JONES and U.S. POSTAL SERVICE,
GENERAL POSTAL OFFICE, Houston, Tex.

*Docket No. 96-698; Submitted on the Record;
Issued March 6, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on January 16, 1995 causally related to his November 15, 1993 employment injury.

On November 15, 1993 appellant, then a 52-year-old letter sorting machine clerk, sustained a lumbar strain in the performance of duty while lifting trays of mail. Appellant returned to work in a limited-duty capacity on November 1, 1994.

In a narrative report dated October 14, 1994, Dr. Nowlin, a Board-certified orthopedic surgeon and Office of Workers' Compensation Programs referral physician, provided a history of appellant's condition, findings on examination and the results of x-rays and a computerized tomography (CT) scan of the lumbar spine and diagnosed a resolved lumbar strain. Dr. Nowlin stated that he found no objective findings, of a continuing lumbar strain and stated "in my opinion, anatomic and physiologic recovery from this injury has occurred in the distant past. There is no medical explanation for the prolongation." He opined that appellant was not disabled for work.

In a work capacity evaluation dated October 28, 1994, appellant's attending physician Dr. Floyd O. Hardimon, an orthopedic surgeon, indicated that appellant was able to work for eight hours per day with certain restrictions.

In a disability certificate dated January 17, 1995, Dr. Hardimon indicated that appellant was able to work only four hours a day. He provided no findings on examination.

By decision dated January 6, 1995, the Office advised appellant that it had determined that he had no loss of wage-earning capacity based on his reemployment at the employing establishment in a light-duty position effective November 1, 1994.

In several claim forms dated January 24, 1995 and continuing, appellant claimed compensation benefits for a recurrence of disability commencing on January 17, 1995.

Dr. Hardimon continued to submit form medical reports, in which he indicated that appellant could work only four hours a day with restrictions, stating that appellant was experiencing back discomfort. Dr. Hardimon attributed appellant's partial disability to his November 15, 1993 employment injury, checking the block marked "yes" indicating that the disability was causally related to appellant's employment. However, he provided no objective findings to support a finding of disability, noting only appellant's subjective complaint of "back discomfort."

In an undated disability certificate received by the Office on March 14, 1995, Dr. Hardimon indicated that appellant was released to light-duty work for eight hours a day on January 17, 1995 on a trial basis but, due to consistent pain and inflammation in the lumbar back, appellant was placed on a four-hour workday with the same light-duty restriction.

In an undated letter received by the Office on March 14, 1995, appellant requested reconsideration of the Office's January 6, 1995 decision.

By decision dated April 7, 1995, the Office denied modification of its January 16, 1995 decision.

In a notice of recurrence of disability dated April 20, 1995, appellant alleged that he sustained a recurrence of disability commencing on January 16, 1995, which he attributed to his November 15, 1993 employment injury.

By letter dated April 24, 1995, appellant requested reconsideration of the denial of his claim.

In a report dated April 18, 1995, Dr. Hardimon diagnosed a lumbar strain, rule out herniated nucleus pulposus at the L4 level. He indicated that appellant was able to work for only four hours a day with restrictions. Dr. Hardimon stated that appellant was originally advised to work light-duty for eight hours a day on a trial basis, but that he began to experience back problems, which included continuous back discomfort and inflammation and was advised to work only four hours a day commencing on January 17, 1995.

By letter dated June 28, 1995, the Office referred appellant, along with a statement of accepted facts and copies of medical records to Dr. Martin L. Bloom, a Board-certified orthopedic surgeon, for an examination and evaluation in order to resolve the conflict in medical opinion between Drs. Hardimon and Nowlin.

In a report dated July 27, 1995, Dr. Bloom provided a history of appellant's condition and findings on examination. Dr. Bloom stated:

"[Appellant] has a normal stance and gait. He can heel and toe walk normally. He will squat fully. He will forward flex 30 degrees and extend his back fully. He has equal pain in both directions. It is my opinion that [appellant] likely can forward flex further, but he states that he has too much pain when he tries to do so. There is tenderness to palpation of the lumbosacral area. No definite

paraspinal spasm is present.... There is no costovertebral angle tenderness. [Appellant] has full range of motion of his hips.

“Neurological examination reveals straight leg raising and femoral stretch test to be negative. Motor and sensory examination of the lower extremities is normal. Deep tendon reflexes are 2+ and symmetrical in the knees and the ankles.”

Dr. Bloom also provided the results of x-rays and a CT scan. He diagnosed lumbar spondylosis with chronic low back pain and stated that it was very unlikely that a lumbar strain that began on November 15, 1993, could persist to the present time. He stated that there was no objective evidence of lumbar strain at the time of his examination. Dr. Bloom stated his opinion that appellant was able to perform his regular job for eight hours per day.

By decision dated September 12, 1995, the Office denied appellant’s claim for a recurrence of disability on January 16, 1995 on the grounds that the evidence of record did not establish causal relationship between his claimed disability and his November 15, 1993 employment injury.¹

The Board finds that appellant has failed to meet his burden of proof, to establish that he sustained a recurrence of disability on January 16, 1995, causally related to his November 15, 1993 employment injury.

On November 15, 1993 appellant, sustained a lumbar strain in the performance of duty. He returned to work in a light-duty capacity on November 1, 1994. Appellant subsequently alleged that he sustained a recurrence of total disability on January 16, 1995.

An individual who claims a recurrence of disability due to an accepted employment-related 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.² 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 rationale.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

¹ This case record contains a document relating to an employee other than appellant. Upon return of the case record the Office should place this document in the correct case record. The Board also notes that appellant submitted additional evidence subsequent to the Office’s September 12, 1995 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

² *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

³ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁴ *Michael Stockert*, 39 ECAB 1186-88 (1988).

Section 8123(a) of the Federal Employees' Compensation Act provides, in pertinent part, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁵ In this case there was a conflict between Dr. Nowlin, a Board-certified orthopedic surgeon and Office referral physician, and Dr. Hardimon, appellant's attending orthopedic surgeon, as to whether appellant had sustained an employment-related recurrence of disability and therefore the Office properly selected an impartial medical specialist to resolve the conflict. Where a case, is referred to an impartial medical specialist, for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁶

In a report dated July 27, 1995, Dr. Bloom, a Board-certified orthopedic surgeon and the impartial medical specialist, chosen to resolve the conflict in medical opinion, provided a history of appellant's condition and findings on examination. He stated:

"[Appellant] has a normal stance and gait. He can heel and toe walk normally. He will squat fully. He will forward flex 30 degrees and extend his back fully. He has equal pain in both directions. It is my opinion that [appellant] likely can forward flex further, but he states that he has too much pain when he tries to do so. There is tenderness to palpation of the lumbosacral area. No definite paraspinal spasm is present.... There is no costovertebral angle tenderness. [Appellant] has full range of motion of his hips.

"Neurological examination reveals straight leg raising and femoral stretch test to be negative. Motor and sensory examination of the lower extremities is normal. Deep tendon reflexes are 2+ and symmetrical in the knees and the ankles."

Dr. Bloom also provided the results of x-rays and a CT scan. He diagnosed lumbar spondylosis with chronic low back pain and stated that it was very unlikely that a lumbar strain that began on November 15, 1993, could persist to the present time. Dr. Bloom stated that there was no objective evidence of lumbar strain at the time of his examination and indicated that appellant was able to work.

The Board finds that the report of the impartial medical specialist, Dr. Bloom, is thorough and well rationalized and is entitled to be accorded special weight.

The reports of Dr. Hardimon, appellant's attending physician are not sufficient to overcome the report of Dr. Bloom.

Dr. Hardimon submitted numerous medical reports and disability certificates in which he indicated that appellant could work four hours a day with restrictions, stating that appellant was experiencing back discomfort. Dr. Hardimon attributed appellant's partial disability to his

⁵ 5 U.S.C. § 8123(a); see *James P. Roberts*, 31 ECAB 1010 (1980).

⁶ *Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

November 15, 1993 employment injury. However, he provided no objective physical findings to support his opinion that appellant could work only four hours a day, noting only appellant's subjective complaint of "back discomfort." As he provided insufficient medical rationale and findings to explain why appellant could only work four hours a day, his form reports are not sufficient to overcome the well-rationalized opinion of Dr. Bloom who opined that appellant was able to work eight hours a day.

The September 12 and April 7, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.

March 6, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member