

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID A. MORRIS and U.S. POSTAL SERVICE,
ROXBOROUGH POST OFFICE, Philadelphia, Pa.

*Docket No. 97-2199; Submitted on the Record;
Issued July 14, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he had residuals of his accepted June 12, 1991 employment injury from November 18, 1991 to July 16, 1995, for which he entitled to wage-loss compensation.

This case has previously been on appeal before the Board. By decision and order dated March 24, 1995, the Board set aside the Office of Workers' Compensation Programs' decision dated April 7, 1993, and remanded the case for further evidentiary development, finding that appellant had submitted evidence in support of his claim that his condition was causally related to factors of his federal employment. The facts and circumstances of the case are completely set out in that decision and are hereby incorporated by reference.¹

After further development, in a decision dated August 16, 1995, the Office accepted appellant's claim for herniated discs at the C5 to C6 and C6 to C7 levels and anterior cervical discectomy surgery. However, the Office advised appellant that he would have to file a claim for wage-loss compensation for the period June 12 to October 15, 1991 and any subsequent dates with supporting medical evidence of temporary total disability. The Office approved leave buy back compensation for appellant from August 16 through October 15, 1991 for temporary total disability after his surgery and from October 16 to November 17, 1991 for partial disability of four hours per day. In a letter dated August 16, 1995, the Office indicated that it had received a claim for compensation from appellant, however, a subsequent memorandum in the file indicated that the CA-7 form was missing and appellant was to mail it in on or around April 22, 1996. In a decision dated February 19, 1997, the Office denied appellant's claim for wage-loss compensation for the period November 18, 1991 to July 16, 1995 on the grounds that the evidence of record did not establish that he sustained temporary total disability due to the work-related injury of June 12, 1991.

¹ Docket No. 93-1872 (issued March 24, 1995).

The Board has duly reviewed the case record on appeal and finds that the appellant did not establish that he was entitled to wage-loss compensation for temporary total disability due to his accepted June 12, 1991 employment injuries for the period November 18, 1991 to July 16, 1995.

The term “disability” as used under the Federal Employees’ Compensation Act means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of injury.² The general test for determining loss of wage-earning capacity is whether an injury-related impairment prevents the employee from performing the kind of work he was doing when injured.³ An award of compensation may not be based on surmise, conjecture, speculation, or appellant’s belief of causal relationship.⁴ The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁵ Neither the fact that the condition became apparent during a period of employment nor appellant’s belief that employment caused or aggravated his condition is sufficient to establish causal relationship.⁶ While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,⁷ neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.⁸

In the present case, appellant sustained employment-related injuries on June 12, 1991, underwent cervical surgery on August 16, 1991 and returned to light-duty work on October 16, 1991 for four hours a day. In reports dated January 8 and August 21, 1992, Dr. David W. Swingle, a neurologist, noted that post surgery appellant was discharged from his care on November 6, 1991. A report of telephone call with appellant dated April 22, 1996 and a memorandum dated June 21, 1996, indicated that appellant left work following his return to light duty due to a heart attack and that thereafter he had taken disability retirement. Appellant’s disability retirement was effective October 26, 1992. A supervisor report dated June 27, 1992, indicated that appellant returned to work on light duty for four hours a day in February 1992, he was given help with his duties and that his performance became unacceptable in May 1992. A decision from the Unemployment Compensation Board of Review dated April 26, 1993, found

² See *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

³ See *Gary L. Loser*, 38 ECAB 673 (1987).

⁴ *Williams Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537-39 (1953).

⁵ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁶ *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁷ See *Kenneth J. Deerman*, 34 ECAB 641 (1983).

⁸ See *Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

that appellant discontinued employment due to a health problem, for which he had surgery twice after January 1992. The Office referred appellant, together with his medical record and a statement of accepted facts, to Dr. Stephen M. Horowitz, a Board-certified orthopedic surgeon, for a second opinion examination and report. In a report dated July 17, 1995, Dr. Horowitz diagnosed a cervical disc herniation based on the medical records and found that appellant may have underlying degenerative arthritis as a result of the pulling incident. He indicated that, with respect to his cervical spine, appellant could return to work in a light-duty position with restrictions. Dr. Horowitz also reported that due to appellant's myocardial infarction and placement of a pacemaker, it would be difficult for appellant to perform any strenuous activity and that only a sedentary position was acceptable. A report dated May 30, 1996, by Dr. John M. Fontaine, a cardiologist, noted that he had treated appellant since December 1991 and had been asked to review electrocardiograms for appellant on August 15, 1991. Dr. Fontaine found the possibility of a remote myocardial infarction and indicated that the first evidence of medical problems involving appellant's heart "appeared to have occurred as he was undergoing preparation for back surgery."

The factual evidence suggests that appellant developed a disabling heart condition in December 1991 and returned to work after treatment for this condition in February 1992. Although Dr. Fontaine indicated that the heart condition was noted while appellant was being prepared for surgery on his cervical spine, this report does not establish that appellant's neck condition in any way caused, accelerated, aggravated or precipitated his heart condition or contributed to this period of disability. The evidence also indicates that appellant retired in October 1992 after two post January 1992 surgeries related to his medical condition, however, the record is devoid of any evidence that such surgery was performed on appellant's cervical spine. Thus, the evidence of record does not establish that appellant's total disability at that point was related to his accepted June 12, 1991 employment injuries. The record also does not contain any evidence that established that appellant was incapable of performing his October 1991 light-duty employment due to his accepted employment injuries until the July 17, 1995 report of Dr. Horowitz. Therefore, appellant has not established that he was disabled due to his accepted employment injuries or entitled to wage-loss compensation between the period November 18, 1991 and July 16, 1995 as the medical evidence suggests that any disability was not related to the June 12, 1991 injury.

The decision of the Office of Workers' Compensation Programs dated February 19, 1997 is hereby affirmed.

Dated, Washington, D.C.
July 14, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member