

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARRY E. BULLOCK and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Cleveland, OH

*Docket No. 99-2063; Submitted on the Record;
Issued September 27, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on or after July 16, 1997 causally related to his November 25, 1996 employment injury.

On November 25, 1996 appellant, then a 48-year-old electrician, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained lower back pain when he stood from a kneeling position. The Office of Workers' Compensation Programs accepted his claim for lumbosacral strain with sciatica and lumbar herniated nucleus pulposus. Appellant stopped work on November 25, 1996.

On February 22, 1997 appellant filed a recurrence of disability claim (Form CA-2a) alleging that on February 20, 1997 he sustained a recurrence of his November 25, 1996 employment injury. On the claim form, he stated that "the original pain just never went away." The Office accepted appellant's claim.

The record reveals that appellant returned to work on June 12, 1997 in a light-duty position.

On August 8, 1997 appellant filed a recurrence of disability claim (Form CA-2a) alleging that on July 16, 1997 he sustained a recurrence of disability due to his November 25, 1996 employment injury. He alleged that he experienced sharp pain in his right leg and back when he was driving and attempted to apply the brakes at a red light, "almost causing [him] to go through the light." Appellant noted that since his original injury he sustained no other injuries. On the reverse side of the claim form, his supervisor stated that it was "unclear whether or not [appellant] suffered a recurrence." Appellant stopped work July 17, 1997.

In support of his claim, appellant submitted a form dated July 17, 1997 from Dr. Peter D. Sanford, a Board-certified orthopedic surgeon, stating that appellant could return to work

July 17, 1997 with restrictions. On the form, Dr. Sanford indicated that appellant could not lift more than 15 pounds with his right or left upper extremities and should avoid climbing, stooping, squatting and prolonged standing. A physical therapy prescription from Dr. Sanford diagnosed lumbar herniated nucleus pulposus and sciatica.

Appellant further submitted an attending physician's report, dated August 1, 1997 and attending physician's supplemental reports, dated June 17 to August 1, 1997, from Dr. Sanford. In his reports, Dr. Sanford stated that appellant could return to work and was restricted to lifting no more than 15 pounds with either upper extremity and to avoid climbing, stooping, squatting or prolonged standing. He diagnosed herniated nucleus pulposus and sciatica. Appellant also submitted nerve conduction reports from Dr. Sanford and Dr. Jay P. Berke, a Board-certified neurologist, dated July 30, 1997. Drs. Sanford and Berke noted extensive denervation right ... anterior myotomes" and a normal conduction study of both lower extremities.

Appellant further submitted magnetic resonance imaging (MRI) reports dated February 25 and July 28, 1997 from Dr. Craig P. Parker, a Board-certified diagnostic radiologist. In his report dated February 28, 1997, Dr. Parker stated: "Small right foraminal disc herniation with extension into the central canal with effacement of the anterolateral margin of thecal sac on the right. This appears to abut the under surface of the exiting L4 nerve root. Mild degenerative disc disease at L1-2, L3-4 and L4-5." In his report dated July 28, 1997, Dr. Parker noted partial regression of the right foraminal/paracentral disc herniation at L4-5 compared to the February 25, 1997 study.

Additionally, appellant submitted notes dated February 27 to August 13, 1997 from a doctor whose signature is illegible. In his notes dated July 17, 1997, Dr. Parker stated that "[appellant was] doing better until in past week having shooting pains [right] buttock and leg...." In his notes dated August 13, 1997, he stated that appellant reached a plateau and had not gotten worse or better in the past month. Dr. Parker also stated that appellant seemed afraid to go to work because his pain might affect his driving.

By decision dated September 2, 1997, the Office denied appellant's claim on the grounds that the evidence of record failed to show that he sustained a recurrence of his November 25, 1996 employment injury on or after July 17, 1997. The Office noted that Dr. Sanford's July 22 and August 1, 1997 reports stated that appellant was capable of restricted work. The Office found that the medical evidence of record indicated that appellant was capable of performing work in the same capacity after his alleged recurrence of disability as when he was released to work on June 5, 1997.

By letter dated September 13, 1997, appellant requested an oral hearing before an Office hearing representative. To support his request, appellant submitted a report dated August 25, 1997 from Dr. Franck G. Skobieranda, a Board-certified neurologist, noting the history of appellant's February 20, 1997 employment injury and stating that appellant's improvement had reached a plateau.

Appellant also submitted a report from Dr. Berke dated September 10, 1997. In his report, Dr. Berke noted appellant's medical history and diagnosed right L5 radiculopathy due to lateral disc herniation based on appellant's history, MRI, electromyogram (EMG) and

examination. He stated: "At the present time, [appellant] is rather dramatically improved from what was the case at the onset of his difficulties. I have, therefore, suggested continuing to work."

Appellant further submitted progress notes from Dr. Judith Hinchey, a Board-certified neurologist, Dr. Douglas Chyatte, a Board-certified neurosurgeon, and unknown physicians dated September 24 to November 11, 1997. In her notes dated September 24, 1997, Dr. Hinchey noted sciatica and foot numbness. In her notes dated October 9, 1997, she noted appellant's medications. Dr. Hinchey also noted that she did not find clinical or objective evidence explaining appellant's complaints and depression was possible.

In his notes dated October 24, 1997, Dr. Chyatte stated appellant's medical history and noted low back pain radiating down his right leg with numbness in both feet. Additionally, appellant submitted an attending physician's report (Form CA-20) from Dr. Hinchey dated October 16, 1997. In her report, Dr. Hinchey diagnosed a lumbar strain and noted that appellant had subjective pain but she found no objective neurological evidence. She also noted that she first examined appellant on September 24, 1997 and that he was advised that he could return to work for limited duty on October 9, 1997. Appellant also submitted an attending physician's supplemental report (Form CA-20a) from Dr. Hinchey dated October 17, 1997. In her report, Dr. Hinchey diagnosed lumbar strain and noted that appellant was able to return to work for limited duty on October 9, 1997 and would be able to return to regular work on November 17, 1997. She also noted that appellant's most recent examination was October 9, 1997.

Appellant further submitted a report dated October 10, 1997 from an unknown physician. The doctor diagnosed mild degenerative changes and stated:

"There is a small central disc protrusion at the T5-6 level that abuts but does not significantly compress the overlying cord. Additional small central disc protrusion is noted at T6-7 and T10-11, also without significant impact on the overlying cord. There is moderate degenerative disc disease at T5-6 through T11-12, but no significant extradural disease is appreciated beyond that described above.... [T]here is no clear evidence of an intramedullary mass, no evidence of compression fracture or marrow replacement process in visualized spine."

Additionally, appellant submitted an EMG report dated October 1, 1997 from Dr. Robert W. Shields, a Board-certified neurologist and clinical neurophysiologist, who stated:

"Electromyographic examination of the right lower extremity with more limited examination of the left lower extremity discloses bilateral absence of medial plantar responses, absent right superficial peroneal sensory response, and reduced left superficial peroneal sensory response. These findings are consistent with a mild predominantly sensory polyneuropathy. Isolated minimal fibrillation potentials are noted in the right tibialis anterior. These latter changes are of uncertain clinical significance. Clearly, there is no evidence of significant active or chronic motor fiber loss in any of the lumbosacral myotomes to indicate the presence of lumbosacral motor radiculopathy."

On May 6, 1998 a hearing was held before an Office hearing representative. Appellant testified that, among other things, he stopped work on July 17, 1997 because he experienced pain in his back and legs when he applied the brakes in his car and was fearful of sustaining an automobile accident while driving to work. Appellant also testified that he returned to work “September 2” and that he was not on limited duty. He stated that his current symptoms were numbness in both feet and toes, pain in his feet, and difficulty bending and stooping.

By decision dated May 4, 1999, the hearing representative affirmed the prior decision of the Office on the grounds that the evidence of record failed to show a causal relationship between appellant’s alleged recurrence of disability on or after July 16, 1997 and his November 25, 1996 employment injury.

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability on or after July 16, 1997 causally related to his November 25, 1996 employment injury.¹

The employee has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the original injury.² Such proof must include medical evidence that the claimed recurrence of disability is causally related to the accepted employment injury.³ As part of this burden, appellant must furnish 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 employment factors and supports that conclusion with sound medical reasoning.⁴ Whether a particular employment incident causes disability is a medical issue which must be resolved by competent rationalized medical opinion evidence.⁵ An award of compensation may not be made on the basis of surmise, conjecture or speculation, or on appellant’s unsupported belief of causal relation.⁶

In this case, the Office accepted appellant’s claim for lumbosacral strain with sciatica and lumbar herniated nucleus pulposus sustained on November 25, 1996. Therefore, the remaining issue is whether appellant’s alleged recurrence of disability on or after July 16, 1997 is causally related to his November 25, 1996 employment injury.

¹ The Board’s jurisdiction to consider and decide appeals from final Office decisions extends only to those decisions issued within one year of the filing of the appeal. Therefore, the Board lacks jurisdiction to review the Office’s decision dated September 2, 1997 as more than one year lapsed between that decision and May 27, 1999, the date on which appellant filed his appeal. *Jeanette Butler*, 47 ECAB 128 (1995).

² *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996).

³ *See id.*

⁴ *Id.*

⁵ *See Buddy L. Spaulding*, 40 ECAB 1002, 1007 (1989).

⁶ *Alfredo Rodriguez*, *supra* note 2.

The evidence of record does not contain rationalized medical opinion evidence, based on a complete and accurate factual and medical history, showing that appellant's alleged recurrence of disability is causally related to his November 25, 1996 employment injury. Dr. Sanford's reports and notes, dated July 17 to August 1, 1997, diagnosed lumbar herniated nucleus pulposus and sciatica and stated appellant's light-duty restrictions, but they did not address the causal relationship issue. In his report dated July 17, 1997, the date of appellant's alleged recurrence of disability, the doctor noted that appellant could return to work with restrictions on that date. Dr. Sanford also stated that appellant could return to work with restrictions in his attending physician's report and supplemental reports dated June 17 to August 1, 1997.

Dr. Parker's MRI report dated July 28, 1997 noted a regression of appellant's right foraminal/paracentral disc herniation at L4-5 compared to his February 25, 1997 MRI scan, but he did not address the cause of that change or relate it to appellant's November 25, 1996 employment injury. Dr. Skobieranda's August 25, 1997 report noted that appellant's improvement had reached a plateau but he did not address the causal relationship issue. Dr. Berke's report dated September 10, 1997 provided a history of appellant's injury and diagnosed right L5 radiculopathy due to lateral disc herniation, but he did not relate appellant's condition to his November 25, 1996 employment injury.

The progress notes from Dr. Hinchey, Dr. Chyatte and unknown physicians, dated February 27 to November 1, 1997, noted appellant's symptoms and history of injury but did address causal relationship. Dr. Hinchey's attending physician's report dated October 16, 1997 and attending physician's supplemental report, dated October 17, 1997, also failed to address causal relationship. An unknown doctor's report dated October 10, 1997 provided objective findings but did not state that appellant was disabled from work or address whether appellant's condition related to his November 25, 1996 employment injury. Similarly, Dr. Shields's EMG report, dated October 1, 1997, provided clinical findings but did not address causal relationship or whether appellant was disabled from work due to his condition.

In sum, the medical evidence fails to discuss specific employment factors as a cause or aggravation of appellant's accepted injury or to explain how work factors affected his preexisting condition to the point of causing disability. Appellant's testimony has no probative value as disability is a medical issue and he, as a layperson, is not qualified to render a medical opinion.⁷ Evidence dated prior to July 17, 1997 also lacks probative value as it is not contemporaneous with appellant's alleged recurrence of disability.

⁷ *James A. Long*, 40 ECAB 538, 541-42 (1989).

The decision of the Office of Workers' Compensation Programs dated May 4, 1999 is affirmed.

Dated, Washington, DC
September 27, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member