

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES J. DIROCCO and U.S. POSTAL SERVICE,
POST OFFICE, McKeesport, PA

*Docket No. 00-306; Submitted on the Record;
Issued December 8, 2000*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability causally related to his June 30, 1998 accepted employment injury.

The Board has duly reviewed the case on appeal and finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability causally related to his June 30, 1998 accepted employment injury.

On July 30, 1998 appellant, then a 49-year-old letter carrier, filed a claim alleging that on that day he sustained injuries to his back and left elbow when he fell on some broken concrete steps. The Office of Workers' Compensation Programs accepted his claim for a lumbosacral sprain and contusions of the left forearm and elbow. Appellant did not stop work, but performed light duty until August 15, 1998, when he was released to full duty.

On January 27, 1999 appellant filed a notice of recurrence of disability alleging that as a result of his accepted employment injury he began experiencing pain and numbness in his left leg, limited movement and severe back spasms. He stopped work on January 26, 1999 and returned to light duty on January 28, 1999.

In a decision dated August 20, 1999, the Office denied appellant's claim, finding the medical evidence insufficient to establish a recurrence of disability causally related to the accepted employment injuries.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his alleged recurrence of disability commencing on or after January 26, 1999 and his June 30, 1998 employment injury.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis

¹ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.²

In this case, appellant submitted numerous reports and notes from his treating chiropractors, Drs. Kajal A. Joshi and Paul Kohler and from his physical therapists. These reports, however, are not probative as section 8101(2) of the Federal Employees' Compensation Act provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.³ Neither Drs. Joshi nor Kohler diagnosed subluxation by x-ray and there is no medical evidence in the record to support a diagnosis of spinal subluxation. Likewise, the reports of a physical therapist are not medical evidence as a physical therapist is not a physician under the Act.⁴

By letters dated March 4 and May 24, 1999, the Office informed appellant that his chiropractors were not considered physicians under the Act and advised him to seek care from a medical doctor, preferably a qualified orthopedist and arrange for the submission of further medical evidence.

Appellant also submitted a report dated March 9, 1999 from Dr. Emma McGowan, who noted appellant's history of injury, including the fact that he reported having had prior back injuries in 1990 and listed her findings on physical examination.⁵ She diagnosed lumbar strain/sprain complicated by bilateral sacroilitis and left sciatica. Dr. McGowan concluded that "there is definite causal relationship between [appellant's] condition with the lumbar strain/sprain and the sciatica as a result of the original injury." This report is not sufficient to meet appellant's burden of proof because Dr. McGowan did not provide any test results or offer any medical explanation in support of her conclusion that appellant's diagnosed conditions are causally related to his prior accepted employment injuries.

By letter dated May 26, 1999, the Office referred appellant, together with a statement of accepted facts and a list of questions to be resolved, for a second opinion evaluation with Dr. Charles S. Stone, a Board-certified orthopedic surgeon. In his report dated June 15, 1999, Dr. Stone reviewed appellant's personal and medical histories, including appellant's reports that he sustained prior back injuries in 1991 and 1995 and listed his findings on physical examination. He diagnosed a contusion of the coccyx occurring on June 30, 1998 and opined that appellant had fully recovered from this injury by August 15, 1998, when he was released to full duty. Dr. Stone noted that on January 27, 1999 appellant developed insidious low back pain with radiation to the left lower extremity, but stated that this onset of pain was not a recurrence

² See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ 5 U.S.C. § 8101(2); *Sheila A. Johnson*, 46 ECAB 323 (1994).

⁴ *Thomas R. Horsfall*, 48 ECAB 180 (1996).

⁵ Dr. McGowan noted that appellant related having undergone magnetic resonance imaging scan, myelograms, computerized tomography scans and electromyography in connection with his 1990 injury. However, there is no medical evidence relevant to this time period contained in the record.

of the June 30, 1998 injury because these symptoms were not a manifestation of a contusion to the elbow or the coccyx. He stated that there was no evidence of any preexisting disability and that there had been no positive diagnostic studies or objective physical findings to support appellant's complaints. In an accompanying work capacity evaluation dated June 10, 1999, Dr. Stone indicated that appellant could work eight hours a day without restrictions.

Dr. Stone's medical report constitutes the weight of the medical evidence of record as it is rationalized, supported by the objective evidence of record and based on an accurate factual and medical background. Because his medical report constitutes the weight of the medical evidence and appellant has not submitted the necessary rationalized medical evidence to establish that he sustained a recurrence of disability commencing January 27, 1999 causally related to his June 28, 1998 employment injuries, the Office properly denied appellant's claim.

The decision of the Office of Workers' Compensation Programs dated August 20, 1999 is hereby affirmed.

Dated, Washington, DC
December 8, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member