

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAM B. RAMSIRE and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, Tex.

*Docket No. 97-571; Submitted on the Record;
Issued October 23, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant's lumbosacral disc disease or herniated disc at L5-S1 is causally related to his August 12, 1991 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's February 6, 1996 request for reconsideration.

On August 14, 1991 appellant, a letter carrier, sustained an injury in the performance of duty when he bent over to pick up a small parcel. He felt pain in the right side of his lower back. Appellant took sick leave from October 4 through 5, 1991 and from October 14 through November 1, 1991. He took leave without pay from November 2 through 9, 1991 and again took sick leave beginning November 13, 1991. On December 10, 1991 appellant, seeking leave buy back, claimed compensation for the period beginning October 4, 1991.

Appellant saw a contract physician for the employing establishment on August 14, 1991. The physician, a specialist in emergency medicine, diagnosed muscular strain and reported that appellant was totally disabled through August 16, 1991 and partially disabled from August 17 to 25, 1991. On August 22, 1991 appellant saw Dr. Henry R. Armstrong, a specialist in internal medicine. On September 5, 1991 Dr. Armstrong diagnosed "rule out herniated disc" and reported that appellant was totally disabled beginning August 22, 1991. On September 27, 1991 Dr. Armstrong reported that appellant was partially disabled beginning October 7, 1991.

The Office accepted appellant's claim for low back strain. Appellant received continuation of pay for periods through October 3, 1991. The Office paid compensation for temporary total disability from November 2 to 8, 1991.

On December 10, 1991 Dr. Armstrong reported that he saw appellant for a reevaluation that day and that appellant would be disabled until December 14, 1991. On February 28, 1992 he diagnosed lumbosacral disc disease. On September 11, 1992 he indicated that appellant was continuously totally disabled beginning March 31, 1992.

On May 6, 1994 the Office requested that appellant submit additional information, including his physician's opinion, with a supporting explanation, on the causal relationship between his current disability or condition and the original injury. Appellant advised that he had not returned to work since November 2, 1992 and that the only medical records he had since October 11, 1991 were prescription receipts with the physician's name on them and two duty status reports. He advised the Office of the difficulty he was having getting a report from his physician.

In a decision dated June 7, 1994, the Office found that the evidence of record failed to demonstrate a causal relationship between the accepted employment injury and any claimed disability on or after May 6, 1994. The Office found that the medical evidence of record provided no explanation of the relationship between appellant's current back problems and the original employment injury. Noting that the most recent medical report was for treatment received over two years ago, the Office found that current medical evidence was needed to establish a current condition.

Appellant requested a hearing before an Office hearing representative. The Office received office notes and medical records from Dr. Armstrong, including an October 10, 1991 report stating that a magnetic resonance imaging (MRI) scan of appellant's lower back revealed a right-sided L5-S1 disc herniation with nerve root compression. In this report, Dr. Armstrong related appellant's symptoms and findings on physical examination. He diagnosed lumbosacral sprain and herniated L5-S1 disc. The Office also received an unsigned attending physician's report indicating that appellant's herniated disc was caused or aggravated by an employment injury because appellant "had to retrieve a package from the very bottom of a gondola, which is approximately 4 feet deep." In addition, the Office received a number of psychological reports.

In a decision dated March 1, 1995, the Office hearing representative affirmed the June 7, 1994 decision denying compensation. The Office found that appellant had failed to prove that his continuing back problems beyond November 16, 1991, the date he returned to full-time duty, were causally related to his employment injury of August 12, 1991.

On June 30, 1995 the Office received a June 22, 1995 report from Dr. William M. Osborne, a Board-certified orthopedic surgeon. Dr. Osborne stated as follows:

"I reviewed your letter dated May 6, 1994, to [appellant] denying that his present condition with his back is related to his August 12, 1991 injury. In my opinion, there is a direct relationship to his present back condition and the August 12, 1991 injury. At the time of his injury in 1991 he was found to have a disc herniation and did not have surgery and has continued to periodically have back pain since his injury in August of 1991 with an exacerbation of his symptoms recently.

"We saw [appellant] first on January 24, 1995, he gave a definite history of an injury on August 12, 1991, with further exacerbation of his symptoms recently. We did get a repeat MRI which showed further migration of the disc herniation and a definite disc fragment. Patient still does not want to have surgery. However, he is still symptomatic and still requiring treatment for his back injury.

In my opinion, this is not a new injury, but is an exacerbation and reoccurrence of his old injury from August 12, 1991.”

On February 6, 1996 appellant requested reconsideration. He contended that the hearing representative had made untrue statements in his decision of March 1, 1995. Appellant explained that he never returned to full-time work after October 7, 1991, not November 16, 1991 as the hearing representative had indicated. Appellant also asserted that he could not have told one physician that he was okay and had gone back to work, as the hearing representative had indicated, because reports from Dr. Armstrong showed that he was hospitalized at the time and because appellant was hospitalized the first time he met this physician. Appellant clarified that he hurt his back on August 12, 1991, had been treated by Dr. Armstrong and others since August 22, 1991, that he was still having back pain and had not been released by any physician to return to work. Appellant explained that he was not asking for monetary compensation, that he just wanted his medical bills paid.

In a decision dated September 30, 1996, the Office denied a merit review of appellant’s case on the grounds that his request for reconsideration neither raised substantive legal questions nor included new and relevant evidence.

The Board finds that the evidence fails to establish that appellant’s lumbosacral disc disease or herniated disc at L5-S1 is causally related to his August 12, 1991 employment injury.

A claimant seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of proof to establish the essential elements of his claim by the weight of the evidence,² including that he sustained an injury in the performance of duty and that any specific condition or disability for work, for which he claims compensation is causally related to that employment injury.³

The Office accepted that appellant sustained a low back sprain on August 12, 1991. Subsequent medical evidence, however, indicated that appellant had lumbosacral disc disease. Other medical evidence indicated that appellant had a herniated disc at the L5-S1 level. It is, therefore, appellant’s burden of proof to establish that these conditions are causally related to the accepted employment injury.

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of

¹ 5 U.S.C. §§ 8101-8193.

² *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁴

The evidence that was before the Office at the time of its March 1, 1995 merit decision contains no such medical opinion. Appellant had difficulty obtaining a report from Dr. Armstrong, his attending specialist in internal medicine. The Office eventually obtained office notes and other medical records from Dr. Armstrong, but this evidence contained no medical opinion explaining how appellant's medical treatment for lumbosacral disc disease or herniated disc at L5-S1 was causally related to the accepted August 12, 1991 employment injury. For this reason, the Board will affirm the Office's March 1, 1995 decision denying compensation.

The Board also finds, however, that the Office abused its discretion in denying appellant's September 20, 1996 request for reconsideration.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a point of law, or (2) advancing a point of law or a fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁵

Following the Office's March 1, 1995 merit decision denying compensation, the Office received a June 22, 1995 report from Dr. Osborne, a Board-certified orthopedic surgeon. Dr. Osborne expressed the opinion that there was a direct relationship between appellant's current back condition and the August 12, 1991 employment injury and he provided an explanation for his belief. Without ruling on the probative value or sufficiency of this evidence, the Board finds that Dr. Osborne's June 22, 1995 report is relevant to the issue decided by the Office in its March 1, 1995 decision and was not previously considered by the Office. Under the third criterion noted above, therefore, appellant is entitled to a merit review of his claim.

The requirement for reopening a claim for merit review does not include the requirement that a claimant submit all evidence necessary to discharge his burden of proof. The requirement pertaining to the submission of evidence specifies only that the evidence be relevant and pertinent and not previously considered by the Office.⁶ A claimant has a right to secure a review of the merits of his case when he presents new evidence relevant to his contention that the decision of the Office is erroneous. The presentation of such new and relevant evidence creates a necessity for review of the full case record, that is, of all of the evidence, in order to properly determine whether the newly supplied evidence, considered with that previously in the record, shifts the weight of the evidence in such a manner as to require modification of the earlier decision. If the Office determines that the new evidence lacks substantive probative value, it

⁴ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁵ 20 C.F.R. § 10.138(b)(1).

⁶ *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

may deny modification of the prior decision, but only after the case has been reviewed on its merits.⁷

The September 30, 1995 decision of the Office of Workers' Compensation Programs is reversed. The March 1, 1995 decision of the Office is affirmed.

Dated, Washington, D.C.
October 23, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁷ *Joseph R. Alsing*, 39 ECAB 1012 (1988).