U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSE TREVINO and DEPARTMENT OF THE ARMY, CORPUS CHRISTI ARMY DEPOT, Corpus Christi, TX

Docket No. 99-1930; Submitted on the Record;
Issued September 14, 2000

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI, VALERIE D. EVANS-HARRELL

The issue is whether appellant has met his burden of proof in establishing that he had a recurrence of total disability beginning June 11, 1998 that was causally related to his June 9, 1997 employment injury.

On September 4, 1996 appellant, then a 43-year-old composite component repairer, was turning over a helicopter blade on the down draft table when he felt a pain in his back. He received continuation of pay for the period September 24 through October 10, 1996. The Office of Workers' Compensation Programs subsequently paid compensation for intermittent periods of disability. On June 9, 1997 appellant was lifting and pushing boxes and blades when he developed pain in his low back. He stopped working on June 12, 1997 and returned to light-duty work on July 28, 1997. The Office accepted appellant's claim for a lumbosacral sprain. He received continuation of pay for the period June 12 through June 25, 1997 and compensation for intermittent periods of disability after July 28, 1997.[1]

Appellant stopped working on May 28, 1998. On June 18, 1998 he filed a claim for disability effective June 11, 1998. In an August 6, 1998 decision, the Office denied appellant's claim for compensation on the grounds that the evidence of record failed to establish that appellant was disabled for work due to the June 9, 1997 employment injury. In an August 28, 1998 letter, appellant requested reconsideration. In an April 2, 1999 merit decision, the Office denied appellant's request for modification of the August 6, 1998 decision.

The Board finds that appellant has not established that he had a recurrence of total disability due to the June 9, 1997 employment injury.

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[1] Appellant was simultaneously being treated for bilateral carpal tunnel syndrome and a torn right rotator cuff for which he received compensation and a schedule award for a 9 percent permanent impairment of the right arm and a 10 percent permanent impairment of the left arm.

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 a June 25, 1997 report, Dr. Rufino H. Gonzalez, a Board-certified orthopedic surgeon, stated that appellant was known to have spondylolysis and spondylolisthesis which had resulted in a chronic type of low back strain. He gave a history of the June 9, 1997 employment injury, noted that appellant related "he was ordered to do a different type of work" a day before "the recurrence of his symptoms … which did require repeated lifting" and diagnosed a recurrent lumbosacral strain with nerve root irritation on the left secondary to spondylolysis and spondylolisthesis. In a June 1, 1998 report, Dr. Gonzalez noted that a magnetic resonance imaging (MRI) scan taken on September 5, 1997 showed normal disc space with no evidence of intramedullary or extramedullary pathology. He related that appellant continued to complain of back pain since June 25, 1997, with complaints of severe back pain in January 1998. Dr. Gonzalez indicated that in a January 28, 1998 examination appellant had a negative straight leg raising test which resulted in low back pain but no sciatic distribution. He related that he explained to appellant that if appellant's job required considerable physical activity, "this is very much related to his symptoms." Dr. Gonzalez commented that he did not believe he could do anything more for appellant since it appeared that his occupation aggravated his mechanical low back pain. In a July 13, 1998 note, he indicated that he was no longer treating back cases.

In a June 15, 1998 report, Dr. Victor Kareh, a Board-certified neurosurgeon, stated that appellant had severe pain in his lower back and buttocks and occasionally down both legs. He noted Dr. Gonzalez had diagnosed spondylolysis and spondylolisthesis but did not discuss appellant's employment or its effect on appellant's condition.

In an August 14, 1998 report, Dr. Gonzalez stated that he had already indicated appellant suffered from chronic lumbosacral strain resulting from mechanical instability of the lumbosacral spine. He noted that when appellant was examined on August 11, 1998, his condition remained the same. Dr. Gonzalez commented that appellant had not developed any neurologic symptoms but had been in constant pain for the prior few weeks and had not returned to work. He stated that there was a question of an injury sustained on June 9, 1997 but indicated that he did not have any information about that particular accident. Dr. Gonzalez commented that, most likely, the June 9, 1997 incident was most likely a new episode of low back pain which would occur intermittently and had been previously anticipated. He stated that he had described, to the best of his ability, appellant's orthopedic problems and how they were closely related to appellant's physical activity and work-related matters. Dr. Gonzalez indicated that if appellant returned to work doing even moderate physical activity, a new episode of back pain should not be considered a new injury since appellant was expected to develop these symptoms

[2] *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

with or without any particular accident. In an August 20, 1998 note, he stated that he did not believe appellant could return to an occupation that required even moderate physical activity.

In a February 26, 1999 report, Dr. Frank A. Luckay, a Board-certified orthopedic surgeon, stated that appellant was at maximum improvement on October 30, 1998 secondary to L4 degenerative disc disease with slight spondylolisthesis at that level. He concluded that appellant had a seven percent permanent impairment.

The medical reports of record do not directly establish that appellant was disabled after June 11, 1998 due to his June 9, 1997 employment injury. Drs. Kareh and Luckay did not address the issue of whether appellant's condition was causally related to his employment. Dr. Gonzalez indicated that appellant's physical activity would aggravate underlying spondylolisthesis and spondylolysis and would cause back pain. However, he did not discuss the implicated employment factors. Dr. Gonzalez did not comment on whether the underlying conditions were causally related to appellant's employment. He did not state that appellant's disability after June 11, 1998 was due to any specific injury. Dr. Gonzalez only suggested, in a vague, general manner, that appellant's work might cause back pain arising from an underlying preexisting condition. Dr. Gonzalez' reports, therefore, are speculative, are of little probative value and are insufficient to establish that appellant's condition after June 11, 1998 was causally related his June 9, 1997 employment injury or to other factors of his employment.

The decisions of the Office of Workers' Compensation Programs, dated April 2, 1999 and August 6, 1998, are hereby affirmed.

Dated, Washington, DC
September 14, 2000

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member