United States Department of Labor
Employees' Compensation Appeals Board

BOBBY SANDERS, Appellant	)	
	)	**Docket No. 04-1492**
and	)	**Issued: December 3, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Jersey City, NJ, Employer	)	

Appearances:
James D. Muirhead, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 17, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 19, 2004 which denied appellant's claim of a recurrence of disability causally related to his accepted injury of May 4, 1987. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on August 28, 2001 causally related to the accepted employment injury of May 4, 1987.

FACTUAL HISTORY

On May 5, 1987 appellant, then a 38-year-old fork lift operator, filed a claim for traumatic injury alleging that on May 4, 1987 he was lifting a container and injured his back. The Office accepted that he sustained a lumbosacral strain and paid appropriate compensation.

Appellant stopped work on May 4, 1987 and returned to a limited-duty position on June 24, 1987 and to full duty on September 28, 1987.

Appellant came under the care of Dr. Nathan Doctry, Board-certified in internal medicine, who treated appellant from May 6, 1987 to January 22, 1988. He diagnosed severe lumbar sprain and facet joint syndrome. The physician advised that appellant could return to light-duty work on June 24, 1987 and to full-time regular duty on September 28, 1987. Thereafter, appellant was treated by Dr. Magdy Elamir, a Board-certified internist, from March 4, 1988 to June 23, 1989, who diagnosed severe lumbar strain and radiculopathy. He continued to work regular duty until August 28, 2001, when he stopped due to an increase in symptomology of back pain and radiculopathy.

On December 11, 2002 appellant filed a Form CA-2a, notice of recurrence of disability. He indicated that he experienced a recurrence of low back pain and radiculopathy on August 28, 2001 causally related to his accepted work injury. On June 17, 2002 he returned to a light-duty position for four hours per day.

By letter dated January 30, 2003, the Office requested detailed factual and medical evidence from appellant, stating that the information submitted was insufficient to establish that he sustained a recurrence on August 28, 2001.

In support of his claim for recurrence, appellant submitted a statement which indicated that on August 28, 2001 he was working his regular job when he experienced increased symptoms of back pain and numbness in his legs. He stopped work and sought treatment and thereafter returned to a light-duty job on June 17, 2002. Appellant submitted a report from Dr. Robert Mazza, a chiropractor, dated February 14, 2003, who treated appellant from 1998 to 2002 for chronic lumbar sacral radiculitis and chronic cervical radiculitis. He noted a history of injury in May 1987 and indicated that since that time appellant experienced recurring episodes of pain, loss of function and muscle spasm. Dr. Mazza opined that these symptoms appeared to be causally related to the injury of May 4, 1987 due to the appearance of radicular pain in 1987 and in 2003. He advised that appellant was totally disabled from August 2001 to June 2002 and at that time could return to a light-duty job for four hours per day. An x-ray of the lumbar spine dated March 4, 2002 revealed degenerative disc disease at L4-5. A magnetic resonance imaging (MRI) scan dated March 11, 2002 revealed mild spinal stenosis at L4-5 secondary to degenerative disc disease with bulging disc, thickening of the ligamentum flavim bilaterally and a small lateral bulging disc at L3-4. Also submitted was an unsigned note dated March 19, 2003 which indicated that appellant was treated for back pain and stiffness in the neck.

In a decision dated April 10, 2003, the Office denied appellant's claim for recurrence of disability commencing August 28, 2001.

By letter dated March 29, 2004, appellant requested reconsideration of the April 10, 2003 decision and submitted additional medical evidence. In a report dated May 19, 2003, Dr. Mazza noted that x-rays performed on March 4, 2002 revealed a narrowing of the disc space at L4-5 and L3-4 and diagnosed a subluxation at L3, L4 and L5. Other unsigned medical notes from September 22, 2003, February 18 and March 10, 2004 noted continued treatment for neck and back pain with physical findings of neck stiffness, radiation into the upper and lower extremities.

In a merit decision dated April 19, 2004, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision.

LEGAL PRECEDENT

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[1] This burden includes the necessity of furnishing evidence from a qualified 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.[2] Moreover, the physician's conclusion must be supported by sound medical reasoning.[3]

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[4] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[5] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[6]

ANALYSIS

The Office accepted that appellant sustained a lumbosacral sprain on May 4, 1987. The Board finds that the record lacks a well-reasoned medical narrative from his physicians relating appellant's recurrent back condition, beginning August 28, 2001, to his accepted employment injury.

The only medical evidence supporting appellant's claim is the reports of Dr. Mazza, a chiropractor.

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[1] *Robert H. St. Onge,* 43 ECAB 1169 (1992).

[2] Section 10.104(a)-(b) of the Code of Federal Regulations provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The physicians report should include the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions, and the prognosis. 20 C.F.R. § 10.104.

[3] *See Robert H. St. Onge, supra* note 1.

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship,* Chapter 2.805.2 (June 1995).

[5] For the importance of bridging information in establishing a claim for a recurrence of disability, *see Robert H. St. Onge, supra* note 1; *Shirloyn J. Holmes,* 39 ECAB 938 (1988); *Richard McBride,* 37 ECAB 748 (1986).

[6] *See Ricky S. Storms,* 52 ECAB 349 (2001); *Morris Scanlon,* 11 ECAB 384, 385 (1960).

Section 8101(2) of the Federal Employees' Compensation Act provides:

> "(2) 'Physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary."[7]

In his report of May 19, 2003, Dr. Mazza noted that x-rays performed on March 4, 2002 revealed a narrowing of the disc space at L4-5 and L3-4 and diagnosed a subluxation at L3, L4 and L5. Dr. Mazza is a physician within the meaning of the Act on March 14, 2002, the date he interpreted x-rays as demonstrating subluxations of appellant's spine.[8] However, the Board notes that although Dr. Mazza was a physician under the Act, his opinion on causal relationship is of diminished probative value because the March 14, 2002 x-rays on which he based his subluxation diagnosis were taken nearly 15 years after the injury of May 4, 1987.[9] The greater the delay between the claimed injury and diagnostic testing, the greater the likelihood that an intervening event not mentioned by the employee has worsened the injury claimed or has caused the condition for which the employee seeks compensation. When the delay becomes so significant that it calls into question the validity of an affirmative opinion based at least in part on that testing, such a delay diminishes the probative value of the opinion offered.[10] In this case, the passage of about 15 years between the date of the alleged injury and the date of diagnostic testing raises a question regarding the origin of the condition documented by that testing and diminishes the probative value of the opinion offered.

The Board notes that other reports from Dr. Mazza, including notes dated February 14, 2003 advised that he treated appellant from 1995 to 2002 for chronic lumbar sacral radiculitis and chronic cervical radiculitis. However, the Board notes that the opinion of Dr. Mazza with regard to the conditions of lumbosacral and cervical radiculitis go beyond any diagnosis of subluxation of L3-5. As medical opinion, in general, can only be given by a qualified physician[11] and since the Board recognizes chiropractors as physicians only to the extent of treating spinal subluxations based on x-ray a chiropractor is not competent to address other conditions.[12] The Board has held chiropractic opinions to be of no probative medical value on

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[7] *See* 5 U.S.C. § 8101(2).

[8] The Board has recognized Office regulations that allow a chiropractor to interpret x-rays with respect to existence of subluxation. *Roddy D. Riggs*, 34 ECAB 1664 (1983).

[9] *See Linda L. Mendenhall*, 41 ECAB 532 (1990); *see also Mary J. Briggs*, 37 ECAB 578, 581 (1986).

[10] *See id.*

[11] *See George E. Williams*, (44 ECAB 530) (1993); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949); *Donald J. Miletta*, 34 ECAB 1822 (1983) (medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history of the employee whose claim is being considered).

[12] *See* 5 U.S.C. § 8101(2)-(3). *See also George E. Williams*, 44 ECAB 530 (1993).

conditions beyond the spine.[13] Therefore, the Board finds that the opinions of Dr. Mazza, a chiropractor, with respect to the conditions of lumbosacral and cervical radiculitis, under the circumstances present here, do not constitute competent medical evidence to support a claim for compensation.

Also submitted were several unsigned reports dated March 19 and September 22, 2003, February 18 and March 10, 2004, which indicate that appellant was treated for back pain and stiffness in the neck and noted positive physical findings upon examination. However, the Board has consistently held that unsigned medical reports are of no probative value.[14] Therefore, these reports are insufficient to meet appellant's burden of proof.

Other diagnostic reports submitted by appellant, including an x-ray of the lumbar spine dated March 4, 2002 and an MRI scan dated March 11, 2002 did not specifically address causal relationship between appellant's accepted condition and his claimed recurrence of disability or conditions and therefore have little probative value.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability or a medical condition beginning August 28, 2001 causally related to his accepted employment-related injury in May 4, 1987.

[13] *George E. Williams*, *supra* note 12.

[14] *See Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT April 19, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 3, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member