

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAYCON C. HOGUE and DEPARTMENT OF HEALTH & HUMAN
SERVICES, NATIONAL ARCHIVES & RECORDS
ADMINISTRATION, College Park, MD

*Docket No. 98-1169; Submitted on the Record;
Issued February 28, 2000*

DECISION and ORDER

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

The issues are: (1) whether appellant sustained a recurrence of total disability on October 21, 1996; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

This case has previously been on appeal before the Board. The Board's decision and order dated August 3, 1988 contains the facts and history of the case up to that point in time.¹ As pointed out in that decision, the Office accepted that appellant sustained a fracture of the pelvis and acetabulum in a March 18, 1986 injury while working for the National Institute of Health in Bethesda, Maryland.

On March 9, 1989 the Office issued a schedule award for a 73 percent permanent loss of use of appellant's left leg; the period of the award was from January 16, 1989 to January 26, 1993. On July 2, 1989 appellant, who had resigned from the National Institute of Health on March 17, 1988 for personal reasons, accepted a position at the employing establishment as an archives technician. The physical requirements of this position were intermittent sitting and standing, lifting up to 25 pounds, pushing and pulling carts up to 100 feet and occasional bending, stooping and walking. By decision dated March 15, 1993, the Office found that the position of archives technician represented appellant's wage-earning capacity and began paying him compensation for loss of wage-earning capacity effective January 27, 1993, the day after his schedule award expired.

On December 6, 1996 the employing establishment issued appellant a proposal to remove him from his position of archives technician on the basis of unauthorized absence since

¹ 39 ECAB 1162 (1988).

November 11, 1996. On February 12, 1997 the employing establishment removed appellant from his position effective February 19, 1997.

On March 2, 1997 appellant filed a claim for a recurrence of disability due to his March 18, 1986 employment injury. He listed the date of the recurrence of disability as October 18 to 20, 1996 and the date he stopped work as October 21, 1996. Regarding the circumstances of the recurrence, appellant stated: "Present work environment has been increasingly laborous [sic] with respect to limitations [lifting, standing and walking] due to greater customer influx and demand." In a claim for compensation for the period beginning October 21, 1996 on an Office Form CA-8, appellant stated: "Work load duties and length of workday exceed limitations of medical condition."

By letter dated May 2, 1997, the Office advised appellant that insufficient medical evidence had been submitted to establish his claim for a recurrence of disability. By letter dated May 12, 1997, the Office advised appellant that, to be covered under the Federal Employees' Compensation Act, the evidence must establish that the claimed recurrence is causally related to the original injury; the Office stated that the claim would "not be compensated for until medical evidence is submitted in support of a recurrence." Appellant submitted additional medical reports from his attending physician.

By decision dated August 25, 1997, the Office found that the evidence was not sufficient to find that appellant sustained a recurrence of total disability on October 21, 1996, as the medical evidence did not show that his condition worsened on or about that date. He requested reconsideration and submitted medical reports regarding treatment for sinusitis, nasal polyps, allergies and a colon polyp. Appellant also submitted a copy of a May 7, 1997 settlement agreement of his appeal to the Merit Systems Protection Board of his removal, in which appellant's removal was replaced with his resignation for personal reasons.

By decision dated February 18, 1998, the Office found the additional evidence irrelevant and not sufficient to warrant review of its prior decision.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. 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.²

The Board finds that the medical evidence does not establish a change in appellant's injury-related condition that would prevent him from performing the duties of his position of archives technician. In a report dated November 7, 1996, appellant's attending physician, Dr. Philip D. Bobrow stated that appellant had "been unable to work for the last couple of weeks because of severe low back pain." The Office, however, has not accepted that appellant's March 18, 1986 injury resulted in a low back condition. In a report dated December 19, 1996,

² *Terry R. Hedman*, 38 ECAB 222 (1986).

Dr. Bobrow stated that appellant could return to work and was “capable of doing all of his work-related responsibilities.” These medical reports appellant submitted in support of his claim for a recurrence of disability do not indicate that appellant was unable to work due to an injury-related condition. In a report dated April 8, 1997, Dr. Bobrow indicated that one of the conditions appellant sustained in his March 1986 employment injury was a herniated lumbar disc. This report is insufficient to establish that appellant’s herniated disc is related to his employment injury, as he did not provide any rationale to support causal relation.³ In addition, Dr. Bobrow submitted numerous prior reports beginning shortly after the employment injury, none of which indicated this injury resulted in a herniated disc, a condition not diagnosed until almost one year after the March 18, 1986 employment injury. Appellant has not established a change in his injury-related condition that would prevent him from performing the duties of his position of archives technician beginning October 21, 1996.

The Board further finds that the case is not in posture for a decision on the question of whether there was a change in the nature and extent of appellant’s job requirements in the position of archives technician that prevented him from continuing to perform this position.

The Office’s procedure manual states: “If the claim for recurrence of disability for work is based on modification of the claimant’s duties, or on the physical requirements of the job, the claimant should be asked to describe such changes and the employing establishment should be asked to comment.”⁴ Despite appellant’s statement on his claim for a recurrence of disability and for compensation beginning October 21, 1996 that the duties of his position had changed to the point that they exceeded his medical limitations, the Office did not request appellant to describe such changes, nor did it ask the employing establishment to address appellant’s allegation. The case will be remanded for such action, to be followed by an appropriate decision on appellant’s claim for a recurrence of disability beginning October 21, 1996.⁵

³ Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee’s burden of proof. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.7(a)(3) (May 1997).

⁵ The Board’s disposition makes it unnecessary for the Board to address the second issue of denial of merit review, as the evidence submitted with appellant’s request for reconsideration will be considered by the Office in its decision on remand.

The decision of the Office of Workers' Compensation Programs dated August 25, 1997 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
February 28, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member