U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES A. LAWRENCE and DEPARTMENT OF VETERANS AFFAIRS, REGIONAL OFFICE, Phildelphia, PA

Docket No. 98-1979; Submitted on the Record;
Issued July 21, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability commencing February 17, 1998, causally related to his accepted October 2, 1996 lumbar strain.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to establish that he sustained a recurrence of disability commencing February 17, 1998, causally related to his accepted October 2, 1996 lumbar strain.

On October 2, 1996 appellant, then a 37-year-old supply clerk, filed a traumatic injury claim alleging that, while performing his duties, *i.e.*, unloading bond paper, he injured his back, which the Office of Workers' Compensation Programs accepted on February 13, 1997 for a lumbar strain. On April 6, 1998 appellant filed a claim for recurrence of disability. Appellant alleged that he sustained a recurrence of disability commencing February 17, 1998 causally related to his accepted October 2, 1996 lumbar strain. The Office denied appellant's claim on May 19, 1998, finding that the evidence of record failed to establish a causal relationship between the accepted condition and the claimed recurrence of February 17, 1998.

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. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the accepted employment injury and supports that conclusion with sound medical reasoning.[1]

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[1] *Lourdes Davila*, 45 ECAB 139 (1993); *Louise G. Malloy*, 45 ECAB 613 (1994).

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 job requirements.[2]

In support of his recurrence of disability claim appellant submitted a March 3, 1998 supplemental attending physician's report (Form CA-20a), completed by Dr. Owen Williamson, an internist, who diagnosed herniated nucleus pulposus at L4-5 and recommended surgery, a March 3, 1998 duty status report by Dr. Williamson diagnosing lumbar disc disease and a February 17, 1998 attending physician's report (Form CA-20) by Dr. Williamson indicating that he first saw appellant on February 17, 1998 diagnosing lumbosacaral disc disease, indicating that appellant was totally disabled commencing February 17, 1998 and that he planned to refer appellant to a neurosurgeon.

On the February 17, 1998 attending physician's report, Dr. Williamson indicated that he first saw appellant on February 17, 1998, however, he did not address a causal relationship between appellant's accepted October 2, 1996 lumbar strain and a diagnosed condition commencing February 17, 1998, nor did he address why appellant was unable to perform the limited-duty position to which he was assigned since October 1996. Dr. Williamson did not indicate that he is aware that appellant was on light duty. His February 17, 1998 attending physician's report is insufficient to establish appellant's recurrence of disability claim. On the March 3, 1998 supplemental attending physician's report, Dr. Williamson failed to address a causal relationship between appellant's accepted October 2, 1996 lumbar strain and a diagnosed condition commencing February 17, 1998. He did not address why appellant was unable to perform his limited-duty position. The March 3, 1998 report is insufficient to establish appellant's recurrence of disability claim. The March 3, 1998 duty status report (Form CA-17), completed by Dr. Williamson, also failed to address the aforementioned issues and is also insufficient to establish appellant's recurrence of disability claim.

By letter dated March 23, 1998, the Office advised appellant of the specific type of evidence needed to establish his recurrence of disability claim, specifically, an attending physician's report (Form CA-20) completed by Dr. Joseph Fabiani, a Board-certified orthopedic surgeon who had been appellant's attending physician since 1996 injury. However, such evidence was not submitted. The Board finds that appellant failed to meet his burden of proof.

No medical evidence was submitted providing a rationalized medical opinion based on a complete and accurate factual and medical history, explaining how a claimed recurrence of disability commencing February 18, 1997 was causally related to appellant's accepted October 2, 1996 lumbar strain, or addressing why appellant was unable to perform the limited-duty position to which he was assigned.

[2] *Terry R. Hedman*, 38 ECAB 222 (1986).

The decision of the Office of Workers' Compensation Programs dated May 19, 1998 is affirmed.[3]

Dated, Washington, D.C.
July 21, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[3] Subsequent to the May 19, 1998 decision appellant submitted medical evidence which was not previously before the Office. The evidence is new evidence, which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office, together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).