

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN M. CULLINAN and U.S. POSTAL SERVICE,
POST OFFICE, Capital Heights, MD

*Docket No. 03-1996; Submitted on the Record;
Issued November 13, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant had disability after December 16, 1993 causally related to his September 29, 1993 accepted work injury.

On September 29, 1993 appellant, then a 44-year-old mechanic's helper, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that he injured his back and right knee when he slipped on a floor mat while walking up stairs. X-rays taken on the date of injury were normal with minimal osteophyte anterior foundation in the lower lumbar area and some disc space narrowing at the C5-6 levels. In a September 30, 1993 report, Dr. David Boetcher, a family practitioner, noted that appellant presented with a tender sacroiliac joint with muscle spasms in his back. He diagnosed a lumbar strain.

In an October 5, 1993 report, Dr. Benedicto Garin diagnosed a neck sprain that was being treated with aspirin for pain, a right knee contusion that was resolved and sprain of the sacroiliac. In an October 6, 1993 report, Dr. Boetcher indicated that appellant could return to light-duty work. In a December 23, 1993 decision, the Office accepted the claim for right knee contusion and lumbar and cervical strains, but also found that any work-related disability ceased as of October 5, 1993. Appellant remained off work until December 19, 1993, when he returned to light duty four hours a day. In a July 10, 1995 report, Dr. Joel L. Falik wrote that, in reviewing appellant's medical history, a magnetic resonance imaging (MRI) scan taken on October 20, 1993 was indicative of a central and left-sided disc herniation at the L5-S1 level with no exiting nerve root or cauda equine.¹

¹ On July 21, 1993 appellant filed a claim for an aggravation of an asthmatic condition that was accepted on June 13, 1994. On June 30, 1997 he filed a stress claim that was denied. The record contains medical reports indicating that appellant suffered from emotional conditions, including major depression post-traumatic stress syndrome from September 1995 onward.

This case has been before the Board previously. In a March 26, 1999 decision, the Board remanded the case to clarify if appellant sustained a herniated disc and the periods of his disability.²

In a July 6, 1999 letter, the Office of Workers' Compensation Programs referred appellant for a second opinion medical examination. In an August 16, 1999 report, Dr. James Kunec, an orthopedic surgeon, noted that appellant presented with no real back pain or problems, but did report intermittent numbness in his right leg following activities or standing for any length of time. He noted that appellant walked with a normal gait and had a full range of motion in his lower back. Appellant was able to touch his toes and had intact sensation and motor strength in both legs. Dr. Kunec diagnosed lumbar radiculitis and indicated if appellant's leg symptoms worsened he would then recommend another MRI scan.

In a September 2, 1999 decision, the Office accepted the claim for right leg radiculopathy and informed appellant that he should submit appropriate forms and medical documentation for benefits. In an August 18, 2000 letter, the Office indicated that appellant was to be compensated for leave used between November 16 and December 16, 1993.

On March 7, 2001 appellant submitted a claim for compensation (Form CA-7), requesting wage-loss compensation from September 29, 1993 to the present. In a March 12, 2001 letter, the Office informed appellant in order to consider his wage-loss claim he needed to submit appropriate medical documentation establishing disability for that period. No further evidence was received.

In an April 18, 2001 decision, the Office noted that appellant had been paid for wage loss from the date of his injury through December 16, 1993, but denied additional wage-loss compensation after that date.

In a February 11, 2002 letter, appellant requested reconsideration and submitted a July 10, 2001 report from Dr. Falik, who stated that he last saw appellant in 1994 for an apparent herniated disc, lumbar disc disease with low back and right leg pain. He indicated that appellant continued to experience back and leg pain when he stood or walked any distance. On examination he reported a full range of motion and no tenderness or spasm in the low back. The straight leg raising test was negative and the sensory, motor and reflex examinations in the lower extremities were normal. Dr. Falik concluded that appellant continued to suffer from his lumbar disc disease.

In a December 9, 2001 report, Dr. Patrick Sheehan, Board-certified in psychiatry, discussed appellant's emotional condition and diagnosed depression. He noted that within a reasonable degree of medical certainty, appellant's major depressive disorder, panic disorder and agoraphobia were caused by the stress at his job for repeated illnesses and the work environment, including contaminated water that appellant worked with that aggravated his asthmatic condition and retaliation he was subject to after filing safety complaints.

² Docket No. 96-1749 (issued March 26, 1999).

The Office referred the medical evidence to the district medical adviser. In an April 18, 2003 report, the district medical adviser noted that appellant's back condition had resolved and there was no rationalized medical evidence to support further disability.

In a May 9, 2003 decision, the Office denied modification of its April 18, 2001 denial of wage-loss compensation for the period after December 16, 1993.

The Board finds that appellant has not met his burden of proof to establish wage-loss compensation subsequent to December 16, 1993.

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

In the present case, appellant has not submitted sufficient medical evidence to establish that he was disabled after December 16, 1993 due to his work-related conditions of lumbar and cervical strain, right knee contusion and right leg radiculitis.

In a March 12, 2001 letter, the Office informed appellant that he must submit appropriate medical documentation establishing disability for any period of wage loss he was claiming. Appellant submitted a July 10, 2001 report from Dr. Falik, who stated that appellant continued to experience back and leg pain when he stood or walked any distance and concluded that appellant continued to have symptoms from his lumbar disc disease. This report does not attribute appellant's condition to work factors or explain why the accepted conditions, including a lumbar and cervical sprain, had not resolved eight years later. Moreover, this report does not discuss specifically whether appellant was disabled after December 16, 1993. His claim was not accepted for lumbar disc disease and the report of Dr. Falik fails to provide any opinion explaining how the accepted condition caused or contributed to his lumbar disc disease or contributed to disability on or after December 16, 1993. Appellant's claim was not accepted for lumbar disc disease and the report of Dr. Falik fails to provide any opinion explaining how the

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

accepted conditions caused or contributed to his lumbar disc disease or contributed to disability on or after December 16, 1993.

The only other medical report appellant submitted was from Dr. Sheehan. In his December 9, 2001 report, Dr. Sheehan does not discuss appellant's accepted back condition on or after December 16, 1993 and he attributes appellant's medical conditions to factors unrelated to the accepted condition. As these medical reports are insufficient to establish disability after December 16, 1993, appellant has not met his burden of proof.

The decision of the Office of Workers' Compensation Programs dated May 9, 2003 is affirmed.

Dated, Washington, DC
November 13, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member