U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID E. CRAIG and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, MO

Docket No. 99-846; Submitted on the Record;
Issued February 27, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
VALERIE D. EVANS-HARRELL

The issue is whether appellant met his burden of proof in establishing that he sustained a disability commencing April 3, 1996 due to factors of federal employment.

The Office of Workers' Compensation Programs accepted appellant's claim for temporary aggravation of lumbar scoliosis, left sacroiliac stability and aggravation of chondromalacia of the left patella. On April 10, 1996 he filed a claim for a recurrence of disability, Form CA-2a, alleging that on April 2, 1996, he sustained a recurrence of disability of his September 2, 1986 employment injury. Appellant stated that following the original injury he had a 25 percent disability in the left hip and left knee. He stated that after knee surgery in 1987 and extensive physical therapy, "his condition" was monitored by a physician every three months and he took pain medication daily and frequently took medication to enable him to sleep. Appellant stated that he had not returned to work since the date of the recurrence of disability. He also stated that due to inadequate staffing on his job, he was forced to exceed his doctor's March 5, 1996 restrictions of not getting up and down 15 to 20 times per day. In a disability note dated March 5, 1996, appellant's treating physician, Dr. Lee Vander Lugt, an osteopath, stated that appellant was limited to getting up 15 to 20 times a day. Appellant's supervisor and the postmaster, Linda Wyman, disagreed that there was inadequate staffing and stated that, to the contrary, she brought three employees into the office and gave them directions to work at the window and for appellant to sit down at his desk for three to four hours a day. She stated that appellant did not discuss with her at any time that he felt any discomfort or felt that he was forced to exceed his restrictions. In April 1997 appellant retired.

In a report dated May 7, 1996, Dr. Lugt considered appellant's history of injury, stating that appellant reaggravated his left knee at work on April 3, 1996 and that appellant had not told him that he had a specific injury, just aggravation of his knee. Based on a magnetic resonance

imaging (MRI) scan that appeared to be dated April 16, 1996, he found that appellant had a posterior horn tear of the medical meniscus. Dr. Lugt stated:

> "[Appellant's] symptoms were certainly suggestive of recurrent tear posterior horn medial meniscus. He has degenerative changes in his knee throughout the period of time that I have been following him along.
>
> "I feel that over the period of time, [appellant] has further torn the posterior horn medial meniscus. I feel that his other conditions in his knee, namely the chrondromalacia, have been aggravated by his work. The posterior horn tear of the medial meniscus is also [a] result of [appellant's] continued work on his left knee."

By decision dated July 31, 1996, the Office denied appellant benefits, stating that the evidence of record failed to establish that the claimed recurrence of disability was causally related to the November 15, 1983 employment injury.

By letter dated August 16, 1996, appellant requested an oral hearing before an Office hearing representative which was held on July 28, 1998.

At the hearing, the Office hearing representative indicated that appellant's claim was first accepted for aggravation of chondromalacia of the left patella and after he filed an occupational claim on October 31, 1986 for a left hip condition, his claim was accepted for temporary aggravation of lumbar scoliosis and left sacroiliac instability. The Office hearing representative stated that the issue was whether appellant's recurrence of disability on or after April 3, 1986 was causally related to any or all of the accepted employment conditions. Appellant testified that he felt that both his knee and back condition contributed to his current disability. He stated that he started having problems with both knees in 1980, that he had surgery on the left knee in 1981 and went back to work but in 1983 his left knee bothered him again and compelled him to seek medical treatment. Appellant stated that in 1985 his left knee "flared-up" and he had surgery redone on his left knee in January 1986.

Appellant stated that in 1990 he sought a change of classification from letter carrier to window clerk or distribution clerk to ease the difficulty with his knee. He testified that at the time of the April 1996 recurrence, he was performing his regular duty. Appellant testified he had multiple duties as a window clerk involving verifying mail the carriers brought in and loading and unloading containers and that he had to get up and down as many as 35 to 50 times a day. He testified that in April 1996 the repetitive activity of getting up and down on the cement worsened his knee to the point where the pain became intolerable. Appellant also testified that since his retirement he cut the grass at his home but he did not "exert himself" and did not perform repetitive getting up and down activities as he did at the employing establishment.

Appellant also submitted additional medical evidence. In a progress note dated August 20, 1996, Dr. Lugt stated:

> "[T]he fact that [appellant] ha[d] to get up and down at work ha[d] aggravated his symptomatology. He does drive a 5-speed truck and that may contribute some to

his condition. Certainly, up and down in the office would be a much more likely cause for his complaints and physical findings."

In a report dated September 18, 1996, Dr. Lugt considered that appellant's knee condition worsened, that according to appellant he had to do "a considerable amount of walking" at work and getting up and down "on multiple occasions" which exceeded his prescribed limitations of not getting up and down more than 15 to 20 times a day. He noted the MRI scan which showed a torn medial meniscus. Dr. Lugt stated that appellant's torn meniscus was a "direct result of the repetitive action at work." He stated that "certainly with his weight getting up and down would cause a meniscus tissue to tear" but "driving a manual transmission would not." Dr. Lugt restated that appellant's torn medial meniscus was the direct result of his activity at work, having to get up and down from the seated to standing position.

In a memorandum dated May 30, 1996, appellant's supervisor and the postmaster, Ms. Wyman, stated that she first received restrictions from Dr. Lugt on January 10, 1996 stating that appellant should only work five days which she complied with. She also stated that she received Dr. Lugt's March 6, 1996 restrictions limiting appellant to getting up from a sitting position 15 to 20 times a day and that from September 16, 1995 through April 5, 1996, she worked the other clerks more hours. She stated that she did not have knowledge appellant was exceeding his restrictions until she received his occupational claim dated April 10, 1996.

In a letter dated August 20, 1996, Ms. Wyman stated that initially the job of distribution clerk did not have any restrictions but she then received appellant's doctor's restrictions that he not get up more than 20 to 30 times. She stated that she overheard appellant stating that he had to get up in excess of his getting up and down restriction but she told him not to get up and another clerk would help him. Ms. Wyman stated that she then instructed three clerks to watch the counter and wait on customers but even then she observed appellant "on his own accord jump up to wait on customers that he knew" and she again instructed him to let one of the clerks wait on them.

The job description of distribution clerk which appellant accepted on November 20, 1992 as part of his rehabilitation effort stated that appellant had medical restrictions of intermittent walking, squatting and climbing but that appellant may sit continuously on a rest bar, stand continuously or alternate from sitting to standing as designated by the postmaster and his restrictions.

By decision dated September 17, 1998, the Office hearing representative affirmed the Office's July 31, 1996 decision.

The Board finds that the Office properly determined that appellant did not meet his burden in establishing that he sustained a recurrence of disability commencing April 3, 1996 but finds that the case is not in posture for decision and requires further development of the evidence.

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.[1] 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.[2] 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 requirements.[3] This burden includes the necessity of furnishing 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 the employment injury and supports that conclusion with sound medical reasoning.[4]

The Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, states that a recurrence of disability includes "a work stoppage caused by a spontaneous material change, demonstrated by objective findings, in the medical condition which resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness."[5] A recurrence of disability is distinguished from a new injury by the criterion that in a recurrence situation no event other than the previous injury accounts for the disability.[6]

In the present case, in his April 10, 1996 claim, appellant stated that he was filing for a recurrence of disability commencing April 2, 1996 due to his September 2, 1986 employment injury. At the hearing, he agreed with the hearing representative that the issue was whether he sustained a recurrence of disability commencing April 2, 1996 related to any of the accepted conditions. The medical evidence appellant submitted to support his claim pertains to a left knee condition. In its July 31, 1996 decision, the Office found that appellant did not establish that he sustained a recurrence of disability commencing April 2, 1996 was causally related to the November 15, 1983 employment injury. In the September 17, 1998 decision, an Office hearing representative stated that the issue was whether the April 2, 1996 recurrence of disability was causally related to the November 15, 1983 employment injury but concluded that appellant had not established an April 2, 1996 recurrence of disability causally related to any of the accepted employment conditions. Despite some ambiguity in the record as to which injury, *i.e.*, 1983 or 1986, appellant is relying on to establish the April 2, 1996 recurrence of disability, all the medical evidence pertains to his left knee condition. It was therefore proper for the Office to evaluate the evidence in terms of whether the alleged April 2, 1996 recurrence resulted from the November 15, 1983 employment injury as that is the injury which concerned appellant's left knee.

---

[1] *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

[2] *George DePasquale*, 39 ECAB 295, 304; *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[3] *Carlos A. Marrero*, 50 ECAB ____ (Docket No. 96-2186, issued October 19, 1998).

[4] *See Nicolea Bruso*, 33 ECAB 1138 (1982).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1)(a) (December 1991).

[6] *See Stephen T. Perkins*, 40 ECAB 1193, 1199 n.2 (1989).

Although appellant testified at the hearing that he was performing "regular duty" at the time of the April 2, 1996 recurrence of disability, the job he was performing was part of his rehabilitation effort from a prior work injury and he had physical restrictions of intermittent walking, squatting and climbing or alternating between sitting and standing as designated by the postmaster and his doctor. He did not conclusively establish that he exceeded Dr. Lugt's March 5, 1996 restrictions of not getting up and down more than 20 to 30 times a day. At the hearing, appellant testified he had to get up and down as many as 35 to 50 times a day and in his September 18, 1996 report, Dr. Lugt stated that appellant told him that he had to get up and down more than 15 to 20 times a day. Appellant's supervisor, Ms. Wyman, stated, however, that if appellant exceeded Dr. Lugt's getting up and down restrictions, he did so at his own volition as she had told him not to and provided additional clerical help so that he could sit down more. Claimant has therefore not met one of the two criteria for establishing a recurrence of disability, that the restrictions of the job were changed.

Appellant has shown through Dr. Lugt's May 7, 1996 report that the nature and extent of his condition changed as Dr. Lugt found that appellant had a posterior horn tear of the medial meniscus based on the April 16, 1996 MRI scan. He has not shown, however, that the change in his physical condition was due to a "spontaneous material change" resulting solely from the November 15, 1983 employment injury. In his May 7, 1996 report, Dr. Lugt stated that the posterior horn tear of the medial meniscus was a result "of his continued work" on his left knee. He also stated that appellant's chondromalacia was aggravated by his work. Dr. Lugt stated that appellant had degenerative changes in his knee throughout the period of time he had been treating him. In his August 20, 1996 report, Dr. Lugt stated that the fact that appellant had to get up and down at work aggravated his symptomatology. In his September 18, 1996 report, while Dr. Lugt noted that appellant exceeded his getting up and down restrictions of not more than 15 to 20 times, he also stated that appellant's torn medical meniscus was the direct result of his activity at work, "having to get up and down from a seated position." His opinion is supportive that appellant's getting up and down at work, regardless of the exact number of times, either caused his medial meniscus tear or aggravated appellant's chondromalacia which was the accepted condition resulting from the November 15, 1983 employment injury.

Dr. Lugt's report, however, is not supportive that a recurrence of disability occurred because he relates appellant's current condition to his ongoing activity at work of getting up and down from a seated position, not due to a spontaneous change in the accepted knee condition. Therefore, the Office properly determined that appellant did not establish that a recurrence of disability due to the November 15, 1983 employment injury occurred commencing April 3, 1996.

Nonetheless, while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the claim.[7] The Office has the obligation to see that justice is done.[8] Although appellant did not submit evidence establishing that he sustained a recurrence of disability commencing April 3, 1996 due to the November 15, 1983 employment injury, appellant has submitted evidence supportive of a finding that his

[7] *See Dennis J. Lasanen*, 43 ECAB 549, 550 (1992); *Robert A. Redmond*, 40 ECAB 796 (1989).

[8] *Dennis J. Lasanen, supra* note 7 at 530; *William J. Cantrell*, 34 ECAB 1233 (1983).

continued employment following his return to work after the November 15, 1983 employment injury aggravated his chondromalacia of the left patella. In a case like this, it is not proper for the Office to narrowly characterize appellant's claim as a recurrence claim when the evidence, although insufficient for establishing a recurrence of disability, is generally supportive of an aggravation of the accepted condition.[9] Where the wrong claim form is filed, the claim should not be denied without sufficiently developing the case based on the fact on hand. Dr. Lugt's opinion is supportive that appellant either sustained a medial meniscus tear as a result of his employment or aggravated his chondromalacia or both. There is no evidence contrary to Dr. Lugt's opinion. The case will therefore be remanded for the Office to determine whether Dr. Lugt's opinion establishes that appellant's factors of employment contributed to or aggravated his left knee condition and give reasons for its findings.[10] Upon such further development as the Office deems necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated September 17, 1998 is hereby affirmed in part, vacated in part and remanded for further action consistent with this opinion.

Dated, Washington, DC
February 27, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Valerie D. Evans-Harrell
Alternate Member

[9] *See* FECA Bulletin No. 96-10 (May 1996).

[10] *See* 20 C.F.R. § 10.130; *Beverly Dukes*, 46 ECAB 1014, 1017 (1995).