U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NATHANIEL M. PLAZA and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Richmond, VA

Docket No. 00-2791; Submitted on the Record;
Issued December 13, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective January 16, 2000.

In this case, the record reflects appellant sustained two work-related injuries prior to his most recent injury of May 10, 1989. The Office had accepted the condition of an acute low back sprain as a result of a May 27, 1963 injury. The Office additionally accepted the condition of a back sprain as a result of a May 25, 1975 injury.

On May 10, 1989 appellant, then a 53-year-old tax examiner, filed a claim for a traumatic injury to his lower back. Appellant stated that as he leaned back on his chair, the chair went back with a jerk and as he tried to stop from falling, his back snapped in the process. The Office accepted appellant's claim for lumbosacral strain. Appellant was off work from May 10 to June 1, 1989, as a result of the incident. A subsequent work stoppage on June 26, 1989 was accepted by the Office as being causally related to the May 10, 1989 work injury.

In a March 11, 1998 medical report, Dr. Emilio Jacques, Jr., an orthopedic surgeon and appellant's treating physician, noted appellant's previous industrial accidents, discussed appellant's complaints and provided the results of the physical examination. A diagnosis of chronic low back pain syndrome, secondary to discogenic etiology with positive right lower extremity radiculopathy was provided. Dr. Jacques opined that appellant's symptoms and complaints, objective and subjective findings were causally related to the industrial accident he was involved in on the date of May 27, 1963 and that appellant was totally disabled from employment. He stated that appellant was disabled from any repetitive bending, lifting, pushing, pulling and carrying and any prolonged sitting or standing positions.

In a March 29, 1999 medical report, Dr. John B. Sledge, an orthopedic surgeon, considered appellant's history of injury, which was noted as an injury to the back in 1963 from which appellant only partially recovered, a recurrence in 1989 from which appellant had been unable to recover from and a feeling of numbness which got progressively worse in 1997. Dr. Sledge noted that appellant was not working at the present time and that appellant felt that

his functional capacity was starting to deteriorate. A physical examination was conducted. No radiographs or imagining studies were available for evaluation purposes. He stated it was difficult to tell whether appellant was at a stable level of function or whether he was undergoing slow deterioration. A work capacity evaluation form dated April 20, 1999, noted that appellant could return to work with limitations.

In an April 21, 1999 medical report, Dr. Edward Fischer, a Board-certified neurologist, noted appellant's prior history of severe low back pain and spasms, prior treatments and complaints. Findings on neurological examination were reported along with a review of the magnetic resonance imaging (MRI) scan studies of appellant's lumbar spine, including the most recent study of July 22, 1997, which was noted to show some degree of degenerative disc disease, particularily at the L4-5 and L5-S1 levels with some facet joint hypertrophy, but only mild narrowing of the spinal canal at best and no significant neural foraminal narrowing. An impression of lumbar spondylosis with chronic lumbar strain was provided. Dr. Fischer advised that appellant had an essentially intact neurological examination. In view of the pain radiating to his legs, he recommended an electromyogram (EMG) with nerve conduction velocity studies, which appellant was not previously noted to have had. In reviewing appellant's prior lab work, Dr. Fischer noted that his alkaline phosphatase was mildly elevated in 1992. Sedimentation rate was normal, as was serum calcium. He recommended that a repeat of the alkaline phosphatase should be done to see if there has been any significant change. Further, evaluation with bone scan may also help to rule out other causes for his chronic pain problem. Dr. Fischer stated he requested lateral flexion, extension and neutral views of the lumbosacral spine region, but expected those to be unremarkable. Given appellant's overweight status, appellant was recommended for pool therapy. Dr. Fischer stated that he doubted a neurogenic cause for appellant's pain problems would be found. No opinion relating appellant's condition to any of his work-related injuries was rendered. A June 18, 1999 EMG found no evidence of lumbosacral radiculopathy but noted that there was a suggestion of mild peripheral neuropathy. Clinical correlation was recommended. A June 8, 1999 bone scan report indicated an increased activity in the entire left hemipelvis. X-rays were recommended for correlation.

The Office referred appellant to Dr. Howard P. Taylor, a Board-certified orthopedist, for a second opinion evaluation. A copy of appellant's medical record, statement of accepted facts and a list of questions was provided. In his October 22, 1999 report, Dr. Taylor noted the history of appellant's work injuries along with treatment received. Examination findings were provided along with a complete listing of Dr. Taylor's review of the objective tests and doctor reports of record. He stated appellant showed a slight right Trendelenberg gait. Full range of motion of the back was noted along with tenderness in his right sciatic notch. Decreased sensation on the right lateral calf and foot were noted. Straight leg raising was negative bilaterally when sitting, but painful at 90 degrees on the right when lying down. No atrophy was seen, but reflexes were slightly depressed throughout his lower extremities. Dr. Taylor opined that appellant had degenerative disc disease in his lower back as well as obesity. He opined that the medical record did not support a diagnosis of lumbar disc herniation. This was based on the fact that the EMG and nerve conduction study did not support a radiculopathy. Appellant's various MRI scans and myelograms did not support a diagnosis of a clinically significant disc herniation. Dr. Taylor opined that appellant does not suffer from residuals of his work injuries. He opined that appellant's present condition was related to his obesity and to his degenerative disc disease. Dr. Taylor opined that appellant's work-related sprains of his back have resolved. He noted that appellant's most recent MRI scan of July 22, 1997 showed degenerative disc disease. Dr. Taylor

opined that there was no objective findings to demonstrate that appellant is disabled from performing the physical requirements of his job as a tax examiner. He further noted that appellant was not receiving any active treatment presently. Dr. Taylor opined that the work injury of 1989 caused a temporary aggravation of appellant's preexisting underlying degenerative disc disease, with no residual alteration of the underlying condition. Accordingly, appellant's complaints relate to the underlying condition.

In a letter dated December 7, 1999, the Office notified appellant of its proposal to terminate compensation and medical benefits. Appellant was given 30 days in which to submit additional evidence or argument.

In a narrative statement dated December 17, 1999, appellant stated his disagreement with the Office's position. Medical reports submitted included a July 23, 1999 ultrasound of appellant's left leg; copy of a July 28, 1999 emergency room report; an April 21, 1999 prescription from Dr. Fischer indicating physical therapy, physical therapy treatment notes from May 1999 for treatment of chronic low back strain. None of this evidence discussed a history of work injury or provided an opinion that appellant's condition continued to be related to his work-related injuries.

In a December 13, 1995 medical report, Dr. Jacques opined appellant was totally disabled from any gainful employment as a result of his industrial accident of May 27, 1963 and reinjury of 1989. He further stated that appellant had a 40 percent permanent impairment and loss of function as a result thereof.

By decision dated January 11, 2000, the Office terminated appellant's compensation benefits for wage loss and medical benefits effective January 16, 2000, on the basis that appellant recovered from the June 6, 1989 work-related injury and its residuals.

In a January 14, 2000 letter, appellant requested an oral hearing before an Office hearing representative.

In a June 15, 2000 memorandum in support of claim for reinstatement of benefits and during the hearing, appellant's attorney argued that appellant's work injuries resulted in an aggravation of his underlying degenerative condition. He argued that all the injuries and recurrences of appellant's condition had a cumulative affect resulting in appellant's present condition and disability. He further argued that Dr. Taylor's report was of diminished value because he did not specifically cite all of the recurrences and flare-ups subsequent to 1963 and wrong in his analysis of the diagnostic tests. Several reports of record were discussed which noted a diagnosis of ruptured or herniated disc.

Appellant submitted numerous factual documents and medical reports along with arguments which were reiterated at the hearing. A majority of the documents and medical reports submitted were duplicative of the case record and not germane to the issue of whether appellant has residuals of his work-related injuries. Relevant medical reports follow.

In a June 11, 1997 medical report, the district medical adviser noted a history of appellant's work injuries and the conditions accepted by the Office. A review of the medical record was done. The district medical adviser stated that there was no evidence of disc herniation based on the February 3, 1996 MRI scan. This was similar to findings on earlier MRI

scan, computerized tomography scan and myelogram. There is evidence of spinal stenosis and degenerative arthritis at the L4-5 level and also evidence of degenerative disc disease at L5-S1 without herniation and without nerve root or spinal cord involvement. The district medical adviser opined that it was reasonable to consider that the injuries at work on May 27, 1963, May 25, 1975 and May 10, 1989 aggravated or worsened preexisting spinal stenosis at L4-5. Appellant continues to have back and bilateral leg pain. These symptoms are residuals of the work injuries. Appellant has continued to have back and leg pain in spite of long periods of conservative treatment. Surgery is not contemplated. For these reasons, it appears that the residuals of the injuries at work are permanent in nature. The district medical adviser further advised that appellant reached maximum medical improvement in October 1992. He then stated that he utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fourth edition, in determining a four percent impairment of the right and a four percent impairment of the left lower extremity. Specific sections of the A.M.A., *Guides* were cited to in determining the amount of impairment.

In a September 27, 1999 report, Dr. John Sledge, an orthopedic surgeon, noted appellant's complaints and provided his examination findings. Dr. Sledge stated that the search for the pathoantomical cause of appellant's symptoms has been frustrating to him and to them. He has been unable to localize by either EMG or MRI scans or plain films the location of the causative entity. Repeated blood tests returned negative, making an occult infection unlikely. Dr. Sledge concluded that since he was not sure where appellant's pain was coming from, he was unsure in what direction to turn for further diagnostic possibilities. Opinion was provided relating appellant's condition to the original work injuries.

In a December 14, 1999 report, Dr. Alan Mandell, a Board-certified neurologist, noted appellant's complaints and an accurate history of injury in 1963 and a twisting injury in July. No histories of the other two work injuries were noted. Findings on examination were provided. A diagnosis of chronic constant low back pain with radicular symptomatology of unknown etiology despite, per his history, extensive evaluation and mild lower extremity sensory neuropathy (clinically), unknown cause was provided. No opinion was provided relating appellant's condition to the original work injuries or his ability to return to work.

In a December 28, 1999 report, Dr. Mandell stated that he was in receipt of some medical records. He noted that appellant had four lumbar spine MRI scans, the last one in 1997, which were all concordant and indicated a mild degenerative joint and disc disease at L4-5 and L5-S1 with a mild/moderate spinal stenosis at L4-5 due to a combination of congenital canal narrowing and superimposed degenerative joint disease and hypertrophy of the ligamentum flavum. Of interest, however, was Dr. Sledge's remark of September 27, 1999: "We once again reviewed his previous MRI scan, which showed no significant fracture, dislocation, bony abnormality, spondylolisthesis or spinal stenosis." Dr. Mandell stated that there was no change in his diagnosis. Chronic low back pain of multiple possible etiologies. Dr. Mandell stated that it was entirely possible that appellant's chronic back pain was related to the above-noted, previously documented MRI scan abnormalities. Other than the temporal relationship between appellant's fall in 1963 and the onset of back pain, he stated that he did not know whether the fall in 1963 caused structural damage which could account for all of or some of his back pain.

An attending physician's report (Form CA-20) dated February 11, 2000 from Dr. Bernard E. Kreger, a Board-certified internist, indicated that appellant had low back pain

persistent since the 1970s initially without sciatica. No specific injury was described. Recent history of herniated L5-S1 disc. Dr. Kreger found no abnormalities in back range of motion or configuration. A diagnosis of low back strain, now with symptoms but no signs of nerve root irritation was provided. He opined with a check mark on a box marked "yes" that appellant's condition was caused or aggravated by employment activity and cited prolonged sitting aggravated appellant's symptoms as does an assortment of physical activities, waxing and waning over the years.

By decision dated August 17, 2000, an Office hearing representative affirmed the prior decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation and medical benefits effective January 16, 2000.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.[1]

The Board finds that the evidence of record clearly demonstrates that appellant has no further disability causally related to his work-related injuries of 1963, 1975 and 1989. The Office accepted that appellant sustained a back strain as a result of three work-related injuries. The medical report of the Office referral physician, Dr. Taylor, shows that appellant's accepted condition of back strain has resolved and appellant is medically capable of resuming his job held at the time of the last injury, 1989. He had access to appellant's entire medical file and a complete statement of accepted facts, which outlined appellant's three work injuries, medical treatment and objective tests performed. Dr. Taylor opined that appellant's work-related sprains of his back had resolved and that his current condition was related to his obesity and degenerative disc disease. He specifically stated that although the work injury of 1989 had caused a temporary aggravation of appellant's preexisting degenerative disc disease, there was no residual alteration of the underlying condition. Dr. Taylor based this on the fact that the objective testing of record did not support a diagnosis of disc herniation or any radiculopathy. Although appellant's attorney argued that Dr. Taylor's report was in error in that he had opined that the diagnostic test did not support disc herniation, the Board finds the Office hearing representative properly found this argument to be without merit. The Office hearing representative properly noted that while the record contained numerous indications by appellant's physicians of a ruptured disc or disc herniation, the objective studies themselves supported disc bulging, stenosis and degenerative disc disease. The Office hearing representative properly noted that Dr. Mandell, in his report of December 28, 1999, specifically found that the four MRI scans revealed mild degenerative joint and disc disease with mild/moderate stenosis. Nothing was mentioned regarding a herniated disc. Dr. Mandell's findings are supported by the Office's district medical adviser in his June 11, 1997 report. The Board also notes that the June 1999 EMG study which found no evidence of lumbosacral radiculopathy, recommended a clinical correlation for a possibility of peripheral neuropathy. Likewise, the June 1999 bone scan study recommended a clinical correlation for the increased

[1] *See Alice J.* Tysinger, 51 ECAB ___ (Docket No. 98-2423, issued August 29, 2000); *Patricia A. Keller*, 45 ECAB 278 (1993).

activity noted in the entire left hemipelvis. Although appellant's attorney argued that Dr. Taylor was unaware of the numerous recurrences of appellant's condition, Dr. Taylor's report clearly suggests otherwise. He was provided appellant's entire medical file and, within Dr. Taylor's report, he specifically discussed many reports, which referenced appellant's recurrences. As Dr. Taylor clearly reviewed the medical evidence of file, his report supports the inference that he was aware of the progression and various flare-ups of appellant's condition throughout the years. Accordingly, Dr. Taylor provided a well-rationalized opinion, based on clinical and objective findings and the entire medical record. This report conclusively shows that appellant has no disability remaining due to the accepted conditions.

None of the other medical evidence of record shows any disability remaining due to the accepted conditions. Although Dr. Jacques treated appellant for the longest period of time, his last report of March 11, 1998, failed to provide any medical rationale for his opinion that appellant was totally disabled and all his current conditions were causally related to the industrial accident of May 27, 1963. Moreover, the report is devoid of medical findings on examination and any diagnostic tests rendered. The Board has held that a medical opinion consisting solely of a conclusory statement regarding disability, without supporting rationale, is of little probative value.[2] In his medical report, Dr. Fisher provided an impression of lumbar spondylosis with chronic lumbar strain, but failed to provide an opinion relating appellant's condition to any of his work-related injuries. However, as a medical opinion discussing causal relationship is needed to show that appellant's condition is causally related to his industrial injuries, Dr. Fisher's report has no probative value. In his medical reports, Dr. Sledge indicated that he could not determine the cause of appellant's condition or pain. Furthermore, no opinion was provided relating appellant's condition to the original work injuries. Thus, Dr. Sledge's reports are of no probative value. Dr. Mandell diagnosed appellant's condition as chronic low back pain with radicular symptomatology and mild lower extremity sensory neuropathy. However, as indicated from Dr. Mandell's December 14, 1999 report, it does not appear that the physician had a complete history of appellant's industrial injuries. Although in his December 28, 1999 report, Dr. Mandell indicated that appellant's chronic low back pain could be due to either the mild degenerative joint and disc disease with mild/moderate stenosis, as indicated by the four lumbar spine MRI scans, or to the temporal relationship between appellant's fall in 1963 and the onset of back pain, the Board finds that Dr. Mandell's causation opinion based on appellant's 1963 fall rests on an inaccurate history of injury and, as a result, has little probative value.[3] Moreover, Dr. Mandell's opinion is equivocal and highly speculative. The Board has held that speculative and equivocal medical opinions on causal relationship have no probative value.[4] Although Dr. Kreger did not have an accurate history of injury as he merely mentioned low back pain persistent since the 1970s, he attributed appellant's current condition to his employment be in the form of a check mark and stating that appellant's condition was caused by prolonged sitting and exertion. The Board has held, however, that when a physician's opinion on causal relationship consists only of

[2] *See Marilyn D. Polk,* 44 ECAB 673, 678 (1993).

[3] *See Patricia M. Mitchell,* 48 ECAB 371 (1997); *Cleopatra McDougal-Saddler,* 47 ECAB 480 (1996).

[4] *See Alberta S. Williamson,* 47 ECAB 569 (1996); *Frederick H. Coward, Jr.* 41 ECAB 843 (1990); *Paul E. Davis,* 30 ECAB 461 (1979).

checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.[5] Although Dr. Kreger stated that prolonged sitting and exertion caused appellant's condition, there is no indication that he knew about appellant's complete medical history, the objective studies of record, or describe appellant's employment-related condition and provide an explanation as to why it had changed such that he was no longer able to work.

Although appellant's counsel argued that the district medical adviser's report supported that the work injuries resulted in permanent aggravation of appellant's preexisting degenerative condition, the Board notes that the district medical adviser opined it was "reasonable to consider" that the work injuries aggravated or worsened preexisting spinal stenosis at L4-5. The district medial adviser further opined that appellant had residuals of the work injuries, which were permanent in nature as appellant continued to have back and bilateral leg pain. The Board finds that this opinion is of reduced probative value as no explanation or medical rationale besides "continuing pain" was provided for a conclusion which appears to be based on conjecture. Moreover, the record reflects that at the time the district medical adviser rendered his report, the Office was attempting to develop evidence for a schedule award for permanent impairment, for which no final determination was rendered.

The Board, therefore, finds appellant had no employment-related disability on or after January 16, 2000 and the Office met its burden of proof in terminating his compensation on that date.

The August 17 and January 11, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
December 13, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[5] *Lillian M. Jones*, 34 ECAB 379, 381 (1982).