

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK A. CRAMER and U.S. POSTAL SERVICE,
POST OFFICE, Whitesboro, NY

*Docket No. 98-1858; Submitted on the Record;
Issued March 8, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability commencing November 19, 1995 causally related to the February 10, 1995 employment injury.

The Office of Workers' Compensation Programs accepted appellant's claim for a contusion of the chest, contusion of the left shoulder and a thoracic strain. After the February 10, 1995 employment injury, appellant worked intermittently and returned to light-duty work. In approximately September 1995, appellant underwent a work-hardening program and was discharged from his job with the employing establishment on October 27, 1995 on the grounds that he had lied on his employment application. The employing establishment dropped the charges, however, when appellant transferred to another federal agency on April 29, 1997 where he worked as a county technician.

On November 22, 1995 appellant filed a claim for a recurrence of disability, Form CA-2a, alleging that on November 19, 1995 he sustained a recurrence of disability of the February 10, 1995 employment injury. He stated that his neck had not changed much since his return to work, that his neck still got stiff, that he had pain in his left shoulder and middle back, and his left shoulder snapped all the time. In a statement dated February 12, 1996, appellant stated that the pain began in his lower back on November 19, 1995 when he woke up in the morning and tried to stand up. He stated that the pain was so great, he was not able to stand, walk or sit and the pain spread from the back to his legs. Appellant stated that he sustained an acute lumbar strain at work on October 24, 1988 and had recurrences of disability in 1991 and 1992 and filed claims for all of those incidents. He stated that the specific activity he was engaged in at the moment of the "specific pain (recurrence)" was sleeping.

Appellant submitted evidence to support his claim including reports of Dr. Wade T. Hunt, a Board-certified family practitioner, dated December 13, 1995 and January 4, 1996, and Dr. Barry A. Tuch, a Board-certified orthopedic surgeon, dated November 1, 1995 and

January 18, 1996. In his December 13, 1995 report, Dr. Hunt noted he was examining appellant for follow up to his low back pain, stated that appellant reported that he was 90 percent improved, performed a physical examination and diagnosed low back strain syndrome. He recommended that appellant return to light duty. In his November 1, 1995 report, Dr. Tuch noted that appellant had completed his work-hardening program, performed a physical examination, and agreed with the work hardening personnel that appellant was permanently partially disabled, required retraining and light work. In his January 4, 1996 report, Dr. Hunt diagnosed “low back pain (?) radiculopathy” and renewed the light-duty restrictions. In his January 18, 1996 report, Dr. Tuch stated that appellant had previously injured his neck and upper back and was on restricted duty when on November 11, 1995 he awoke with severe pain in his lower back and in both legs. He stated that appellant went to Urgent Care, treated with Dr. Hunt for physical therapy and reported being 70 percent improved. He considered appellant’s history of injury, performed a physical examination, reviewed x-rays and diagnosed resolving lumbosacral strain.

By letter dated February 2, 1996, the Office requested additional information from appellant including evidence of a change of the nature and extent of his injury-related condition or of his light-duty requirements.

By decision dated April 25, 1996, the Office denied the claim, stating that the evidence of record failed to demonstrate a causal relationship between the February 10, 1995 employment injury and the claimed condition of disability.

On May 8, 1996 appellant requested an oral hearing before an Office hearing representative which was held on October 29, 1996. At the hearing, appellant described the history of his February 10, 1995 employment injury, and stated that he felt back pain during the work-hardening program in approximately September 1995, and his back bothered him two weeks after he completed it. He stated that his back was becoming progressively worse.

Appellant also submitted additional medical evidence. In a report dated August 6, 1996, Dr. Charles S. Rothberg, a Board-certified neurological surgeon, considered appellant’s history of injury, performed a physical examination and reviewed x-rays which were normal and recommended medication and physical therapy to treat appellant’s ongoing neck pain and obtaining a magnetic resonance imaging (MRI) scan. In a report dated August 20, 1996, Dr. Tuch noted appellant’s complaints of increasing pain in his left upper trapezius, performed a physical examination upon which he noted a palpable pop of the left upper trapezius when appellant flexed his shoulder and diagnosed sprain of the left shoulder and neck. He stated that no treatment was necessary for this condition and no appropriate treatment was available.

By decision dated December 12, 1996, the Office hearing representative affirmed the Office’s April 25, 1996 decision.

By letter dated September 23, 1997, appellant requested reconsideration of the Office’s decision. Appellant submitted additional evidence including the medical reports of Dr. Frank H. Boehm, Jr., a neurological surgeon, dated July 25, 1997 and August 5 and 18, 1997, a medical report from Dr. Srinivasan S. Mani, a Board-certified psychiatrist and neurologist, dated August 12, 1997, a normal thoracic MRI scan dated July 24, 1997, a lumbar MRI scan dated

July 24, 1997, showing a central disc herniation at L3-4 and L5-S1 and a surgical report of discograms appellant underwent on August 4, 1997.

In his July 25, 1997 report, Dr. Boehm considered appellant's history of injury, performed a physical examination, and reviewed an MRI scan which showed "multiple levels of disc desiccation's/degeneration." He stated that the discs at L3-4, L4-5 and L5-S1 particularly showed loss of "hydrationsigno," with loss of disc height at L5-S1. He stated that appellant suffered from a severe exacerbation secondary to degenerative disc disease and was unable to determine which disc was the pain generator. In his August 5, 1997 report, Dr. Boehm opined that appellant's current pain syndrome was "a secondary to primarily L5-S1 disc disease and degeneration." In his August 18, 1997 report, Dr. Boehm stated that there was enough evidence "to support a finding of Direct causation between" the 1988 employment injury. He stated that the fall while on duty at the employing establishment, apparently referring to the February 10, 1995 employment injury, accelerated the symptomology that appellant was experiencing.

In his report dated August 12, 1997, Dr. Mani considered appellant's history of injury and noted that appellant was injured in a fall on February 10, 1995 and that he developed "even further exacerbation" of his low back pain after the work-hardening program. He performed a physical examination upon which he found painful restriction of the movement of the shoulders bilaterally and of the right lower extremity. Dr. Mani found a zone of dysesthesia in the right extremity S1 segment distribution and that the straight leg raising test elicited a moderate pain in both lower extremities. He also reviewed the lumbar MRI scan showing central disc herniation at L3-4 and L5-S1. Dr. Mani concluded that appellant's symptoms were related to radiculopathy. Further, he opined that appellant's low back pain, as well as pain in the mid dorsal region, and pain radiating down the lower extremity caused by the herniated disc were primarily related to the February 10, 1995 employment injury.

By decision dated December 24, 1997, the Office denied appellant's request for modification.

Appellant requested reconsideration of the Office's decision and submitted the report of Dr. Boehm dated December 17, 1997. In his December 17, 1997 report, Dr. Boehm stated that the work-hardening program appellant underwent after the February 1995 employment injury which involved various maneuvers to build strength including pulling, pushing and lifting "seems to have aggravated [appellant's] previous injuries." He stated that, prior to these events, referring to the 1988, 1991, 1992 and 1995 events, appellant was a healthy individual with no preexisting spinal or neck problems. Dr. Boehm opined that there was a direct causal relationship between the 1995 injury and appellant's present neck problems and an aggravation of the preexisting back pain dating back to 1988. He stated that all of appellant's symptoms had been aggravated by his participation in the work-hardening program.

By decision dated February 18, 1998, the Office denied appellant's request for modification.

The Board finds that appellant has failed to establish that his recurrence of disability commencing November 19, 1995 was causally related to the February 10, 1995 employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, 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 to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he 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 requirements.¹

In the present case, appellant did not show that the nature and extent of his light-duty requirements changed and he has not presented any rationalized medical evidence showing that his injury-related condition changed. Dr. Hunt's reports dated December 13, 1995 and January 4, 1996 in which Dr. Hunt diagnosed low back strain syndrome, Dr. Tuch's reports dated November 1, 1995, January 18 and August 20, 1996 in which Dr. Tuch diagnosed resolving lumbosacral strain or sprain of the left shoulder and neck, and Dr. Rothberg's August 6, 1996 report in which Dr. Rothberg addressed treatment of appellant's ongoing neck pain do not address causation, and therefore are not probative.²

In his August 12, 1997 report, Dr. Mani opined that appellant's low back pain, his pain in the mid dorsal region and the pain radiating down the lower extremity which was caused by his herniated disc was primarily related to the February 10, 1995 employment injury. Dr. Mani's opinion, however, is not probative because he did not address the issue of a recurrence of disability and does not refer to a November 19, 1995 incident. In considering appellant's history of injury, Dr. Mani stated that appellant developed further exacerbation of his low back pain with pain radiating down the lower extremity from the work-hardening program but does not provide a rationalized medical opinion explaining how this medically occurred. Further, an exacerbation or aggravation of February 10, 1995 employment injury would constitute a new injury, not a recurrence of disability. A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury.³ Dr. Mani's report therefore is not sufficient to establish a recurrence of disability. His opinion is also insufficiently detailed and lacking in medical rationale to establish that appellant established an aggravation of the February 10, 1995 employment injury or a new injury as a result of the work-hardening program.⁴

In his July 25, 1997 report, Dr. Boehm stated that appellant suffered from a severe exacerbation secondary to degenerative disc disease but did not describe what caused the exacerbation. In his August 5, 1997 report, he opined that appellant's current pain syndrome was secondary to L5-S1 disc disease and degeneration but did not address whether appellant's pain syndrome was caused by his employment. In his August 18, 1997 report, Dr. Boehm opined there was causation "between" the 1988 employment injury and opined that appellant's

¹ *Carlos A. Marrero*, 50 ECAB _____ (Docket No. 96-2186, issued October 19, 1998).

² *See Richard A. Weiss*, 47 ECAB 182, 183 (1995); *Roger Dingess*, 47 ECAB 123, 127 (1995).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1) (January 1995).

⁴ *See Diane Williams*, 47 ECAB 613, 616 (1996).

fall at work, apparently referring to appellant's February 10, 1995 fall, accelerated appellant's symptomology. He, however, made no reference to a recurrence of disability following the February 10, 1995 fall. Further, his December 17, 1987 opinion in which he opined that the work-hardening program appellant underwent "seems to have aggravated [appellant's] previous injuries" and concluded that appellant's symptoms were aggravated by appellant's participation in the work-hardening program does not establish a recurrence of disability commencing on November 19, 1995 because the work-hardening program would constitute an intervening injury.⁵ Moreover, because Dr. Boehm's opinion is somewhat speculative as to whether the work-hardening program aggravated appellant's condition, his opinion is also not sufficiently rationalized to establish that appellant sustained a new employment injury or an aggravation of a preexisting injury.⁶ Dr. Boehm's opinion therefore is also insufficient to establish appellant's claim.

The decisions of the Office of Workers' Compensation Programs dated February 18, 1998, December 24, 1997 and December 12, 1996 are hereby affirmed.

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

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁵ See *Carlos A. Marrero*, *supra* note 1.

⁶ See *Alberta S. Williamson*, 47 ECAB 569, 573-74 (1996).