

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE E. YOUNG and U.S. POSTAL SERVICE,
POST OFFICE, San Diego, Calif.

*Docket No. 97-424; Submitted on the Record;
Issued October 23, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability causally related to his November 18, 1989 employment injury.

On November 18, 1989 appellant, then a 46-year-old mail handler, filed a traumatic injury claim alleging that he hurt his back when the adjustable chair on which he was sitting dropped to a lower adjustment. Appellant stopped work on November 18, 1989 and never returned. The Office of Workers' Compensation Programs accepted that appellant sustained an employment-related low back contusion/strain and appellant received continuation of pay from November 19, 1989 to January 2, 1990.¹

In a decision dated November 9, 1992, appellant was terminated from the postal service effective November 16, 1992. Within the decision, the employing establishment noted that appellant had both physical and psychological work restrictions, and that the physical restrictions were accommodated for.

On April 8, 1994 appellant filed a notice of recurrence of disability alleging that he suffered a recurrence of his injury of June 1987 in August 1989.

By decision dated October 19, 1994, the Office denied appellant's claim finding that neither the factual or medical evidence was sufficient to establish his claim.

¹ The record reflects that appellant had previously filed several claims with the Office for back conditions. The Office accepted a low back strain for the injury of July 15, 1988; no monetary compensation benefits were paid. The Office accepted a lumbosacral strain for the injury of October 11, 1988; no compensation benefits were paid. The Office additionally accepted a low back strain for the injury of June 16, 1989; no monetary compensation benefits were paid. Appellant additionally filed two cases for stress-related conditions which were denied on March 14 and July 2, 1990.

On March 26, 1996 and on May 18, 1996, appellant filed claims for an alleged recurrence of injury indicating that he suffered a recurrence of his October 5, 1989 injury which caused pay loss from January 5, 1990.² Appellant indicated that he was not allowed to return to work following the original injury because of his orthopedic restrictions and constant treatments at Kaiser and the Veterans Administration for back problems, which included three ruptured discs. Appellant also indicated that he retired based on disability in 1992.

Appellant further indicated that he worked as a mental health worker from June 1990 through November 1992. His duties included taking blood pressures, temperature and pulse, as well as restraining emotionally disturbed children and adults.

Appellant stated that the State of California declared him mentally and physically unemployable and that the Social Security declared him mentally unemployable in 1992.

By letter dated April 8, 1996, the Office acknowledged the recurrence claim and requested further information from appellant.

In a report dated August 20, 1990, Dr. Antra Priede, who is Board-certified in emergency medicine, mentioned treatment for work-related injuries since October 20, 1988. It was noted that appellant had a work-related injury on October 11, 1988 due to twisting to the left while throwing a sack of mail. Appellant was treated conservatively for the problem and improved, but had relapses relative to his work either due to bending, lifting, twisting, pushing, or pulling. A computerized axial tomography scan of August 16, 1989 showed a minimal L4-5 disc bulge. Dr. Priede noted that appellant always improved with rest, medication, and some physical therapy. With each recurrent injury, appellant had been less able to perform the job of a mail handler. Dr. Priede stated that appellant could not squat due to his knee condition. This aggravates appellant's low back strain.

In a report dated November 5, 1993, Dr. Priede indicated that appellant had pain in his back every day and numbness in the right foot during the past few months. Appellant's right knee was worse with more pain and buckling. Appellant was using a cane for walking and was noted to limp. Dr. Priede diagnosed degenerative disease LS spine L4, chronic low back strain, and right knee degenerative arthritis. He indicated that appellant often strains his back when the right knee buckles or he has difficulty getting up from a chair. Dr. Priede stated that appellant's degenerative joint problems were progressive, particularly of the right knee. Dr. Priede further stated that appellant's lumbosacral spine and muscles were strained chronically due to the difficulty walking.

In a report dated May 1, 1996, Dr. Priede diagnosed degenerative disease, lumbosacral spine at L5, chronic low back strain, and bilateral knee degenerative arthritis. He opined that appellant was totally disabled due to chronic lumbosacral strain and degenerative disc disease, progressive arthritis of both knees, and post-traumatic stress disorder. Dr. Priede noted that appellant was medically retired from the Postal Service in 1990 and had been receiving disability

² The Office processed the claim assuming that the alleged recurrence resulted from the November 18, 1989 injury as opposed to the October 5, 1989 date which appellant supplied.

retirement payments. He noted that appellant was declared disabled by the State of California in 1992. Dr. Priede opined that appellant had an ongoing condition since 1989 precluding him from employment and that there had been no recurrence as there were no recent precipitating factors causing a recurrence. The symptoms were ongoing and stable.

By decision dated September 30, 1996, the Office denied appellant's claim because the evidence failed to demonstrate a causal relationship between the injury and the claim condition.

The only decision before the Board on this appeal is that of the Office dated September 30, 1996, in which appellant's claim was denied as the evidence failed to demonstrate a causal relationship between the injury and the claimed condition. Since more than one year has elapsed from the date of the issuance of the Office's prior decision, to the date of the filing of appellant's appeal on October 16, 1996, the Board lacks jurisdiction to review the prior decisions.³

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability causally related to his November 18, 1989 employment injury.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury.⁴ As part of such burden of proof, rationalized medical evidence showing causal relation must be submitted.⁵

In this case, the evidence of record shows that appellant was released from regular follow-up for low back pain and placed on a permanent and stationary job of primarily sitting on October 25, 1989. After the November 18, 1989 injury, Dr. Priede opined in a January 3, 1990 report that appellant's low back strain and contusion had resolved. He released appellant to modified duty permanent and stationary. Although appellant was released to work on a modified permanent and stationary job, he continued to be disabled due to a psychiatric condition. Appellant was eventually removed from duty effective November 16, 1992 due to his psychiatric condition.

Although Dr. Priede opines in his May 1, 1996 report that appellant has continued disability since 1989 without precipitating factors causing a recurrence, his opinion is inconsistent with the past factual and medical history and is not well rationalized. In a June 17, 1994 report, Dr. Priede noted that appellant's low back strain and contusion had resolved by January 3, 1990 and the disability since January 1990 was for psychiatric reasons not due to back pain or injury. Dr. Priede noted that the injury was prone to recurrence due to increased activity such as bending, lifting, walking, and sitting. The August 20, 1990 and November 5, 1993 reports points to appellant's knee condition as a precipitating factor. There is also reference to degenerative disc disease. Thus, Dr. Priede, in his May 1, 1996 opinion, fails to explain how

³ See 20 C.F.R. § 501.3(d).

⁴ *Barbara J. Williams*, 40 ECAB 649 (1989); *James A. Long*, 40 ECAB 538 (1989).

⁵ *Id.*

appellant could have continuing residuals and disability related to the November 18, 1989 injury when contemporaneous evidence showed that the condition resolved by January 1990. Without any explanation or rationale for the conclusion reached, Dr. Priede's May 1, 1996 opinion is of insufficient probative value to establish causality because of the incorrect medical history upon which it was based.⁶

Moreover, even if appellant continued to have residuals of the November 18, 1989 injury, Dr. Priede fails to provide an explanation in his May 1, 1996 report if and how the condition worsened to cause disability and wage loss from January 5, 1990 and November 1992 as he does not discuss any nonwork-related activities in which appellant participated during the time period in question. It should be noted that appellant worked from June 1990 through November 1992 as a mental health worker which included the physically demanding duty of restraining emotionally disturbed children and adults. Therefore, Dr. Priede's May 1, 1996 report is not sufficient to meet appellant's burden of proof.

Appellant has failed to provide any rationalized medical evidence establishing that he sustained a recurrence causally related to his November 18, 1989 employment injury, and has failed to discharge his burden of proof.

The decision of the Office of Worker's Compensation Programs dated September 30, 1996 is hereby affirmed.

Dated, Washington, D.C.

October 23, 1998

George E. Rivers

Member

Bradley T. Knott

Alternate Member

⁶ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

A. Peter Kanjorski

Alternate Member