U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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

Docket No. 96-2292; Submitted on the Record;
Issued August 14, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained 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.

On May 13, 1991 appellant, then a 35-year-old forklift operator, injured his left ankle after he lost control of the forklift. The Office of Workers' Compensation Programs accepted appellant's claim for a crush injury to the left ankle and low back strain and authorized payment of all appropriate benefits.

Appellant returned to full-duty work in July 1991. On July 6, 1993 appellant stopped work completely after suffering a recurrence of total disability.

On July 18, 1994 appellant was released to limited-duty work by his attending physician, Dr. Richard Pentecost, a Board-certified orthopedist.

In a June 22, 1995 medical report, Dr. Pentecost stated that appellant was disabled from work beginning June 14, 1995 and related the disability to back pain. Dr. Pentecost further related that appellant stated that he went swimming Wednesday and on Sunday his back started hurting again.

By decision dated August 18, 1995, the Office denied appellant's claim for recurrence of disability on or after June 14, 1995 on the grounds that the evidence of record failed to demonstrate a causal relationship between the accepted injury and the claimed condition or disability.

Appellant worked five hours per day in a limited-duty position as a mobile equipment dispatcher until he stopped work on October 7, 1995.[1] On October 26, 1995 appellant filed a

[1] Appellant received compensation for his loss of wage-earning capacity.

notice of recurrence of disability (Form CA-2a) alleging that he sustained a recurrence of disability on October 7, 1995.

In a November 30, 1995 medical report, Dr. Pentecost stated that appellant continued to have pain in his low back radiating down his legs with tingling and numbness in the right foot. Dr. Pentecost diagnosed degeneration of lumbar disc L4-5, lumbar nerve root entrapment with calf muscle athropy secondary to worker's injury of May "31," 1991. He recommended additional testing and stated that appellant's work station should be moved to his home until condition was corrected to reduce the pain and stress to the area of weak disc and two inches loss of right calf muscle. Dr. Pentecost opined that appellant would remain temporarily totally disabled without this recommended medical care.

By decision dated January 4, 1996, the Office denied appellant's claim for recurrence of disability on the grounds that the evidence of file failed to demonstrate a causal relationship between the accepted injury and the claimed condition or disability.

In a January 26, 1996 medical report, Dr. Pentecost stated that appellant's reinjury (aggravation) of the original injury of May 13, 1991 is the fact that he has remained symptomatic from 1991 onward (as noted in the medical reports and magnetic resonance imaging (MRI) of February 1994) but was working until an increased level of symptoms occurring in October 1995 made it impossible to perform his work duties. Dr. Pentecost reiterated his November 30, 1995 findings on physical examination. Dr. Pentecost additionally stated that the February 22, 1994 MRI report, mentioned decreased water content of L3, L4 and L5 disc spaces compatible with desiccation and degeneration. Dr. Pentecost stated that with a scenario of a three level degenerative disc condition, it was easily understandable how an aggravation of the preexisting soft tissue injury of lumbar spine could cause an increase in symptoms to the point of incapacitating pain during work duties. Dr. Pentecost stated that appellant's condition worsened from a "strain" to a painful disc syndrome at one or perhaps more than one level. He then concluded that appellant's disability was causally related to his employment injury.

In an undated request for reconsideration, which the Office received on February 16, 1996, appellant stated that Dr. Pentecost's letters should clear up any misunderstandings.

By decision dated April 2, 1996, the Office denied modification of the prior decision, after merit review, on the grounds that the evidence submitted was insufficient to warrant modification.

In a letter dated April 26, 1996, appellant requested that the Office reconsider his claim and presented his arguments why his recurrent disability and condition are related to the original May 13, 1991 work injury. In support of this request for reconsideration, appellant submitted medical reports and a copy of his medical charts from Dr. Pentecost's office and copies of work restriction evaluations by Dr. Donald R. Chadwell, who is Board-certified in physical medicine and rehabilitation and Dr. D.L. Trent, a general surgeon, which stated that prolonged sitting made appellant's condition worse.

In a report dated April 26, 1996, Dr. John M. Fuhrman, a Board-certified internist and an orthopedic surgeon, noted that appellant has had lumbosacral discomfort and problems since his

work injury in 1991. He further noted that the February 22, 1994 MRI showed disc problems, spurs and some foremenal stenosis. After examining appellant, Dr. Fuhrman diagnosed degenerative arthritis lumbosacral spine with some foremenal stenosis and chronic lumbosacral myofascial syndrome. He opined that appellant should be at a job where he could change position between sitting, standing and walking on a per-needed-basis as dictated by appellant and not by the job. Dr. Fuhrman alternatively stated that appellant should be at a job where he does computer work at home and can lay down on a per-needed-basis.

By decision dated May 15, 1996, the Office denied modification of the January 4, 1996 decision, after merit review, on the grounds that the evidence submitted in support of the request for review was not sufficient to warrant modification of the prior decision.

By letter dated May 20, 1996, appellant again requested that the Office reconsider his claim. Appellant did not submit any additional medical evidence with his request, but he did submit a lengthy statement, which explained his reasons for arguing that the Office erred in its prior decisions.

By decision dated June 11, 1996, the Office again denied appellant's request for reconsideration, after merit review, on the grounds that appellant has not submitted evidence sufficient to warrant modification of the prior decision. The Office specifically noted that the prior decisions were based on a review of the evidence of record, including all of those reports mentioned by appellant. The Office further stated that as the issue was medical, appellant's analysis of the decisions was insufficient to warrant modification of the prior decision.

The Board finds that appellant has not established that he sustained a recurrence of disability on or after June 14, 1995 and on or after October 7, 1995 causally related to his accepted May 13, 1991 employment injury.

When an employee, who is disabled from a 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. 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 job requirements.[2] This burden further includes the necessity of furnishing medical evidence from a qualified 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 reasoning.[3]

In the present case, the Office has accepted that appellant sustained a low back strain as a result of an employment injury on May 13, 1991. Following the injury, appellant returned to full-duty work in July 1991 and worked until he suffered a recurrence of total disability on

[2] *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[3] *Jerry A. Miller*, 46 ECAB 243 (1994); *Ezra D. Long*, 46 ECAB 791 (1995); *Ronald M. Cokes*, 46 ECAB 967 (1995).

July 6, 1993. Appellant remained off work until June 20, 1994, at which time he worked in a limited-duty position as a mobile equipment dispatcher for five hours per day. Appellant was working in this position when he stopped work on June 14, 1995 and claimed that he had sustained a recurrence of disability on that date to due to his employment injury.

Appellant has not submitted sufficient medical evidence to establish that he sustained a recurrence of disability on or after June 14, 1995 due to his employment injury. Appellant submitted a medical excuse and a progress note by Dr. Pentecost. While Dr. Pentecost stated that appellant was disabled for work beginning June 14, 1995 and related the disability to back pain, he failed to explain the basis of appellant's complaint. In fact, Dr. Pentecost related appellant's pain complaints to the fact that he went swimming Wednesday and on Sunday his back started to hurt again. Thus, Dr. Pentecost's reports are of limited probative value in that they do not contain adequate medical rationale.[4] Moreover, back pain is symptom, rather than a medical condition. As these reports did not diagnose a medical condition and failed to provide an adequate medical rationale for the basis of appellant's complaints, they are of limited probative value. Thus, appellant has not met his burden of proof to establish that he sustained a recurrence of disability on or after June 14, 1995 due to his employment injury.

Appellant also has not submitted sufficient medical evidence to establish that he sustained a recurrence of disability on or after October 7, 1995. Appellant stated that Dr. Pentecost's January 26, 1996 letter, stated that his disability on and after October 7, 1995 is related to the original injury. Dr. Pentecost stated that appellant's "reinjury (aggravation) of the original injury of May 13, 1991, is the fact that appellant remained symptomatic until an increased level of symptoms occurring in October 1995 made it impossible to perform his work duties." He further stated that appellant's condition had changed from a strain to a disc syndrome. Although Dr. Pentecost opined that appellant's disability was causally related to his worker's injury, his opinion is of little probative value in that Dr. Pentecost failed to provide an explanation of what caused appellant's "reinjury (aggravation)" and failed to explain how appellant's work-related condition had changed from a strain to a disc syndrome or why appellant was unable to continue performing his duties as a mobile equipment dispatcher.[5]

In other reports, Dr. Pentecost suggested that as appellant's back condition was asymptomatic at the time of the injury, but became symptomatic later on, appellant had a recurring condition of a disabling nature. In his November 30, 1995 medical report, Dr. Pentecost noted that appellant had degeneration of lumbar disc L4-5, lumbar nerve root entrapment with calf muscle athropy secondary to the injury of May "31," 1991, but he did not describe the symptoms in any detail or adequately explain why this condition would result from an injury four to five years prior. In earlier reports of record, Dr. Pentecost diagnosed low back sprain injury with sciatica with degenerative disc disease present at L4-5 and related his findings to appellant's original injury.[6] He further stated, in a July 2, 1993 report, that the disc disease

[4] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[5] *Id.*

[6] Dr. Pentecost's February 2, 1993 report.

was preexisting "because as we all know, degenerative disc disease does not suddenly appear in a matter of days, weeks or even months. *** This [disease] did pre-exist his worker's injury and was asymptomatic at the time of his injury." The Board, however, has held that the fact that a condition manifests itself or worsens during a period of employment[7] or that work activities produce symptoms revelatory of an underlying condition[8] does not raise an inference of causal relationship between a claimed condition and employment factors. Moreover, the Office never accepted the condition of degenerative disc disease and Dr. Pentecost's report of June 17, 1994, indicates that appellant's back strain had healed.

Appellant also has not shown that there was a change in the nature and extent of his light-duty job requirements. At the time appellant stopped work on October 7, 1995, he had been working in his limited-duty position as a mobile equipment dispatcher for over a year. Appellant complained that as he has to sit eight hours a day, his back condition is aggravated and this resulted in his disability for work beginning in October 1995. It is noted within the job offer that appellant accepted that appellant "may sit, stand, or walk about to meet your physical requirements while performing the duties of the job." Thus, there is no job requirement for appellant to sit eight hours a day. Although several medical reports from Drs. Fuhrman, Pentecost and Trent support appellant's position that that his preexisting degenerative disc disease was aggravated by the May 13, 1991 work injury, none of the physicians have explained how appellant's back condition worsened and the cause of the condition to have worsened.

As the present case involves the situation where an employee returns to a limited-duty position, after having been disabled by an employment-related condition, he has the burden to establish a recurrence of total disability upon a subsequent work stoppage. For the reasons noted above, appellant has not met this burden of proof.

[7] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[8] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

The decisions of the Office of Workers' Compensation Programs dated June 11, May 15, April 2 and January 4, 1996 and August 18, 1995 are affirmed.

Dated, Washington, D.C.
August 14, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member