

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEITH CLARK and U.S. POSTAL SERVICE,
POST OFFICE, Boston, MA

*Docket No. 01-915; Submitted on the Record;
Issued November 21, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on April 6, 1998 causally related to his December 17, 1995 employment injury.

On December 17, 1995 appellant, then a 45-year-old truck driver, filed a claim for compensation benefits alleging that he sustained an injury to his groin when he slipped and fell. The Office of Workers' Compensation Programs accepted that appellant sustained an employment-related groin strain and paid him appropriate compensation benefits. Appellant did not stop work but returned to a limited-duty position and resumed his regular duties as a truck driver after February 1996.

Accompanying appellant's claim were various medical records from January 10 to February 12, 1996; and an x-ray of the lumbar spine dated January 12, 1996. The medical records document a history of appellant's work injury and indicated that he sought treatment for testicular pain and low back discomfort. Appellant noted he underwent lumbar surgery in 1991, which was a nonwork-related injury. The x-ray of the lumbar spine revealed minimal degenerative changes but no acute bony injury.

On April 8, 1998 appellant filed a Form CA-2a, notice of recurrence of disability. He indicated a recurrence of pain in the back and groin area due to employment-related injuries sustained on December 17, 1995. Appellant stopped work on April 6, 1998 and returned to work on April 8, 1998. He indicated that his recurrence of symptoms began on April 6, 1998.

By letter dated May 5, 1998, the Office requested detailed factual and medical evidence from April 11, 1996 to the present, stating that the information submitted was insufficient to establish a recurrence on the above date.

In response to the Offices request, appellant submitted various medical records including treatment notes from Dr. Donald E. Tate, a chiropractor, from May 1 to June 1, 1996; a magnetic

resonance imaging scan (MRI) dated April 28, 1998; a report from Dr. James A. Karlson, a Board-certified orthopedic surgeon, dated May 4, 1998 and a narrative statement dated May 22, 1998. The treatment notes from Dr. Tate noted a history of appellant's injury in December 1995 and indicated appellant was being treated for a left sacroiliac sprain and strain. Dr. Tate noted appellant experienced a severe muscle cramp the previous day and sought treatment thereafter. The MRI dated April 28, 1998 revealed L5-S1 left laminectomy with small left paracentral disc herniation and epidural scarring; the degree of disc herniation was less prominent than the prior study without new or progressive epidural mass effect. The report from Dr. Karlson dated May 4, 1998 noted appellant was complaining of left sided back pain since his work-related injury December 17, 1995. Dr. Karlson noted that appellant's present condition was directly and causally related to the December 1995 injury. He further noted that appellant had a previous history of lumbar disc surgery, which had resolved and that appellant was asymptomatic prior to his injury at work on December 17, 1995. Appellant noted in his narrative statement that after his injury in December 1995 he continued to suffer low-grade pain in the groin and back area. He noted the pain was in the same areas affected by the original injury.

By decision dated June 10, 1998, the Office denied appellant's claim for recurrence of disability on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on April 6, 1998 which was causally related to the accepted employment injury sustained December 17, 1995.

Appellant requested an oral hearing before an Office hearing representative which was held January 4, 1999. By decision dated March 17, 1999, the Office hearing representative vacated the decision dated June 10, 1998 and remanded the case to the Office for further development of the medical evidence. The hearing representative directed the Office to refer appellant to an appropriate specialist for a second opinion.

On April 9, 1999 the Office referred appellant for a second opinion to Dr. John S. Ritter, a Board-certified orthopedic surgeon. The Office provided Dr. Ritter with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties.

In a medical report dated April 26, 1999, Dr. Ritter indicated that he reviewed the records provided him and performed a physical examination of appellant. He diagnosed appellant with left groin and back strain as a result of his work-related injury of December 17, 1995. He noted the orthopedic examination revealed no objective evidence of nerve root irritation or nerve root compression; there was no subjective complaint of nerve root pain in the lower extremity; and spine motion, hip motion and testis examinations were without objective evidence of injury or impairment. Dr. Ritter indicated appellant had a low back condition of L5-S1 disc excision with postoperative scar formation and evidence of disc bulging. He indicated that appellant had an aggravation of his previous disc surgery as a result of the fall on December 17, 1995. Dr. Ritter indicated appellant's condition had resolved and that appellant had returned to his prior level of functional capacity. He indicated appellant required no further treatment for the aggravation of his disc condition, which occurred on December 17, 1995.

In a letter dated June 16, 1999, the Office requested that Dr. Ritter clarify his opinion with regard to whether appellant had residuals of the work-related aggravation of appellant's back condition, which would result in appellant stopping work in April 1998.

In a supplemental report dated June 17, 1999, Dr. Ritter indicated that acute lumbar strains commonly recover in a 2-to 12-week period. However, in appellant's case, he had a preexisting spine pathology in existence at the time of the injury which would double the projected recovery period to 24 weeks. Dr. Ritter noted that appellant would have reached a medical end result by May 28, 1996, 24 weeks from the December 17, 1995 injury. He further noted that the work stoppage on April 6, 1998 was not caused by his December 17, 1995 work injury but solely the result of his underlying, preexisting condition.

By decision dated July 27, 1999, the Office hearing representative denied appellant's claim for recurrence of disability on the grounds that the evidence failed to establish that the claimed recurrence was causally related to the accepted employment injury sustained December 17, 1995.

On July 27, 2000 appellant, through his attorney, requested reconsideration of the decision dated July 27, 1999. He submitted a report from Dr. Karlson dated July 6, 2000. He submitted a summary of his notes, indicating that he treated appellant from December 31, 1996 to December 21, 1998. Dr. Karlson indicated treating appellant for recurrent low back pain, left leg pain, left groin and testicular pain. He noted appellant underwent an MRI scan of the lumbosacral spine dated April 28, 1998 which demonstrated a left paracentral disc herniation with epidural scarring and granulation. Dr. Karlson diagnosed appellant with L5 S1 disc degeneration. He stated that he "attributed the majority of the patient's present symptomatology to the work-related injury of December 17, 1995." Dr. Karlson further noted that "the patient does have a history of prior surgery in this area; however, it's my opinion that this work-related injury aggravated this prior condition." He indicated that appellant had not obtained adequate relief from his injury.

In a decision dated October 26 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence of record is insufficient to warrant modification of the prior decision.

The Board finds that this case is not in posture for a decision due to a conflict in the medical evidence.

An employee 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 she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant 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 the employment injury and supports that conclusion with sound medical reasoning.¹

¹ *Carmen Gould*, 50 ECAB 504 (1999).

In the present case, appellant has submitted evidence from his treating physician, Dr. Karlson, an orthopedic surgeon, who indicated in his report dated July 6, 2000 that appellant had ongoing back symptoms with exacerbation relating to the employment injury of December 17, 1995. On the other hand, an Office referral physician, Dr. Ritter, an orthopedic surgeon, has indicated that there were no medical findings to connect the current symptoms to the injury of December 17, 1995. Accordingly, there exists a conflict in the medical evidence. Section 8123(a) of the Federal Employees' compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.² Accordingly, the case will be remanded to the Office for resolution of the conflict. On remand, the Office should refer appellant, along with a statement of accepted facts and the medical records, to an appropriate specialist for an impartial evaluation and report including a rationalized opinion as to whether appellant's condition was causally related to the December 17, 1995 employment injury. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs' dated October 26, 2000 is set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
November 21, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

² *Joseph D. Lee*, 42 ECAB 172 (1990).