United States Department of Labor
Employees' Compensation Appeals Board

JOHN K. LUDWICK, Appellant	)	
and	)	**Docket No. 05-13**
	)	**Issued: April 6, 2005**
U. S. POSTAL SERVICE,	)	
POST OFFICE, Cincinnati, OH,	)	
Employer	)	

Appearances:
John K. Ludwick, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On September 18, 2004 appellant filed a timely appeal from a September 22, 2003 merit decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the denial of his recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability causally related to his accepted July 28, 1997 employment injury.

FACTUAL HISTORY

On July 28, 1997 appellant, then a 54-year-old rural mail carrier, filed a traumatic injury claim alleging that on that date he sustained injuries to his neck and shoulder when his postal

vehicle was rear-ended by a pick up truck as he was delivering mail in the performance of duty.[1] Appellant returned to full duty on September 2, 1997.[2]

Appellant submitted a July 30, 1997 report in which Dr. Paul W. Terrell, an attending Board-certified family practitioner, advised that appellant could not lift or bend and was only able to perform sit down duties. He also provided treatment notes from Dr. Terrell dating from July 8, 1997, who treated appellant for a nonwork-related sprain of the left ankle. Dr. Terrell treated appellant for his July 28, 1997 employment injury and diagnosed sprain of the right shoulder, contusion of the right knee and sprain of the neck.

Appellant also submitted treatment notes dating from July 6 to September 10, 1997 from Dr. Steven Smith, a chiropractor, who diagnosed right shoulder strain/sprain, cervical strain/sprain and a hyperflexion/hyperextension-type injury.

On November 18, 1997 the Office accepted the claim for right shoulder sprain, contusion of the right knee and cervical sprain.

By decision dated January 2, 1998, the Office denied continuation of pay for the period July 2 to September 2, 1997. The Office advised appellant that his absence beginning July 2, 1997 predated his July 28, 1997 employment injury.

On January 27, 2002 appellant filed a claim for a recurrence of disability. Appellant alleged that he had ongoing pain in his hip and knee which was aggravated by long periods of standing, riding and twisting on his route. In response to a question inquiring as to the date and hour of the claimed recurrence, appellant listed July 2001. In response to a question regarding the date he stopped work, appellant did not fill in a response, but rather indicated "limited days worked." Appellant described the circumstances surrounding the recurrence and noted that, on September 11 and December 30, 1998 and May 10, 2001, he was involved in on-the-job motor vehicle collisions, that were not his fault, and which compounded the stress and his physical condition began to "unravel." The employing establishment advised that appellant was on limited duty for a week following the original injury and returned to full duty; however, the employing establishment also indicated that appellant was currently not working.[3]

In a December 7, 2001 statement, appellant described the circumstances concerning his accepted employment injury of July 28, 1997 and alleged that he had taken various medications and sought various treatments. He explained that his shoulder had improved a great deal; however, his lower back and hip injury did not improve. Appellant noted that the treatments he

[1] The record reflects that appellant had a nonemployment-related injury on July 6, 1997, where he fell at a friend's house and twisted his left ankle.

[2] The employing establishment certified that appellant lost 26 days of work as a result of the motor vehicle accident. The employing establishment related that appellant's lost time began on July 29, 1997 and ended on September 2, 1997. The employing establishment also indicated that appellant was on limited duty for a week, and then returned to regular duty.

[3] The record reflects that appellant's claim was closed on January 2, 1998.

received provided a sort of "maintenance relief" but that extended periods of standing caused pain to his back and hip, which also caused numbness in his right leg. He alleged that this prevented him from driving for an extended period of time without having to stop and flex his knee and the pain made it difficult to get in and out of his car. Appellant alleged that a few months after the accident, he was again hit by another driver on the left front side of his vehicle. A short time later, he was returning to the employing establishment after delivering his route, when a customer backed from a parking place into the right side of his car in the employing establishment parking lot. Additionally, appellant indicated that he was again struck by another person who backed into his vehicle without looking. Appellant related that, he was without fault in these subsequent accidents; however, they jolted his back and caused him stress, as well as high blood pressure, because he was apprehensive on the road. He also explained that he ground his teeth at night due to the apprehension. Appellant indicated that, for the last two years, he was undergoing psychological counseling for stress and depression. In addition, he explained that he was now on several medications, whereas, prior to the work-related accident, he did not take any regular medication, nor did he have high blood pressure, heart or prostate problems.

Appellant also submitted a copy of the Highland County Emergency room record for July 28, 1997, and treatment notes from Dr. Terrell dated July 8, 1997 to April 12, 1999. Appellant also submitted reports from Dr. E. Gregory Fisher, a Board-certified orthopedic surgeon, dated September 22, 1998 to January 26, 1999. Additionally, he submitted reports from his chiropractors, Dr. Smith and Dr. William W. Easley,[4] and several physical therapy notes.

In his January 12, 1998 report, Dr. Terrell advised that appellant stopped by for a final check of the left foot and leg, which seemed to be "100 percent okay." Dr. Terrell noted that both knees were tender in the medial area and intermittently bothersome. He advised that appellant related that sitting at an angle in the seat of a car while working as a rural carrier probably aggravated his condition. In an April 12, 1999 report, Dr. Terrell indicated that appellant was concerned about his right shoulder as he was having discomfort, which could possibly be related to the accident of 1997. He advised that appellant did not have any problems prior to the event; however, he noted that appellant was having intermittent discomfort in the shoulder with repetitive motion when he extended his arm and reached to open mailboxes or lift. He also related appellant's concerns regarding his blood pressure which happened to coincide with his accident. However, Dr. Terrell, advised that it would not be unusual for a person appellant's age to have mild hypertension. He assessed "[p]robable chronic inflammation and/or strain of the right shoulder, again probably secondary to the 1997 event.

In a September 22, 1998 report, Dr. Fisher noted that appellant came in with a "new problem." Appellant related that he was having pain on the medial side of his right knee, noted particularly on prolonged sitting. The physician noted that x-rays of the knee were normal and injected the knee with cortisone. Dr. Fisher advised that appellant was seen on October 13, 1998 for follow up of the right knee, and advised that the pain on the medial side of the knee was less than it was, and again injected the knee. On January 26, 1999 Dr. Fisher advised that appellant complained of aches and pains in the knee, back and right shoulder, since the accident and posteriorly in the shoulders, whenever appellant did a lot of heavy lifting or pulling of

[4] None of these reports contained a diagnosis of a subluxation, demonstrated by an x-ray.

mailboxes, or sat for long periods of time. He indicated that appellant had full range of motion of the right shoulder, and his back, although there was pain with hyperflexion in the lower back area. Dr. Fisher opined that appellant's right knee was healed from the injury of 1997. Regarding the right shoulder and low back, the physician advised that the aches and pains appellant was having were "probably" due to the residual muscle ligament strain over these areas from the accident of 1997. He further advised that it would "probably" take a long time for these to resolve but no particular treatment was necessary, as these would "probably" go away in time. Dr. Fisher advised that appellant could continue to work as a mail carrier without restrictions and did not need to return unless there was a problem.

On April 9, 2002 the Office notified appellant of the factual and medical evidence needed to substantiate his claim for a recurrence disability.

By decision dated May 22, 2002, the Office denied appellant's recurrence claim, finding that the evidence did not establish that his disability from work beginning on January 27, 2002 was causally related to the July 28, 1997 employment injury.

By letter dated June 20, 2002, appellant requested a hearing, which was held on July 16, 2003. During the hearing, appellant indicated that he wanted to have his claim reopened because it was closed by mistake; he also indicated that, with the exception of the emergency room bill, none of his medical bills had been paid. He further indicated that there was no point at which he stopped seeking medical treatment, and that he had not worked for about two years.

By decision dated September 22, 2003, the Office hearing representative affirmed the May 22, 2002 decision. The Office hearing representative advised appellant that any unpaid medical bills from the date of the injury to April 1999 could be submitted for payment. However, as the record contained no medical opinion explaining how the present condition was causally related to the initial injury, appellant had not met his burden of proof.

LEGAL PRECEDENT

Section 10.5(x) of the Office's regulations provides that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[5]

Section 10.5(y) of the Office's regulations provides that a recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment.[6]

[5] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB ___ (Docket No. 04-887, issued September 27, 2004).

[6] 20 C.F.R. § 10.5(y).

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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 who supports that conclusion with sound medical reasoning.[7]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.[8]

ANALYSIS

Appellant's claim was accepted for right shoulder sprain, contusion of the right knee and cervical sprain. His January 27, 2002 recurrence of disability claim form indicates that his recurrence was "ongoing" due to pain in his hip and knee.

Appellant submitted medical reports from Dr. Terrell and Dr. Fisher. However, the Office hearing representative advised appellant that he could submit his bills from the dated of injury to April 1999 for payment. Further, these reports are not relevant to any period for which benefits are sought. There are no subsequent medical reports indicating any period of disability or the need for continuing medical treatment attributable to the original July 28, 1997 employment injury.

Appellant also submitted several reports from chiropractors supporting his claim of a recurrence of disability. However, such reports are of no probative medical value as the chiropractors do not qualify as a "physician" under the Act, as they did not diagnose a subluxation as demonstrated by x-ray to exist.[9]

In the instant case, appellant has not submitted any medical evidence to support his claim for a recurrence of disability for any particular period or for the recurrence of a medical condition for a period subsequent to that for which the hearing representative indicated that the Office would make appropriate payment. Although, the Office, by letter dated April 9, 2002, advised appellant of the evidence necessary to establish his claim, appellant did not submit the additional evidence. To establish his claim, it is essential that appellant submit medical evidence explaining why his condition or disability at a specific time was caused or aggravated by the July 28, 1997 original employment injury. However, such evidence explaining how any continuing condition or disability is attributable to the original injury has not been submitted. As noted above, neither the fact that appellant's claimed condition became apparent during a period of employment, nor his belief that his condition was aggravated by his employment is sufficient

[7] *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

[8] *Walter D. Morehead*, 31 ECAB 188 (1986).

[9] 5 U.S.C. § 8101(2); *see Carmen Gould*, 50 ECAB 504 (1999).

to establish causal relationship.[10] As appellant has not submitted any rationalized medical evidence showing that he sustained a recurrence of disability or a recurrence of a medical condition due to his accepted 1997 employment injuries, he has not met his burden of proof.

CONCLUSION

The Board finds that regarding appellant's recurrence claim, he failed to provide rationalized medical evidence establishing that his claimed recurrence of disability or medical condition was causally related to his July 28, 1997 accepted employment injury.

ORDER

IT IS HEREBY ORDERD THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated September 22, 2003 is affirmed.

Issued: April 6, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[10] *Supra* note 9.