

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVEN A. SVOBODA and U.S. POSTAL SERVICE,
POST OFFICE, Omaha, NE

*Docket No. 98-1122; Submitted on the Record;
Issued March 8, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a recurrence of disability on July 30, 1996 causally related to his December 4, 1990 employment injury.

On December 4, 1990 appellant, then a 40-year-old letter carrier, filed a traumatic injury claim alleging that he injured his back on that date in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for cervical strain and recurrent lumbar strain.¹

On September 10, 1996 appellant filed a notice of recurrence of disability alleging that on July 30, 1996 he sustained a recurrence of disability causally related to his December 4, 1990 employment injury.² Appellant related that he was sleeping in bed on July 30, 1996 and awoke with "extreme pain shooting into my right leg, especially my knee." Appellant stopped work on July 31, 1996 and returned to work on August 12, 1996.

By decision dated August 25, 1997, the Office denied appellant's claim on the grounds that the evidence failed to establish that he sustained a recurrence of disability on July 30, 1996 due to his December 4, 1990 employment injury. The Office determined that appellant's injury on July 30, 1996 was not the "direct and natural result" of his employment injury but rather triggered by a nonemployment-related incident.

¹ The record indicates that the Office accepted that appellant sustained lumbosacral strain with sciatica and gastritis due to prescription drug use causally related to a traumatic injury on October 19, 1987. The Office further accepted that appellant sustained recurrences of disability due to the October 19, 1987 employment injury on July 20 and December 12, 1988 and July 19, 1990 and April 12, 1991.

² On June 16, 1995 appellant filed a notice of recurrence of disability alleging that on May 23, 1995 he sustained a recurrence of disability causally related to his December 4, 1990 employment injury. Appellant related that he was sleeping on a four-inch mattress while camping on vacation and awoke with pain in his back. By decision dated January 31, 1996, the Office denied appellant's claim for a recurrence of disability.

By a letter dated October 2, 1997, appellant requested reconsideration of the Office's denial of his claim for a recurrence of disability. In a decision dated December 30, 1997, the Office denied modification of its prior decision.³

The Board has duly reviewed the case record and finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability.

It is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.⁴

In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, Professor Larson notes:

“[W]hen the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of ‘direct and natural results’ and of claimant's own conduct as an independent intervening cause.

“The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.”⁵

Thus, it is accepted that once the work-connected character of any condition is established “the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.⁶ If a member weakened by an employment injury contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury, if the further medical complication flows from the compensable injury, *i.e.*, “so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable in the circumstances.”⁷

³ The Office found that the evidence submitted with appellant's request for reconsideration was insufficient to warrant review of its August 25, 1997 decision. However, as the Office weighed the medical evidence submitted with appellant's request for reconsideration, it conducted a merit review of the claim.

⁴ Larson, *The Law of Workers' Compensation* § 13.00 (1997); Robert W. Meeson, 44 ECAB 834 (1993).

⁵ *Id* at § 13.11.

⁶ *Id* at § 13.11(a); see also Dennis J. Lasanen, 41 ECAB 933 (1990).

⁷ See Robert W. Meeson, *supra* note 4.

In the present case, appellant sustained an employment-related injury on December 4, 1990, which the Office accepted for cervical strain and recurrent lumbar strain. Appellant returned to his regular employment following the injury. Appellant stated that he awoke at home in bed on July 30, 1996 with back pain radiating down his right leg. The issue, therefore, is whether appellant's disability after July 30, 1996 is compensable as a "direct and natural" result of the December 4, 1990 employment injury.

In an office visit note dated August 2, 1996, Dr. Tim P. Crnkovich, an internist and appellant's attending physician, indicated that he treated appellant on that date for back pain radiating down both legs, which began around July 28, 1996. He diagnosed lumbar strain. Regarding the history of injury, Dr. Crnkovich related:

"[Appellant] states he has not had any significant change in work habits nor can he relate it to any specific trauma. About the only thing he can recall is he worked on his gas grill at home over the weekend and perhaps was in a twisted or unaccustomed to position for a moderate amount of time fixing this. Otherwise, [there was] no trauma that he can recall."

Dr. Crnkovich did not attribute appellant's diagnosed condition of lumbar strain to his prior employment injury but instead to an independent nonemployment related cause, that of appellant twisting his back to repair his grill and thus his opinion is not supportive of appellant's claim.

In a form report dated September 23, 1996, Dr. Crnkovich diagnosed right lateral cutaneous femoral neuropathy and degenerative joint disease and checked "yes" that the condition was due to appellant's employment by history. He further found that appellant was partially disabled from August 2, 1996 to the present. However, a physician's checkmark indicating causation, without further explanation, has little probative value and is insufficient to establish causal relationship.⁸ Dr. Crnkovich did not provide any medical rationale for his causation finding other than to indicate it was supported by appellant's history and, therefore, his report is insufficient to meet appellant's burden of proof.

In an office visit note dated October 16, 1996, Dr. Crnkovich diagnosed "chronic multilevel lumbar disc disease with sciatica" which he attributed to an October 1987 employment injury. He stated:

"[Appellant] has had numerous exacerbations of this injury throughout the years with recurrent lumbar disc disease and bilateral radiculopathy.... The injury on or about July 30, 1996 is directly related to the initial injury in 1987. This represents an exacerbation of that same injury."

Dr. Crnkovich did not discuss the impact on appellant's back condition of his repair of the grill prior to his onset of pain on July 30, 1996. He also attributed appellant's condition to a 1987 employment injury rather than the 1990 injury, for which appellant filed his recurrence of

⁸ *Robert J. Krstyen*, 44 ECAB 227 (1992).

disability claim. As Dr. Crnkovich did not provide a rationalized medical explanation addressing how appellant's employment injury caused disability on or after July 30, 1996, his report is of diminished probative value.⁹

In a report dated September 12, 1997, Dr. Crnkovich related the following regarding his August 2, 1996 office visit note:

“[Appellant] had complaints of back pain radiating down both legs to the buttocks, left side worse than right. He did not have any specific back trauma that he could recall and I elicited a history that he had been working on a gas grill at home over the weekend and perhaps was in a twisted or unaccustomed to position for a moderate amount of time fixing this. It is my considered medical opinion that the repair of the grill, as described above, would not have produced the symptoms that [he] presented with, were it not for the underlying neuropathy as previously documented by Dr. Jay Parsow in a June 16, 1992 evaluation and by a Dr. Daniel D. Zimmerman, District Medical Director, in a letter of February 24, 1992. In this letter, [Dr. Zimmerman] states this ‘individual does have a bulging disc at L5-S1, which could be stated to at least have been aggravated by factors of [his] federal employment.’”¹⁰

Dr. Crnkovich diagnosed “chronic multilevel lumbar disc disease with sciatic” which he attributed to appellant's 1987 employment injury. He stated, “Had [appellant] not had the underlying above condition, the simple act of repairing his barbecue grill in a manner that I had described previously would not have caused him to have symptoms four days later. Therefore, it is unlikely that this was ‘the triggering event.’”¹¹ The Office, however, has not accepted that appellant sustained lumbar disc disease due to his employment injury or other factors of his federal employment. Appellant, therefore, has the burden of proof in establishing that this condition is causally related to his employment through the submission of rationalized medical evidence.¹² Dr. Crnkovich provided no rationale in support of his opinion that appellant had employment-related lumbar disc disease. Instead, Dr. Crnkovich merely cited to reports of other physicians, all of which predate appellant's alleged July 1996 recurrence of disability, in support of his conclusion. As Dr. Crnkovich did not describe the medical mechanism by which appellant's employment-related condition caused him to sustain disability beginning July 30, 1996, his report is insufficient to meet appellant's burden of proof. The opinion of a physician addressing causal relationship must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate

⁹ *William C. Thomas*, 45 ECAB 591 (1994) (medical reports consisting solely of conclusory statements without supporting rationale are of little probative value).

¹⁰ In a review of the record prior to appellant's schedule award, an Office medical adviser diagnosed recurrent lumbar strain and noted that appellant had a bulging disc which could have been aggravated by his employment.

¹¹ Appellant submitted a report from Dr. Crnkovich dated September 30, 1997, which was identical to his September 12, 1997 report.

¹² See *Charlene R. Herrera*, 44 ECAB 361 (1993).

medical and factual background.¹³ Appellant, consequently, has not submitted sufficient evidence to establish that he sustained a recurrence of disability on July 30, 1996 causally related to his December 4, 1990 employment injury.

The decisions of the Office of Workers' Compensation Programs dated December 30 and August 25, 1997 are hereby affirmed.

Dated, Washington, D.C.
March 8, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

¹³ *Connie Johns*, 44 ECAB 560 (1993).