

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DALLIE E. GODWIN and DEPARTMENT OF THE ARMY,
McALESTER ARMY AMMUNITION PLANT, McAlester, OK

*Docket No. 03-1483; Submitted on the Record;
Issued November 6, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability beginning December 21, 1996 causally related to his May 13, 1991, employment injury.

This case has previously been before the Board.¹ By decision dated August 14, 1998, the Board affirmed the Office of Workers' Compensation Programs' decisions dated August 18, 1995 and January 4, April 2, May 15 and June 11, 1996 which found that appellant failed to establish a recurrence of disability on or after June 14, 1995 and on or after October 7, 1995 causally related to an accepted May 13, 1991 employment injury. The facts of the case contained in the Board's prior decision are incorporated herein by reference.

The record reflects that appellant returned to full-time work in a light-duty position as a mobile equipment dispatcher on December 10, 1996 after being off work since October 1995.² On December 18, 1996 appellant filed a recurrence of disability claim alleging that the pain in his back and neck had increased. Appellant worked from December 10, 1996 intermittently until January 16, 1997. He retired on disability retirement from Office of Personnel Management (OPM) effective May 29, 1997. Upon electing OPM annuity benefits in lieu of compensation benefits, the Office terminated payment of compensation for loss of wage-earning capacity effective August 17, 1997.

¹ Docket No. 96-2292 (issued August 14, 1998); *petition for recon. denied* (issued September 13, 1999).

² In a September 23, 1994 decision, the Office had determined that appellant's actual earnings in the position of mobile equipment dispatcher represented his wage-earning capacity. Prior to this, appellant worked full time from July 18, 1994 to June 14, 1995.

Appellant submitted multiple claims for recurrence of disability and claims for compensation for wage loss beginning December 21, 1996.³

In support of his claims, appellant submitted various medical reports noting his status. Many of these reports were either previously of record or did not specifically discuss whether appellant was totally disabled beginning December 21, 1996 as a result of his accepted employment injuries.

In a July 25, 2000 report, Dr. Gary David Casper, a Board-certified orthopedic surgeon, noted his examination findings and diagnosed severe degenerative disc disease with notable instability at L3-4, L4-5 and L5-S1; sciatica secondary to foraminal stenosis and disc protrusion at the above levels; status post open ankle fracture with repair; status post soft tissue injuries involving the right buttock and the left medial thigh status post repair; depression as per records; hyperlipidemia; and chronic lumbar strain syndrome. Dr. Casper opined that the May 13, 1991 accident exacerbated the preexisting osteophyte formation at L4-5 and that the subsequent increased osteophyte formation and significant degenerative changes are related to the May 13, 1991 injury. He further opined that appellant had severe limitation of motion about his lumbar spine and stated that prolonged sitting would aggravate appellant's back condition and that appellant was permanently disabled from any job requiring any stooping, kneeling, sitting, squatting, bending or prolonged sitting.⁴

In a June 2, 2001 report, Dr. David Lee Trent, a general surgeon, concurred with Dr. Casper's opinion. He stated that Dr. Casper considered all the facts and came to the obvious conclusion that blunt force trauma to soft tissues of the lumbar spine aggravate the disc. Dr. Trent stated that appellant's strain of the lumbar vertebra compressed the disc accelerating the loss of water content compatible with desiccation and degeneration, as per his medical records and that it was evident that appellant's traumatic injury of May 13, 1991 exceeded the design limits of the architectural formation of the lumbar spine. He noted that this was how his degenerative disc disease, sciatica, painful disc syndrome, nerve root entrapment, etc., were causally related to his traumatic injury. Dr. Trent further opined that appellant's employment injury worsened his preexisting osteophyte at L4-5.

In an August 10, 2001 report, Dr. Trent noted that in December 1996 appellant returned to work and was placed in his same job. He asserted that appellant's workstation was not properly modified for several weeks after he returned to work. Dr. Trent opined that appellant's job did not sufficiently accommodate his physical restrictions. Dr. Trent diagnosed chronic lumbar strain syndrome with severe degenerative disc disease with sciatica; foraminal stenosis and disc protrusion at L3-4, L4-5 and L5-S1; ankle fracture, post repaired; soft tissue injury

³ On October 4, 1999 appellant filed a claim alleging that the degenerative disc disease in his spine and his disc syndrome were caused by his mobile equipment dispatcher duties. By decision dated January 18, 2000, the Office denied the claim, finding that the medical evidence was insufficient to establish causal relationship. This was filed under claim number 160344475. This file was subsequently doubled into the current file relating to the May 13, 1991 traumatic injury, which has file number 160191307.

⁴ Follow-up orthopedic reports from Dr. Casper dated August 31 and December 8, 2000, March 16, April 3, June 12, August 2 and December 4, 2001 and January 29, 2002 were also received, but did not specifically discuss the causal relationship between the claimed disability beginning December 21, 1996 and the accepted conditions.

involving the right buttocks and left medial thigh, post repair. He advised that appellant had a preexisting osteophyte formation at L4-5 which was aggravated by strain and increased as a result of appellant's work injury. Dr. Trent further stated that, since the above and below osteophytes were not preexisting and they showed significant degenerative changes with osteophytes, they were also aggravated by appellant's work injury. He opined that the degenerative disc disease caused a loss of function of appellant's lumbar spine which disabled him from any form of manual labor. Dr. Trent concluded that appellant's work injury of May 13, 1991 caused degenerative disc disease, sciatica and nerve root compression.

In an April 2, 2002 report, Dr. Trent reiterated his belief that appellant should not have worked as a mobile equipment dispatcher. Dr. Trent stated that appellant could not stand at a desk in an office environment and not bend at the waist in order to perform the listed duties of a mobile equipment dispatcher. He noted that, based on appellant's abnormal walk pattern, if appellant were to walk too far, more strain on the left side of his body would reaggregate his work-related injury of May 13, 1991. He stated that appellant was basically limited to sitting while performing his duties. Dr. Trent advised that the sitting position was stressful on the lumbar area because there was no support from the legs. He stated that appellant had several incidents of aggravations following his return to work and reiterated that appellant was totally disabled from any employment due to his work-related injury. Dr. Trent submitted additional similar reports regarding appellant's condition.

By decision dated January 30, 2001, the Office denied appellant's claim for a recurrence of total disability in May 1997 due to the May 13, 1991 work injury. The Office also found that appellant had not met his burden of proof to show that his wage-earning capacity decision should be modified or that his injury-related condition had worsened.

Appellant requested a review of the written record. By decision dated May 14, 2001, a hearing representative found that there was no basis for modifying the September 23, 1994 loss of wage-earning capacity decision. The hearing representative also found that appellant did not establish a recurrence of total disability beginning December 21, 1996.

Appellant filed additional requests for reconsideration and submitted additional medical reports in support of his requests. The employing establishment also submitted evidence indicating that appellant was afforded flexibility in his light-duty job to conform with his activity restrictions. By decisions dated June 28 and November 5, 2001, July 31 and October 29, 2002 and March 3, 2003, the Office denied modification of its decision denying appellant's claim for a recurrence of total disability beginning December 21, 1996.

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability beginning December 21, 1996 causally related to his May 13, 1991 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.⁵ 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.⁶

The Office accepted that appellant sustained a crushing injury to the left ankle and a low back strain on May 13, 1991. Following this injury, appellant was eventually placed in a modified position of mobile equipment dispatcher with prescribed work restrictions, which the Office found represented appellant's loss of wage-earning capacity in its September 23, 1994 decision.⁷ Appellant asserted that his injury-related back condition worsened and caused total disability beginning December 21, 1996.

The medical evidence is insufficient to establish appellant's claim for a recurrence of total disability beginning December 21, 1996 as this evidence either does not address how appellant's employment injury caused total disability or it does not provide a rationalized medical opinion specifically addressing the period beginning December 21, 1996.⁸ For example, while Dr. Casper opined that the May 13, 1991 injury exacerbated the preexisting osteophyte formation at L4-5, he did not explain why either of appellant's accepted conditions, a crush injury to the left ankle and a low back strain, would result in total disability for the period beginning December 21, 1996. The Office has not accepted any other diagnosed conditions and, thus, appellant bears the burden of proof to establish that these conditions are employment related.⁹

Likewise, Dr. Trent's reports either do not address the relevant period for which a recurrence of disability is claimed or the physician does not explain how and why the accepted conditions caused a recurrence of total disability. Dr. Trent submitted several reports asserting that appellant's degenerative low back condition was caused or aggravated by appellant's employment as a mobile equipment dispatcher. However, he did not specifically address how a recurrence of total disability resulted from either of the accepted conditions beginning December 21, 1996. Instead, Dr. Trent explains how appellant's employment may have caused

⁵ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁶ *Glenn Robertson*, 48 ECAB 344, 352 (1997).

⁷ In its decisions of January 30 and May 14, 2001, the Office found that appellant failed to meet his burden of proof to modify the loss of wage-earning capacity decision of September 23, 1994. The Board does not have jurisdiction over these decisions as appellant's appeal, filed on May 23, 2003, was not filed within one year of issuance of those decisions. The March 3, 2003, October 29 and July 31, 2002 Office decisions, over which the Board has jurisdiction, do not address this issue. Consequently, the Board does not have jurisdiction to review whether appellant met his burden of proof in establishing that his wage-earning capacity decision should be modified. *See* 20 C.F.R. § 501.3(d).

⁸ *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁹ An employee has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence. *Derrick C. Miller*, 54 ECAB ____ (Docket No. 02-140, issued December 23, 2002). The Office decisions over which the Board has jurisdiction do not adjudicate whether appellant has met his burden of proof in establishing whether other medical conditions may be employment related. Consequently, the Board does not have jurisdiction over such in the present appeal. *See* 20 C.F.R. § 501.2(c).

or aggravated conditions that have not been accepted as being employment related. His opinion is also of limited probative value to the extent that he primarily bases his opinion on appellant's assertions and complaints regarding working conditions.¹⁰ The Board has held that medical reports based on inadequate data concerning work conditions are of diminished probative value.¹¹

Consequently, appellant has not shown a change in the nature and extent of the injury-related condition.

Appellant has also not established a change in the nature and extent of his light-duty requirements. Although appellant has alleged that, the employing establishment required him to work outside of his work restrictions, the evidence does not support this. Instead, evidence from the employing establishment indicates that appellant was allowed flexibility to perform his duties and that his duties were modified as necessary to conform to his restrictions. The record also does not support appellant's assertion that the employing establishment withdrew the limited-duty position and forced him to retire in 1997. Instead, the record reveals that, after appellant stopped working on January 16, 1997, appellant's limited-duty position remained available until appellant applied for retirement.

Accordingly, appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability beginning December 21, 1996 causally related to his accepted May 13, 1991 employment injury.

¹⁰ See *Laurie S. Swanson*, 53 ECAB ____ (Docket Nos. 01-1406 & 02-765, issued May 2, 2002) (where a physician's report does not indicate an objective worsening of a claimant's condition, and the physician's statements regarding a claimant's ability to work consist primarily of a repetition of the claimant's complaints, this is not a basis for payment of compensation).

¹¹ *Michael J. Uhrain*, 8 ECAB 360, 362 (1955).

The decisions of the Office of Workers' Compensation Programs dated March 3, 2003, October 29 and July 31, 2002 are hereby affirmed.

Dated, Washington, DC
November 6, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member