U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUIS A. BERRIOS and U.S. POSTAL SERVICE,
CO-OP CITY STATION, Bronx, N.Y.

Docket No. 97-38; Submitted on the Record;
Issued August 7, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant established that he sustained a recurrence of disability causally related to his May 2, 1992 work injury.

The Board has carefully reviewed the case record and finds that appellant has failed to meet his burden of proof in establishing that his claimed disability after March 4, 1996 was causally related to his accepted back condition.

Under the Federal Employees Compensation Act,[1] an employee 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 recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.[2] As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,[3] and supports that conclusion with sound medical reasoning.[4]

Section 10.121(b) 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 medical report covering the dates of examination and treatment, the history given by the employee, the findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's

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[1] 5 U.S.C. §§ 8101-8193 (1974).

[2] *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

[3] *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

[4] *Lourdes Davila*, 45 ECAB 139, 142 (1993).

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.[5]

Thus, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.[6] 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.[7] Further, neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that his condition was caused by his employment is sufficient to establish a causal relationship.[8]

In this case, appellant's claim for traumatic injury on May 2, 1992 was accepted for an acute herniated disc at L4-5 and the Office of Workers' Compensation Programs paid appropriate compensation.

Appellant returned to permanent limited duty on August 3, 1992, with a lifting restriction of 15 pounds, no prolonged standing or sitting, and no bending or carrying. On March 22, 1996 appellant filed a notice of recurrence of disability, claiming that he had to stop work on March 4, 1996 after he was ordered to assist in delivering mail and the prolonged walking and standing caused back pain and leg spasms.

In a letter dated April 29, 1996, appellant explained that his supervisor told him to board a bus and meet another carrier in a building to assist him. Appellant stated that he walked three long blocks to the bus and, upon arrival at the building, had to wait 20 minutes with no place to sit down. Appellant added that he felt his back pain getting worse and "[k]nowing that [he] could not resist much longer," appellant went back to the post office station by bus and was driven to the hospital. The employing establishment stated that appellant was instructed to help another carrier by delivering accountable mail and/or small parcels weighing less than two pounds in a building with an elevator, and to rest for a few minutes by sitting on a bench, in a laundry room, or on the stairs as needed.

In support of his claim, appellant submitted progress notes and a May 3, 1996 report from Dr. Richard E. Memoli, an orthopedic practitioner who first treated appellant on June 24, 1992. Dr. Memoli related subsequent visits when appellant complained of lower back pain and indicated that appellant had an acute recurrence of severe low back pain on March 4, 1996 when he stopped work. Dr. Memoli diagnosed degenerative disc disease and herniated discs at L3-4 and L4-5. He concluded that these injuries were causally related to the May 2, 1992 incident and appellant's permanent disability was also causally related.

[5] 20 C.F.R. § 10.121(b).

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

[7] *Leslie S. Pope*, 37 ECAB 798, 802 (1986); *cf. Richard McBride*, 37 ECAB 748, 753 (1986).

[8] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

On July 23, 1996 the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish a causal relationship between the accepted condition and appellant's current condition.

The Board finds that while Dr. Memoli's report included a history of appellant's injury and treatment, results of diagnostic tests, physical findings, a diagnosis and recommendations for further care, his conclusion that appellant's latest claimed disability was causally related to the May 2, 1992 recurrence is unexplained. Dr. Memoli did not provide a rationalized medical opinion showing how appellant's current physical findings and complaints are causally related to the accepted herniated disc condition.[9] Nor did Dr. Memoli discuss, with medical rationale, how the walking and standing on March 4, 1996 aggravated appellant's back condition.[10] Therefore, appellant has failed to meet his burden of proof.

When an employee, who is disabled from the job he held when injured, 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 of establishing by the weight of the reliable, probative and substantial evidence that he cannot perform such light duty.[11] 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.[12]

Here, Dr. Memoli's March 11, 1996 progress note, which is closest in time to the claimed disability on March 4, 1996, stated that appellant's examination showed "no change since last evaluation both in [appellant's] complaints and physical findings. Still severe pain low back." A subsequent note dated April 22, 1996 stated that appellant returned with "persistent complaints as noted previously." A June 10, 1996 note stated that appellant was "mildly improved" since his last evaluation. Thus, the Board finds that the medical evidence is insufficient to show that appellant's back condition had worsened.[13]

In his April 26, 1996 letter, appellant stated that management kept on "contradicting direct medical orders by harassing" appellant beyond his limitations. However, appellant provided no corroborating evidence that the nature of his light-duty job had changed.

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[9] *See Margarette B. Rogler,* 43 ECAB 1034, 1039 (1992) (finding that a physician's opinion that provides no medical rationale for its conclusion on causation is of diminished probative value).

[10] *See John Watkins*, 47 ECAB ___ (Docket No. 94-1615, issued May 17, 1996) (finding that a medical opinion that failed to discuss how appellant's duties aggravated his degenerative disc disease was insufficient to establish any residuals of his accepted back condition).

[11] *Richard E. Konnen*, 47 ECAB ___ (Docket No. 94-1158, issued February 16, 1996).

[12] *Gus N. Rodes*, 46 ECAB 518, 526 (1995).

[13] *See Mary A. Howard*, 45 ECAB 646, 652 (1994) (finding that appellant failed to submit medical evidence establishing her disability for a light-duty position and was thus not entitled to compensation); *cf. George Depasquale*, 39 ECAB 295, 304 (1987) (finding the medical evidence sufficient to establish that appellant's condition deteriorated during his light-duty employment to the point of total disability).

Appellant stated on his claim form that he had to stand and wait 20 minutes with no place to sit down, yet Dr. Stanley M. Sonn, appellant's chiropractor, initially imposed a work restriction of alternate standing and sitting for 30 minutes. While appellant may have been assigned to duties other than his usual boxing and tying of mail, he has not shown that the walking and standing required of him on March 4, 1996 were beyond his medical restrictions. Therefore, the Board finds that appellant failed to establish a change in the nature and extent of his light-duty position.[14]

The July 23, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
August 7, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[14] *Cf. Fallon Bush*, 48 ECAB ___ (Docket No. 95-2237, issued July 15, 1997) (finding that appellant established a change in the nature of his light-duty position when he was assigned to work nights and medical opinions limited him to working days because his arthritic hip became worse in the late afternoon and evening).