U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH A. MARTINELLI and U.S. POSTAL SERVICE,
POST OFFICE, Port St. Lucie, Fla.

Docket No. 97-1612; Submitted on the Record;
Issued May 18, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant established that his recurrence of disability was causally related to the accepted work injuries.

The Board has carefully reviewed the case record and finds that appellant has failed to meet his burden of proof in establishing a causal relationship between his 1988 injuries and the 1995 recurrence of disability.

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.

[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]

Thus, 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.[9] 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.[10]

In this case, appellant's notice of traumatic injury, filed on September 13, 1988 after appellant hurt his neck and shoulder lifting a box of mail the day before, was accepted by the Office of Workers' Compensation Programs for strains of the left shoulder and cervical spine. After referral to vocational rehabilitation, appellant returned to half-time limited duty on January 14, 1991 and was paid appropriate compensation.[11] Subsequently, the Office accepted major depression related to post-traumatic recovery.

On April 5, 1995 appellant filed a notice of recurrence of disability, claiming that constant pain required an increase in his medication and treatment, which prevented him from working. Appellant stopped work on February 7, 1995. On July 12, 1995 the Office informed appellant that he needed to submit a rationalized medical opinion from his treating physician, Dr. Bruce E. Platzek, a neurologist, explaining how his current condition was causally related to the original work injuries.

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[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).

[9] *Richard E. Konnen*, 47 ECAB 388, 389 (1996).

[10] *Gus N. Rodes*, 46 ECAB 518, 526 (1995); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[11] On April 23, 1991 the Office issued a determination of wage-earning capacity, finding that appellant was entitled to $916.00 every four weeks for lost wages in his 20-hour-a-week rehabilitation position with the employing establishment. Appellant filed a claim for depression on October 25, 1991, which was denied on March 23, 1992. Subsequently, the Board affirmed the denial on the grounds that appellant had failed to meet his burden of proof in establishing that he sustained an emotional condition in the performance of duty. Docket No. 92-1289, issued on June 3, 1993.

Appellant responded that he performed the duties of his rehabilitation position to the best of his ability but missed days of work when the pain became unbearable. He added that his light-duty job had not changed, but was "difficult" to do because of the pain in his shoulder and neck. Appellant also submitted medical reports from Dr. Platzek.

On August 21, 1995 the Office denied the claim on the grounds that the medical evidence was insufficient to establish a causal relationship between appellant's recurrence of disability and the original injuries. The Office also found that appellant had failed to establish a material worsening of his condition that would prevent him from working.

Appellant requested reconsideration and submitted additional medical evidence from Dr. Platzek. The Office denied appellant's request on November 7, 1995 on the grounds that the medical evidence was insufficient to warrant modification of its prior decision. Appellant again requested reconsideration, which was denied on May 16, 1996 on the same grounds. Appellant's third request was similarly denied on January 31, 1997.

The Board finds that the medical reports from Dr. Platzek are insufficient to establish a causal connection between appellant's current condition and the accepted work injuries. The monthly office treatment notes dated December 16, November 18, October 21, September 18, August 21, July 24, May 29, March 4, and January 3, 1996 as well as October 11, 1995 indicated left para-cervical muscle spasm but provided no opinion on causal relationship.

In his July 1, 1996 report, Dr. Platzek, who initially evaluated appellant on March 21, 1990, stated that appellant's chronic pain syndrome resulted from the 1988 work injury. He noted that an electromyogram (EMG) done on April 4, 1990 demonstrated left C7 radiculopathy[12] and that appellant returned to part-time work during 1991 to 1995.

However, appellant's ability to work became compromised because of increasing pain in his neck and left shoulder, and a repeat EMG in February 7, 1995 showed increased nerve irritation and damage. A June 20, 1995 EMG report showed further neurological deterioration. Dr. Platzek concluded that appellant's cervical nerve root irritation and radiculopathy rendered him unable to work because of the persistent pain syndrome.

In his January 16, 1996 report, Dr. Platzek stated that appellant's recurrence of disability was causally related to the 1988 injury as shown by abnormal test results over the past several years. Dr. Platzek indicated that he had taken appellant off work due to the worsening of his neurological condition. He added that appellant was 100 percent vocationally disabled.

Dr. Platzek based his opinion on abnormal test results but his monthly treatment notes indicated that upon "comprehensive neuro[logical] exam[ination]" of motor, reflex, and sensory testing he found no focal weakness, atrophy, or fasciculation of the upper and lower extremities, no hypo or hyper reflexes of the triceps or biceps, and no peripheral nerve or dermatome dysfunction.

[12] Radiculopathy is defined as a disease of the nerve roots. *Dorland's Illustrated Medical Dictionary* (27th ed. 1988).

Further, the February 1995 EMG findings were compatible with C7 radiculopathy, which Dr. Platzek first diagnosed in 1990, and showed no evidence of ulnar or median nerve compression. The July 1995 EMG indicated only a slight change. Finally, medical evidence from 1991 through 1994 consistently repeated that while appellant had experienced muscle spasm, his neurological examinations were unchanged, and Dr. Platzek encouraged him to manage his condition on his own.[13]

Dr. Kenneth J. Gold, a Board-certified psychiatrist, stated that appellant had no psychiatric disability and could work in a limited-duty position. Therefore, the Board finds that appellant has failed to meet his burden of proof in establishing either that his current disability is causally related to the 1988 injuries[14] or that his condition has worsened to the point that he cannot perform the duties of his rehabilitation position.[15]

The January 31, 1997 and May 16, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
May 18, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

[13] *Max Haber*, 19 ECAB 243, 247 (1967) (same); see also *John L. Clark*, 32 ECAB 1618, 1624 (1981) (finding that a medical opinion based on a claimant's complaint that he hurt too much to work, with no objective signs of disability being shown, was insufficient to establish a basis for compensation).

[14] *See Jose Hernandez*, 47 ECAB 288, 294 (1996) (finding that medical reports that failed to address directly the causal relationship between appellant's recurrence of disability and his employment injuries were insufficient to meet appellant's burden of proof).

[15] *See Glenn Robertson*, 48 ECAB ___ (Docket No. 95-639, issued February 20, 1997) (finding that appellant failed to submit rationalized medical evidence explaining how and why he was unable to perform his light-duty position); *cf. Mary A. Wright*, 48 ECAB ___ (Docket No. 94-1713, issued December 19, 1996) (finding that appellant submitted sufficient medical evidence to show that her accepted back condition worsened so that she could not perform the required duties of the rehabilitation position).