U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TOMMY RIZZO and U.S. POSTAL SERVICE,
ROSEDALE STATION, Kansas City, MO

Docket No. 00-1896; Oral Argument Held October 22, 2002;
Issued November 21, 2002

Appearances: *Tommy Rizzo, pro se*; *Thomas G. Giblin, Esq.*, for the Director,
Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of his disability beginning November 1, 1997 causally related to his July 15, 1993 injury.

On August 18, 1993, appellant, then a 47-year-old casual letter carrier, filed a claim alleging that on July 15, 1993 he sustained a sprain to his lower back when he was rear ended in a motor vehicle accident. Appellant received treatment on the same date at the emergency department of Providence Medical Center. In an attending physician's report dated August 31, 1993, Dr. John T. O'Mailey, a physiatrist, diagnosed appellant with lumbosacral strain with radiculopathy causally related to the July 15, 1993 accident. He stated that appellant was totally disabled from July 15 to 16, 1993, partially disabled from July 28, 1993 to August 3, 1993, and could resume his regular work on August 4, 1993.

On March 27, 1994, appellant filed a notice of recurrence of disability of the July 15, 1993 injury. Appellant submitted a progress report dated December 14, 1993 from Dr. Robert P. Jones, a Board-certified orthopedic surgeon, who stated that appellant had a lumbosacral sprain secondary to a motor vehicle accident the prior July.

In a decision dated October 24, 1995, the Office of Workers' Compensation Programs denied appellant's claim finding that the evidence failed to establish that the claimed recurrence of disability was causally related to the injury of July 15, 1993. However, in a decision dated March 11, 1996, an Office hearing representative found that Dr. Jones' report of December 14, 1993 supported that the treatment appellant received on that date was related to the accepted injury. He noted that appellant's claim was "not really a recurrence claim, *per se*." He found that as claimant never missed any time from work and there were no bills for treatment submitted for consideration, "issuing a [c]ompensation [o]rder denying a recurrence claim was premature

and unnecessary." The hearing representative set aside the October 24, 1995 decision, and returned to the case to the Office for further action.

By letter to appellant dated April 5, 1996, the Office sent appellant a Form CA-2a, recurrence of disability form, and instructed appellant to have his physician submit a detailed narrative report which supported that he had continuing residuals from the July 15, 1993 injury.

In response, appellant submitted a July 26, 1995 medical report by Dr. Jones, who indicated that he examined appellant on that date. He stated:

> "At the present time, I feel that he has a chronic lumbosacral strain syndrome, and I think that his medical condition has stabilized. I would not expect any significant improvement in the future. He has no symptoms, nor does he have objective signs of a radiculopathy.
>
> "I feel that his sprain, at least by history, is a direct result of the motor vehicle accident he was in 1993. I have no history of, nor any evidence of, a preexisting back condition other than some mild wedging and osteophyte formation in his dorsal lumbar spine that is above the area of his complaints and not significant to his current complaints."

In a November 27, 1995 report, Dr. Jones stated that he had examined appellant on several occasions for back pain and that in his opinion, appellant had a ten percent permanent physical impairment from his back injury. In a May 6, 1996 report, Dr. Jones indicated that appellant's condition was stable, and that he expected no significant change in the future.

On April 6, 1996 appellant filed a notice of recurrence of disability of the July 15, 1993 injury. On November 1, 1997 appellant filed another notice of recurrence of disability.

In a medical report dated October 28, 1997, Dr. Douglas W. Haggen, an anesthesiologist, indicated that appellant had lumbar radiculopathy and that he gave appellant a lumbar epidural steroid injection. Dr. Hagen gave appellant a second injection on November 5, 1997.

By decision dated June 2, 1999, the Office denied appellant's claim for recurrence. By letter dated June 12, 1999, appellant requested a hearing, which was held on January 27, 2000.

In a January 5, 2000 report, Dr. Steven T. Gialde, an osteopath, noted that appellant continued to have multilevel disc disease, multiarticular arthritis, hypertension, situational depression and radiculopathy secondary to his multilevel disc disease. Dr. Gialde opined that appellant was totally disabled because of his multiple problems.

In a decision dated April 18, 2000, the hearing representative found that appellant failed to provide the requisite medical evidence with rationale to support his claim for recurrence, and accordingly affirmed the Office's decision of June 2, 1999.

The Board finds that this case is not in posture for decision.

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 he claims compensation is causally related to the accepted injury.[1] 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 condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[2]

The Board notes that there is medical evidence in the record supportive of appellant's claimed recurrence of disability. In a December 14, 1993 report, Dr. Jones stated that appellant had a lumbosacral sprain secondary to his motor vehicle accident in July. On July 26, 1995 Dr. Jones noted that he believed that appellant's sprain, at least by history, was the direct result of the motor vehicle accident of 1993. The record indicates that appellant received lumbar epidural steroid injections from Dr. Haggen in October and November 1997. On January 5, 2000 Dr. Gialde noted that appellant continued to have multilevel disc disease. These opinions do not constitute rationalized medical opinion evidence linking appellant's alleged recurrence to his July 15, 1993 injury, as they do not state the date of appellant's alleged recurrence nor provide a detailed, rationalized opinion linking the alleged recurrence to appellant's July 15, 1993 work injury. However, the fact that these opinions contain deficiencies preventing appellant from discharging his burden of proof does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished. These reports are sufficient to require further development of the record, especially given the hearing representative's earlier instructions to the Office to further develop the evidence and given the absence of any opposing medical evidence.[3] It is well established that proceedings under the Federal Employees' Compensation Act[4] are not adversarial in nature,[5] and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[6] In this case, there is an uncontroverted inference of a relationship between appellant's condition and his accepted work injury.

On remand, therefore, the Office should refer appellant, together with the medical evidence of record and a statement of accepted facts, to an appropriate Board-certified specialist for an examination, diagnosis and a rationalized opinion as to whether appellant sustained a recurrence of the July 15, 1993 injury, and if so, the date that appellant sustained the recurrence. After such further development as is deemed necessary, the Office shall issue a *de novo* decision.

[1] *Jose Hernandez*, 47 ECAB 288, 293-94 (1996).

[2] *Helen K. Holt,* 50 ECAB 279, 282 (1999).

[3] *John J. Carlone*, 41 ECAB 354 (1989).

[4] 5 U.S.C. §§ 8101-8193.

[5] *See, e.g., Walter A. Fundringer, Jr.*, 37 ECAB 200 (1985).

[6] *See Dorothy L. Sidwell,* 36 ECAB 699 (1985).

The decisions of the Office of Workers' Compensation Programs dated April 18, 2000 and June 2, 1999 are hereby set aside and the case is remanded for further proceedings consistent with the opinion of the Board.

Dated, Washington, DC
November 21, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member