U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARIUS H. BALTZ and DEPARTMENT OF THE ARMY,
Fort Richardson, AK

Docket No. 02-936; Submitted on the Record;
Issued December 2, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability beginning September 23, 1997 due to his May 21, 1997 employment injury.

On May 22, 1997 appellant, then a 39-year-old equipment operator, injured his back when he stepped on broken concrete and fell. The Office of Workers' Compensation Programs accepted that appellant sustained a rectal contusion and pelvic contusion. He stopped work on May 21, 1997 and returned to limited-duty full-time work on August 4, 1997. On September 23, 1997 appellant stopped work and did not return.

Accompanying appellant's claim were several reports from Dr. Won P. Chung, an internist, dated April 15, 1994 to June 30, 1997; and reports from Dr. Paul M. Worrell, an internist, dated July 10 to August 14, 1997. Dr. Chung's reports note a history and treatment of appellant's injury. The reports from Dr. Worrell dated July 10 to August 14, 1997 noted a history of appellant's injury indicating that he sustained a contusion to the rectal area which was healing properly. He noted that appellant returned to work on August 5, 1997 and was assigned the duty of checking out tools which he could perform although he found the duties boring.

On September 23, 1997 appellant stopped work alleging a recurrence of disability causally related to his work-related injury.

Thereafter, appellant submitted reports from Dr. Worrell dated August 5 to October 15, 1997; and a report from Dr. J. Michael James, an internist, dated October 29, 1997.[1]

[1] In a memorandum dated November 7, 1997, appellant was notified that the employing establishment proposed to remove him due to the offenses of failure to follow leave procedures, absence without leave and creating a disturbance. In a letter dated January 13, 1998, the employing establishment removed him from his position effective January 16, 1998. Appellant, through counsel, appealed his case to the merit board, who, in a decision dated June 17, 1998, determined that the penalty of removal was reasonable.

Drs. Worrell's and James' note of August 14, 1997 indicated that appellant could remain on light duty. Dr. Worrell prepared an attending physician's report dated September 4, 1997 diagnosing appellant with a muscular strain, which remained tender. He noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. Dr. Worrell indicated that appellant could perform light duty and would be rechecked in three weeks. He prepared a duty status report dated September 4, 1997 noting appellant could return to work light duty full time under certain restrictions. Dr. Worrell's treatment notes of September 4, 1997 indicated that pain in appellant's rectal area had resolved. He noted appellant continued on light duty. Dr. Worrell's note of September 24, 1997 indicated that appellant's employment duties were not strenuous, noting that he was not doing much in the tool room except standing around and was not required to sit much. Dr. Worrell indicated that appellant complained that his discomfort got worse the week prior to September 24, 1997 as a result of having diarrhea several days. He noted that appellant could continue with light duty. In a duty status report dated September 24, 1997, Dr. Worrell noted appellant could continue with full-time light duty subject to various restrictions. He indicated in an attending physician's report of September 24, 1997 that appellant could continue with light duty with minimal sitting time. His attending physician's report of October 15, 1997 diagnosed appellant with pelvic pain, which was healing and indicated that he could continue working light duty with no prolonged sitting. His duty status report of October 15, 1997 noted that appellant had been working light duty since July 10, 1997 and could continue to do so. Dr. James' report of October 29, 1997 noted a history of appellant's work-related injury and treatment by Dr. Worrell. He noted that the (computerized tomography) CT scan of appellant's pelvis was normal and rectal examinations were normal. Dr. James indicated that appellant returned to light duty but noted driving increased his symptoms. He indicated that appellant stopped work six weeks ago. Dr. James noted that the results of the electrodiagnostic tests revealed trace evidence of denervation of the left gastrocnemius and left abductor hallucis. He diagnosed appellant with pelvic floor trauma and mild sciatic nerve irritation as a consequence of the fall. Dr. James indicated that appellant was capable of light to medium duty with modest restrictions of no prolonged sitting or driving.

In a letter dated October 15, 1997, the employing establishment requested that Dr. Worrell reviewed a duty status report and a job description and comment on the suitability of the position.

Dr. Worrell responded on October 24, 1997 noting that there were no objective findings of perineal trauma; however, appellant still felt discomfort. He noted restrictions of lifting and carrying of 10 pounds; no climbing, driving or operating machinery; and kneeling, bending, pushing and/or pulling for one hour a day. Dr. Worrell noted that he read the enclosed position description and found that it was suitable and consistent with the physical limitations imposed by appellant's injury. He noted that appellant was able to perform the duties outlined in the position description for eight hours a day, five days a week.

The employing establishment submitted a statement indicating that appellant returned to work in a limited-duty capacity in August 1997 with Dr. Worrell's approval. He was accommodated with light duty at all relevant times and was eventually formally detailed to an unclassified set of duties, which complied with the duty status report submitted by Dr. Worrell. The employing establishment noted that all medical records from August 1997 authorized

appellant to engage in light-duty work and he performed all the duties of handing out parts and tools from August 4 to October 10, 1997.

Appellant, through his attorney, submitted a brief, noting that he was not provided with a written job offer and that appellant's condition worsened according to the report from Dr. James dated October 29, 1997.

In a decision dated August 21, 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 or about September 23, 1997, which was causally related to the accepted employment injury sustained May 21, 1997.

In a letter dated September 25, 1998, appellant requested reconsideration and did not submit medical evidence but he argued that no formal job offer was made by the employing establishment; therefore, he had no duty to continue to work in the limited-duty position.

In a decision dated February 16, 1999, the Office denied modification of the prior decision on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision.

On January 22, 2000 appellant requested reconsideration of the decision dated February 16, 1999 and submitted additional medical evidence from Dr. James dated December 8, 1997 to March 2, 2000. Dr. James' note of December 8, 1997 indicated that appellant experienced some side effects with certain medications which were discontinued. He diagnosed appellant with a contusion of the sciatic nerve. Dr. James' January 12, 1998 note indicated that appellant experienced left groin pain with prolonged driving. His February 23, 1998 note indicated that there was no significant improvement in appellant's groin pain since he was last seen and noted his examination was unchanged. Dr. James' note of January 14, 1999 noted appellant remained unchanged with his symptoms of back and groin pain waxing and waning. His note of March 2, 2000 indicated that appellant experienced no significant change in his buttock or lower extremity pain. Dr. James noted appellant had an episode last fall when he caught his leg in a tree root, which caused left lower extremity paresthesias for three days, which resolved. He noted that appellant still experienced left buttock pain and left testicular pain with tenderness over the left sciatic nerve at the buttock.

In a decision dated May 19, 2000, the Office denied modification of the prior decision on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision.

In a letter dated September 10, 2000, appellant requested reconsideration of the Office decision.

In a decision dated January 4, 2001, the Office denied modification of the prior decision on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision.

In a letter dated November 15, 2001, appellant requested reconsideration of the Office decision.

In a decision dated December 14, 2001, the Office denied modification of the prior decision on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision.[2]

The Board finds that the evidence fails to establish that appellant sustained a recurrence of disability beginning on September 23, 1997 as a result of his May 21, 1997 employment injury.

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 requirements.[3]

Appellant has not submitted sufficient evidence to support 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.

Appellant submitted notes from Dr. Worrell indicating that he was being treated for a rectal contusion and pelvic contusion he sustained in a work-related accident. Dr. Worrell's reports dated July 10 to August 14, 1997 noted that appellant returned to work on August 5, 1997 and was assigned the duty of checking out tools which appellant could perform although he found these duties boring. Dr. Worrell's note of August 14, 1997 indicated that appellant could remain on light duty. He prepared a duty status report dated September 4, 1997 noting that appellant could return to work light duty full time under certain restrictions. Dr. Worrell's treatment notes of September 4, 1997 indicated that pain in appellant's rectal area had resolved and he could continue on light duty. His note of September 24, 1997 indicated that appellant's position was not strenuous, noting that he was not doing much in the tool room except standing around and that his duties did not require him to sit. Dr. Worrell indicated that appellant complained that his discomfort worsened due to an episode of diarrhea; however, he noted that appellant could continue with light duty. In duty status reports dated September 24 and October 15, 1997, he noted that appellant had been working light duty since July 10, 1997 and could continue to do so. Dr. Worrell noted appellant could continue with full-time light duty subject to various restrictions. He indicated in an attending physician's report of September 24, 1997 that appellant could continue with light duty with minimal sitting time. However, none of Dr. Worrell's reports, most contemporaneous with the recurrence of injury noted a specific date of a recurrence of disability nor did he note a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from performing his light-duty position. Rather, Dr. Worrell noted in correspondence dated

[2] Appellant filed a CA-2a, notice of recurrence of disability, on November 20, 2001 indicating a recurrence of disability on September 17, 1997. However, the Board does not have jurisdiction over this claim for recurrence in the present appeal as the Office has not rendered a decision on this matter; *see* 20 C.F.R. § 501.2(c).

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

October 24, 1997 that he read the enclosed position description and found that it was suitable and consistent with the physical limitations imposed by appellant's injury. He noted that appellant was able to perform the duties outlined in the position description for eight hours a day, five days a week. The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence.[4] Additionally, these notes are vague regarding the time of the onset of the claimed recurrence of disability and are unrationalized regarding how the May 1997 employment injury would have caused a particular period of disability beginning in September 1997.[5] Other reports from Dr. Worrell, specifically the attending physician's reports dated September 4 and October 15, 1997 diagnosed appellant with a muscular strain which remained tender. Dr. Worrell noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. He indicated that appellant could perform light duty and would be rechecked in three weeks. Although Dr. Worrell provided some support for causal relationship, the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given, is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[6]

Dr. James' reports of October 29, 1997, January 12 and February 23, 1998, January 14, 1999 and March 2, 2000 noted a history of appellant's work-related injury and treatment by Dr. Worrell. He noted that the CT scan of appellant's pelvis was normal and rectal examinations were normal. Dr. Worrell indicated that appellant returned to light duty but noted driving increased his symptoms. Dr. James indicated that appellant stopped work six weeks ago. He noted that the results of the electrodiagnostic tests revealed trace evidence of denervation of the left gastrocnemius and left abductor hallucis. Dr. James indicated that appellant was capable of light to medium duty with modest restrictions of no prolonged sitting or driving. However, he did not indicate a specific date of a recurrence of disability nor did he note a particular change in the nature of appellant's physical condition arising from the employment injury, which prevented appellant from performing his light-duty position. Although Dr. James provided some support for causal relationship in a conclusory statement indicating that appellant's condition of pelvic floor trauma and mild sciatic nerve irritation was a consequence of his fall, he did not provide a rationalized opinion regarding the causal relationship between appellant's pelvic and sciatic nerve conditions and the employment incident believed to have caused or contributed to such condition. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[7] Additionally, Dr. James diagnosed appellant with sciatic nerve irritation; however, there is no "bridging evidence" which would relate the sciatic nerve irritation to the accepted employment injury. That is, he does not explain how, within four months following the accepted rectal contusion and pelvic contusion, it was exacerbated by appellant's employment factors to result in sciatic nerve irritation. The Office never accepted

[4] *See Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

[5] *See Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

[6] *See Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

[7] *See Theron J. Barham*, *supra* note 5.

that appellant sustained a sciatic nerve injury as a result of his May 21, 1997 work injury and there is no medical evidence to support such a conclusion.[8] The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[9]

On appeal appellant alleged that his light-duty position changed and exceeded his restrictions as he was required to drive a motor vehicle while under the influence of medications. However, there is no credible evidence which substantiates that appellant experienced a change in the nature and extent of the light-duty requirements or was required to perform duties which exceeded his medical restrictions. Additionally, appellant noted that a suitability determination was never made regarding the light-duty position he performed beginning in August 1997. The Board notes that appellant's benefits were not terminated in this instance and, therefore, the procedures and the penalties of 5 U.S.C. § 8106(c)(2), which address termination due to a refusal of suitable employment were not applicable. The light-duty position performed by appellant was approved by his treating physician, Dr. Worrell, and the record is void of evidence which would indicate that there was a change in the nature and extent of the light-duty requirements or was required to perform duties which exceeded his medical restrictions.

Appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements, which would prohibit him from performing the light-duty position he assumed after he returned to work.

[8] *See Arthur N. Meyers, supra* note 4 (where the Board found a physician's opinion to be of diminished probative value where the physician's opinion in support of causal relationship was based on a history of injury that was not corroborated by the contemporaneous medical history contained in the case record).

[9] *See Theron J. Barham, supra* note 5.

The decision of the Office of Workers' Compensation Programs dated December 14, 2001 is hereby affirmed.[10]

Dated, Washington, DC
December 2, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] With appellant's request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).