

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD LAPANE and U.S. POSTAL SERVICE,
POST OFFICE, Providence, RI

*Docket No. 98-2465; Submitted on the Record;
Issued October 26, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant continues to suffer residuals of his employment-related back strain; and (2) whether the employment incident of July 6, 1988 aggravated appellant's preexisting spondylosis and spondylolisthesis condition at the L5-S1 interspace with associated bulging disc.

On July 6, 1988 appellant, a custodian, sustained a low back injury while in the performance of his duties when he lifted and carried a 5-gallon can of wax. The Office of Workers' Compensation Programs accepted his claim for back strain¹ and placed him on the periodic compensation rolls effective December 18, 1988.

In a decision dated October 20, 1994, the Office terminated appellant's compensation benefits on the grounds that disabling residuals of the employment injury had ceased. An Office hearing representative subsequently affirmed the termination but modified its effective date. The hearing representative also found that a conflict in medical opinion arose as a result of new evidence submitted after the Office's decision.² Dr. Kenneth H. Guild, appellant's attending physician, continually maintained that appellant had residual disability as a result of the employment activity. The Office referral physician, Dr. Stanley J. Stutz, concluded that appellant no longer had such disability. In a decision dated July 11, 1995, the hearing representative remanded the case to the Office for resolution of this conflict.

Following several unsuccessful attempts to obtain a probative medical opinion from the first impartial medical specialist, the Office referred appellant, together with the case file and a

¹ The Office reported the accepted condition as either back sprain or back strain.

² See *Maurice E. King*, 6 ECAB 35 (1953); *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity).

statement of accepted facts, to Dr. James D. Coleman, a Board-certified orthopedic surgeon, to resolve the conflict. In a report dated March 18, 1997, Dr. Coleman reviewed the statement of accepted facts and many medical records in the case file. He related appellant's history of injury, medical course, employment, current complaints and past history. Following his findings on physical examination, Dr. Coleman diagnosed, among other conditions, bilateral spondylolysis, fifth lumbar vertebra, and associated slight spondylolisthesis (anterolisthesis), preexisting, with symptomatic aggravation. He also diagnosed generalized bulging of the L5-S1 intervertebral disc, probably preexisting. Responding to questions posed by the Office, Dr. Coleman reported that there were no "entirely objective" physical findings other than a defect in the left vastus lateralis muscle and that appellant had documented, objective radiographic evidence of bilateral L5 spondylolysis with spondylolisthesis and a bulging disc at L5-S1. There was no evidence of a definite L5-S1 disc herniation. On the issue of causal relationship, Dr. Coleman reported as follows:

"Assuming the validity of the history that the patient allegedly had no pre July 6, 1988 back pain and has not been free of pain since the incident, it is my opinion that this patient's preexisting spondylolysis and spondylolisthesis condition at the L5-S1 interspace with associated bulging disc was symptomatically aggravated by the alleged injury of July 6, 1988. Again accepting the validity of his history, he has never been free of pain since that injury. I believe the predominant cause of his condition is the spondylolysis and listhesis but a major contributor to his current work disability is the alleged injury of July 6, 1988. I believe also that the multiple post-injury events in the Statement of Accepted Facts which include several falls are also contributors to his ongoing disability. In my opinion his obesity aggravates his symptoms. It was noted in my examination that he had multiple positive Waddell signs suggesting a functional component of his work disability. I believe, in view of these findings and the fact that he has had post-injury treatment for a stress disorder that there is probably a psycho social factor to his continuing work disability which does not appear to have been addressed in the medical records in which I reviewed."

Dr. Coleman added:

"It is my opinion there is a multi-factorial causality of his current disabling back symptomatology. Assuming he had no back pain prior to the July 6, 1988 injury and has had persisting unrelenting back pain since the incident, I believe this injury caused symptomatic aggravation of his preexisting spondylolysis and bulging disc condition. Certainly the multiple recorded injuries following this incident and his obesity also are factors in this patient's lack of improvement.

"It is impossible to accurately apportion the causality of each of these factors. This patient worked over one year (sic) for the postal service without low back pain prior to the injury of July 6, 1988 and following this event he allegedly has not been free of back pain. On the basis of this history, I believe the injury of July 6, 1988 was a major causal factor in a permanent symptomatic aggravation of a preexisting condition.

“I believe he is disabled from his normal job as a laborer because of chronic low back pain resulting in muscular deconditioning.”

In a decision dated September 2, 1997, an Office hearing representative found that Dr. Coleman’s opinion required clarification:

“On remand, the Office should ask Dr. Coleman whether he can provide medical rationale (such as a description of a pathophysiological process and/or reference to objective findings and test results) for his opinion on causal relationship between the July 6, 1988 work injury and the claimant’s present conditions of spondylolysis and spondylolisthesis, taking into account the amount of time that has passed since the work injury and the multiple off-duty accidents in which the claimant has been involved since the work injury. Dr. Coleman should be asked whether his opinion on this issue is based solely on the observation that the claimant was asymptomatic prior to the work injury, or whether he can explain in medical terms how the claimant’s currently diagnosed back conditions and disability are causally related to the work injury sustained on July 6, 1988.”

In a supplemental report dated October 16, 1997, Dr. Coleman stated as follows:

“My opinion that the July 6, 1988 work injury created symptomatic aggravation of the preexisting spondylolysis and spondylolisthesis³ rests on the validity of his history that he did not have any back pain prior to the July 6, 1988 work injury and was never free of low back discomfort following that date. Unfortunately there were no known pre July 6, 1988 objective imaging studies such as a CT scan or MRI of the lumbar spine. Such studies might determine whether the bulging disc at the L5-S1 level which created a mass effect on the disc at the ventral thecal sac was worsened by the July 6, 1988 work injury or was merely a finding as[s]ociated with a preexisting spondylolisthesis at the L5-S1 level unchanged by the injury. I believe, upon review of the records there was no objective evidence of material change in the underlying spondylolisthesis condition.”⁴

Dr. Coleman added:

“To my knowledge the pathophysiological process which causes asymptomatic spondylolisthesis to become symptomatic is unknown in most cases. It is not uncommon for an adult individual with asymptomatic spondylolisthesis to have a back injury whether it be lifting or twisting in nature and develop complaints of chronic low back pain. As noted in the previous paragraph, I cannot identify any objective physical findings or test results which would objectively quantitate the

³ The Office did not ask about the associated bulging disc Dr. Coleman described in his first report.

⁴ The Office asked Dr. Coleman whether he based his opinion on causal relationship solely on the observation that appellant was asymptomatic before the injury or whether he based his opinion on objective evidence of a material change in the underlying condition.

July 6, 1988 injury. As noted in my report of March 18, 1997, I believe his disabling back symptomatology had a multi-factorial causality which included a preexisting spondylolysis, spondylolisthesis, and bulging disc condition, the July 6, 1988 injury, multiple post July 6, 1988 injuries, and obesity. It remains my opinion, assuming the validity of the history that he did not have significant back pain prior to the July 6, 1988 injury and was never free of back pain since that injury, that a major factor in his current work disability was the lifting injury of July 6, 1988.”

In a decision dated January 8, 1998, the Office found that appellant had recovered from the effects of his July 6, 1988 work injury. The Office found that the weight of the medical evidence, as represented by the opinion of Dr. Coleman, found no objective physical evidence to demonstrate a work-related aggravation of preexisting conditions and supported that there was no objective evidence of disability causally connected to the July 6, 1988 work injury.

In a decision dated July 14, 1998, an Office hearing representative affirmed the Office’s January 8, 1998 decision. The hearing representative explained that appellant was not entitled to continued compensation unless it was established that he was still experiencing residual effects from the accepted sprain or that the July 6, 1988 episode aggravated his underlying spondylosis. The hearing representative found that the evidence of record did not substantiate either basis for continued entitlement to compensation. The hearing representative further found that Dr. Coleman’s opinion was sufficient to resolve the outstanding conflict in medical opinion.

The Board finds that this case is not in posture for decision. The opinion of the impartial medical specialist is insufficient to resolve the outstanding conflict.

The Office accepted that appellant sustained a back strain on July 6, 1988 while in the performance of his duties. Appellant received compensation for disability and treatment based on this accepted medical condition. The first question for determination, therefore, is whether appellant continues to suffer residuals of his employment-related back strain and, if so, whether this medical condition disables him from performing his date-of-injury job. When the impartial medical specialist, Dr. Coleman, did not address this issue, the Office should have requested a well-reasoned medical opinion to resolve the matter.

The second question for determination is whether the incident of July 6, 1988 aggravated appellant’s preexisting spondylosis and spondylolisthesis condition at the L5-S1 interspace with associated bulging disc. On this issue Dr. Coleman made clear that his opinion was in the affirmative. In his March 18, 1997 report, he stated that, assuming appellant had given him an accurate history,⁵ it was his opinion that appellant’s preexisting spondylolysis and spondylolisthesis condition at the L5-S1 interspace with associated bulging disc was symptomatically aggravated by alleged injury of July 6, 1988. He explained that there was a

⁵ That Dr. Coleman conditioned his opinion on the accuracy of appellant’s history in no way diminishes the value of his opinion. The Board has often held that the opinion of an impartial medical specialist must be based upon a proper factual background. *E.g.*, *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980). In this case, the Office does not dispute the history appellant related.

multi-factorial causality to appellant's current disabling back symptomatology: The predominant cause was appellant's spondylolysis and listhesis, but the injury of July 6, 1988 was a major causal factor in the permanent symptomatic aggravation of the preexisting condition. In his supplemental report of October 15, 1997, Dr. Coleman reiterated that it remained his opinion, assuming the validity of the history reported, that a major factor in appellant's current work disability was the lifting injury of July 6, 1988.

Although the Office found Dr. Coleman's opinion to be detailed and well rationalized and therefore sufficient to satisfy the requirements of a referee medical opinion, the impartial medical specialist did not show how his opinion was consistent with the medical record. He explained that there was documented objective radiographic evidence of appellant's low back condition, but without entirely objective physical findings or test results that would objectively quantify the July 6, 1988 injury, he rested his opinion on the validity of the history that appellant had no back pain prior to the July 6, 1988 work injury and was never free of low back discomfort following that date. Given the significance of this reliance, the Office should have asked Dr. Coleman to support the validity of appellant's history by referencing consistent complaints, past histories, clinical findings, test results⁶ or the general course of medical treatment. The Board notes that the evidence need not be so conclusive as to suggest a causal connection beyond all possible doubt. The evidence required is only that necessary to convince the lay adjudicator that the conclusion drawn is rational, sound and logical.⁷

Dr. Coleman also did not explain how he determined the employment-related aggravation to be permanent. The Office should have requested that he provide sound medical reasoning to support his opinion on the duration of the aggravation.

The Office has focused on Dr. Coleman's use of the phrase "symptomatic aggravation," on his observation that there was no objective evidence of material change in the underlying spondylolisthesis condition and on confirmation that appellant did not sustain a disc herniation. None of these is fatal to appellant's entitlement. As the impartial medical specialist selected by the Office to resolve the conflict as to whether appellant continues to have disability residual to the employment incident of July 6, 1988, Dr. Coleman has made clear his opinion that appellant has such residual disability.

Because the opinion of the impartial medical specialist is insufficient to resolve the conflict, the Board will set aside the Office's July 14, 1998 decision and remand the case for further development of the evidence. Following such development, the Office will issue an appropriate final decision on the merits of appellant's entitlement to compensation benefits.

The July 14, 1998 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

⁶ A neuroradiologist reported on September 25, 1996 that the L5-S1 intervertebral disc demonstrated a generalized bulge that extended on both sides of the midline producing a slight mass effect upon the ventral thecal sac and entering in contact with the exiting L5 nerve roots and the L5 dorsal root ganglia bilaterally, more prominently on the left side.

⁷ *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein at note 1.

Dated, Washington, DC
October 26, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member