U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEONEL BARREIRO and U.S. POSTAL SERVICE,
POST OFFICE, San Antonio, TX

Docket No. 03-1693; Submitted on the Record;
Issued October 2, 2003

DECISION and ORDER

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

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of total disability beginning July 14, 2002 due to his February 11, 1988 accepted employment injuries.

On February 16, 1988 appellant, then a 38-year-old distribution clerk filed a notice of traumatic injury alleging that on February 11, 1988 he injured his left shoulder while moving a cart of mail and lifting and throwing catalogs.[1] The Office of Workers' Compensation Programs accepted the claim for left shoulder and arm sprain, left rotator cuff repair, sprain of ribs and chest pain.

Appellant returned to work and worked until June 6, 2001 when he claimed he stopped work due to a worsening of shortness of breath and chest pain. Appellant claimed that he had been suffering from shortness of breath since his work-related injury in 1988.

Appellant filed several claims for compensation (Form CA-7) claiming compensation for leave without pay (LWOP) from June 3 to 30, 2001 and from July 1 to October 20, 2001. He claimed that he was off work during these periods for "pain management."

By letter dated August 16, 2001, the Office informed appellant that he should file a notice of recurrence of disability (Form CA-2a) and submit a medical narrative report from his physician explaining the objective findings and why he could no longer perform the duties he was performing when he stopped work.

In a report dated August 27, 2001, Dr. Joe G. Gonzales, Board-certified in physical medicine and rehabilitation, stated that as a direct result of appellant's work injury he has chronic left shoulder pain with degenerative changes, rotator cuff syndrome and left chest wall pain,

[1] Appellant actually claimed that he aggravated an injury sustained in 1987.

presumably from rib injuries, and that over the last several months he had become less tolerant of his work activities. He stated: "The most concerning symptom that [appellant] is currently manifesting is that of shortness of breath which is apparently present with even the slightest exertion. This is the main reason he was taken out of work as his tolerance has continued to decline." In an attending physician's report dated November 15, 2001, Dr. Gonzales stated that appellant was totally disabled from July 29 through August 25, 2001 and noted that he was scheduled to see a pulmonary specialist for his condition.

By letter dated February 1, 2002, the Office requested that appellant's new treating physician, Dr. Michael M. Leonard, Board-certified in physical medicine and rehabilitation, provide a current medical report on appellant's condition and answer to specific questions.

In a report dated March 1, 2002, Dr. Leonard indicated that appellant's chief complaint was tightness of the left arm. He diagnosed:

> "Left shoulder pain with limited range of motion bilaterally at the shoulders with [acromion] joint tenderness, status postsurgical repair, chest wall discomfort associated with decreased inspiration and expiration, possibly associated with pulmonary restrictive lung disease, associated with patient's previous rib fractures, hyperkalemia, elevated alkaphosphatase, rule out liver function abnormality."

Dr. Leonard stated that appellant had a history of left arm tightness after lifting and throwing catalogs while working for the post office and that his arm would "freeze up" with the inability to move due to pain. He noted that appellant had been treated with Toradol injections once a month, which he felt helped his pain, but was told by another physician to discontinue its use. Under "review of systems" Dr. Leonard stated that appellant was positive for shortness of breath on walking several blocks and going up a flight of stairs, as well as swelling of the hands and feet, had a loss of sensation of the hands and feet and tiredness for no apparent reason.[2]

In an attending physician's report dated March 13, 2002, Dr. Gonzales stated that appellant was totally disabled beginning June 2001 and checked "yes" that the condition was caused or aggravated by his employment. He stated that appellant was being treated for shortness of breath and pain management.

In a report dated August 2, 2002, Board-certified internist, Dr. Luis F. Arango, indicated that he had been treating appellant for the past two months for chest pain and shortness of breath. He noted that appellant was unable to expand his chest and sometimes had shortness of breath while sitting or lying down. He noted that appellant had chest pain around the left fourth rib. He stated: "My impression is shortness of breath, questionable congestive heart failure, questionable unstable angina and history of fractured ribs." He continued:

> "My main concern at this time is that [appellant] might possibly have coronary artery disease. He was given orders to be admitted to the hospital for heart

[2] By report dated June 6, 2002, Dr. Leonard stated that appellant could work 8 hours per day with restrictions of no climbing, no reaching above the shoulder and lifting a maximum of 10 to 20 pounds.

catherization to know if the chest pain and shortness of breath has any cardiac etiology, he did not show up to the testing. At this time we are still unable to perform this test. It is my professional opinion that [appellant] is not able to work at this time until further noted."

On June 18, 2002 the employing establishment offered appellant a limited-duty position as a modified distribution clerk and appellant accepted the position on June 28, 2002. Appellant did not return to work.

By report dated August 8, 2002, Dr. Arango stated that appellant could return to work if he performed modified duties and stated that he would no longer be treating appellant since he refused any type of medical evaluation or treatment and did not undergo a heart catherization as ordered to determine the cause of his condition.

By letter dated August 13, 2002, the Office informed appellant that he was to report back to limited-duty work effective August 15, 2002 and that failure to report may result in disciplinary action. Appellant claimed that he could not return to work due to his shortness of breath. He also claimed that he did not have chest pain.[3] The employing establishment terminated appellant effective December 13, 2002 for failure to follow instructions resulting in absence without leave (AWOL). The employing establishment noted that appellant did not return to work on August 15, 2002 as required and failed to substantiate his unscheduled sick leave absence with acceptable medical documentation.

Appellant filed a claim for compensation (Form CA-7) claiming that he was totally disabled beginning July 14 to December 16, 2002. Appellant's supervisor indicated on the form that appellant refused to return to work even though he was cleared to return to work on August 8, 2002 and had submitted no medical evidence to support his continued absence.

The Office requested that appellant provide current medical evidence within 30 days to establish that his complaints of chest pain and shortness of breath were related to the accepted conditions.

By decision dated February 10, 2003, the Office denied appellant's claim for leave without pay for the period July 14, 2002 to February 10, 2003 since the evidence did not establish that appellant's claimed conditions of shortness of breath and chest pain resulted from the accepted work injuries.

Appellant disagreed with the decision and requested reconsideration. In support he submitted a personal statement and a January 7, 2003 report from Dr. Gonzales. Appellant

[3] Appellant's employing establishment alleged that appellant was trying to avoid going back to work and was refusing to get medical testing and treatment. The record indicates that appellant moved 245 miles away from his work site and then complained to his supervisor that he had to drive 245 miles to work.

claimed that his shortness of breath was not related to a heart condition and that his physicians had all indicated that his heart was normal. In his report, Dr. Gonzales stated:

> "[Appellant] has asked that I respond to opinions which have been expressed regarding 'heart problems.' It is my professional opinion that he does not have any cardiac condition, which has resulted in his inability to work at the post office; rather it has been shortness of breath, which has resulted from chronic chest wall pain, which has made him intolerant of the work activities at the [employing establishment]."

By decision dated June 3, 2003, the Office denied appellant's request finding that the evidence submitted was insufficient to warrant modification of the previous decision, since it did not explain how appellant's shortness of breath and disability beginning July 14, 2002 was related to the February 11, 1998 employment injury.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability beginning July 14, 2002 due to his February 11, 1988 employment injuries.

An individual 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 compensation is claimed is causally related to the accepted injury.[4] This burden includes the necessity of furnishing 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 rationale.[5] Where no such rationale is present, medical evidence is of diminished probative value.[6]

In this case, appellant's February 11, 1988 traumatic injury claim was accepted for left shoulder and arm sprain, left rotator cuff repair, sprain of the ribs and chest pain. Appellant claims more than 14 years later that he was totally disabled beginning July 14, 2002 due to shortness of breath and is entitled to compensation for LWOP. It is appellant's burden to establish a causal relationship between his condition and the accepted work injuries by submitting rationalized medical evidence. Appellant has not met his burden of proof in this case.

The Board has reviewed the medical evidence of record and finds that it does not contain a proper diagnosis relating to appellant's shortness of breath. Shortness of breath is a symptom of a condition and is not a diagnosis. Appellant's physician Dr. Arango, a Board-certified internist, indicated that he was unable to determine the cause of appellant's condition since medical evaluation or treatment. Dr. Arango ordered a heart catherization to determine whether appellant's chest pain and shortness of breath had any cardiac etiology, as Dr. Arango had suspected possible coronary artery disease. However, appellant did not undergo the testing and

[4] *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

[5] *Mary S. Brock*, 40 ECAB 461, 471-72 (1989).

[6] *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

Dr. Arango was unable to determine the cause of appellant's condition. Appellant claimed that he did not undergo the procedure and other testing because his insurance company would not pay for the treatment.

Dr. Gonzales, an attending physician Board-certified in physical medicine and rehabilitation, opined that appellant's shortness of breath was not related to a cardiac condition and stated that it was the result of chronic chest wall pain. Appellant's physicians were unable to determine the exact cause of appellant's shortness of breath and the record does not contain a proper diagnosis for the condition for which appellant is claiming compensation.

The Board notes that appellant was cleared to return to work on June 6, 2002 by Dr. Leonard, an attending physician Board-certified in physical medicine and rehabilitation, thus dispelling his allegation that he was totally disabled for work. Dr. Leonard found that appellant could work 8 hours per day with restrictions of no climbing, no reaching above the shoulder and lifting a maximum of 10 to 20 pounds. Based on Dr. Leonard's release, the employing establishment offered appellant a modified-duty position, which appellant accepted on June 28, 2002. Dr. Arango also found in his August 8, 2002 report that appellant could return to work if he performed modified duties.

Appellant did submit various medical reports from physicians indicating that he was totally disabled for work, however, many of these reports are dated prior to the July 14, 2002 alleged recurrence of disability and therefore have little probative value in establishing disability. For example, Dr. Gonzales indicated in an attending physician's report that appellant was totally disabled for work beginning June 2001 and July 2001 due to shortness of breath and chest pain.[7] Reports dated prior to the alleged incident have little probative value.

Further, Dr. Arango stated in his August 2, 2002 report that appellant was "not able to work at this time until further noted" but was unable to provide an explanation for appellant's disability since appellant had not undergone the required testing. He stated that he thought that appellant might possibly have coronary artery disease but was unable to determine the cause of his condition. Dr. Arango's opinion that appellant was totally disabled for work has little probative value because the report is incomplete and does not explain the reason for appellant's inability to work.

Appellant also did not meet his burden since he did not submit a physician's rationalized medical opinion establishing a causal relationship between his shortness of breath and the accepted employment injuries. There is no medical opinion in the record relating appellant's claimed disability starting in July 2002 to his accepted work injuries of left shoulder and arm sprain, sprain of the ribs and chest pain. It is especially important in this case to establish a causal connection between appellant's current condition and the accepted employment conditions, since appellant is claiming a recurrence of disability more than 14 years after the original injury. There is no medical evidence in the record relating appellant's shortness of breath to the 1988 accepted work injuries.

[7] Dr. Gonzales checked "yes" that appellant's condition was caused or aggravated by his employment.

It is appellant's burden to establish a causal connection between his claimed condition and the 1988 accepted work injuries by submitting rationalized medical evidence. Since appellant did not submit a rationalized medical opinion report linking his current condition to the accepted work injuries, he did not meet his burden of proof in this case. The Board finds that the Office properly denied his claim for recurrence of disability beginning July 14, 2002.[8]

The June 3 and February 10, 2003 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 2, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[8] By letter dated April 24, 2003, appellant stated that he was filing a claim for a consequential injury to the damage caused by the long term use of the drug Toradol, which was used to treat his shortness of breath. However, the record does not contain a final decision of the Office concerning this matter and, therefore, the matter is not currently before the Board; *see* 20 C.F.R. § 501.2(c).