

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE HERNANDEZ and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 00-2197; Submitted on the Record;
Issued July 11, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability beginning October 23, 1998 due to his September 18, 1997 employment injury.

On September 18, 1997 appellant, then a 35-year-old clerk, injured his left leg and right toe when he tripped over a pallet skid. The Office of Workers' Compensation Programs accepted that appellant sustained a left leg contusion, right first toe contusion, right wrist contusion and a left foot contusion. Appellant stopped work and remained on total disability until returning to a limited-duty position on June 29, 1998.

Accompanying appellant's claim were several duty status report's dated September 18, 23 and 29, 1997 prepared by Dr. Irene Chow, a fitness-for-duty physician; and a note from Dr. Russell H. Silver, Board-certified in physical medicine and rehabilitation, dated September 25, 1997. The duty status report dated September 18, 1997 diagnosed a contusion of the left leg, right first toe, right wrist and left foot. Dr. Chow indicated appellant could return to work with restrictions on lifting, no prolonged standing or walking. The duty status report's dated September 23 and 29, 1997 indicated appellant could return to his regular duties on September 27, 1997. The note from Dr. Silver indicated appellant was under his care for wrist, foot and leg pain and was not to return to work until further notice.

In a June 10, 1998 report, Dr. Norman M. Heyman, a Board-certified orthopedic surgeon and Office second opinion physician, noted that appellant's examination revealed no objective sign of abnormality and he could return to regular work without restrictions. On July 9, 1998 the Office issued a notice of proposed termination of compensation on the grounds that Dr. Heyman's June 10, 1998 report established no continuing disability as a result of the September 18, 1997 employment injury. By decision dated September 1, 1998, the Office terminated appellant's benefits effective September 1, 1998.

On May 13, 1999 appellant filed a Form CA-2a, notice of recurrence of disability. He indicated a recurrence on October 23, 1998, noting that his pain had intensified in the left knee, right wrist, back and abdominal area since the employment-related injury of September 18, 1997. Appellant stopped work on October 23, 1998.

By letter dated May 27, 1999, the Office requested detailed factual and medical evidence from appellant, stating that the information submitted was insufficient to establish a recurrence on the above date.

Appellant submitted several notes from Dr. Silver dated January 28, June 10 and 28, 1999; a medical report from Dr. Herbert Wiener, a family practitioner, dated June 15, 1999 and a narrative statement. Dr. Silver's note dated January 28, 1999 indicated appellant was diagnosed with left knee pain and right wrist pain. He indicated appellant was unable to return to work until January 29, 2000. Dr. Silver's June 10, 1999 note indicated appellant was being treated for left knee and right wrist injuries he sustained in a work-related accident. He noted appellant experienced pain in the right wrist and left knee with numbness and tingling radiating down the left leg. Dr. Silver noted appellant returned to work when he was still injured which resulted in a worsening of his condition. The June 28, 1999 note indicated appellant would be unable to work until January 29, 2000. The medical report from Dr. Wiener noted appellant was being treated for a September 18, 1997 work-related injury. Appellant complained of pain and stiffness of the right wrist, left knee and low back. Dr. Wiener noted tenderness and restricted motion of the right wrist and left knee; and paravertebral tenderness and muscle spasm of the lumbar spine. He diagnosed appellant with internal derangement of the right wrist; internal derangement of the left knee and low back derangement. Dr. Wiener indicated appellant was totally disabled and his prognosis was guarded. The narrative statement indicated after the original injury appellant was placed on limited duty with restrictions on standing and lifting. He noted that he was unable to walk or lift anything without feeling pain in his left knee, right wrist, back and abdominal area.

In a decision dated July 17, 1999, the Office denied appellant's claim for recurrence of disability on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability of October 23, 1998 causally related to the September 18, 1997 employment injury.

Appellant requested an oral hearing and submitted additional medical evidence. The medical evidence consisted of x-rays of the lumbar spine, left knee, right wrist and pelvis dated August 31, 1999. The radiographic studies were unremarkable.

The hearing was held on January 11, 2000. Appellant testified that he experienced pain since the work-related injury of September 18, 1997 and on October 23, 1998, he experienced a worsening of his condition. He also submitted a medical report from Dr. Placido Menezes, a Board-certified orthopedic surgeon, dated December 22, 1999 which diagnosed appellant with contusion of the right wrist, lumbar radiculopathy and internal derangement of the left knee.

Subsequently, appellant submitted various medical records, many duplicates of those already in the record or unrelated records which pertain to a gastrointestinal and colon condition. He also submitted a medical report from Dr. Luis Frias, a Board-certified neurologist, dated

August 19, 1999; notes from Dr. Wiener dated September 21, 1999 to January 4, 2000; notes from Dr. Silver dated September 25, 1997 to August 27, 1999; a medical report from Dr. Maria De Jesus, a Board-certified neurologist, dated October 14, 1999; and a computerized tomography (CT) scan of the abdomen and pelvis dated November 10, 1999. The medical report from Dr. Frias indicated appellant complained of lower back pain and bilateral knee pain, which started when appellant fell at work. He diagnosed appellant with lumbosacral strain; post-traumatic lumbosacral myofascial pain syndrome and left L3 radiculopathy manifesting with right knee arthropathy and cervical myofascial pain syndrome. The notes from Dr. Wiener dated September 21, 1999 to January 4, 2000 indicated appellant would be unable to work until February 4, 2000. The notes from Dr. Silver dated September 25, 1997 to August 27, 1999 indicated appellant was being treated for work-related injuries to his left knee and right wrist and would be unable to return to work until January 29, 2000. The medical report from Dr. De Jesus indicated that appellant was “status post fall” and was complaining of low back pain, numbness of the left knee and right wrist pain. Dr. De Jesus noted upon physical examination the range of motion of the left knee and right wrist was normal and range of motion of the lumbar spine was slightly limited. She diagnosed appellant with lumbar sprain, left knee sprain and right wrist sprain.

By decision dated March 8, 2000, an Office hearing representative affirmed the June 17, 1999 decision.

The Board finds that appellant did not sustain a recurrence of disability beginning on October 23, 1998 as a result of his September 18, 1997 employment injury.

Appellant sustained injury on September 18, 1997, accepted for a left leg contusion, right first toe contusion, right wrist contusion and left foot contusion. He received appropriate benefits for intermittent disability and returned to limited-duty work. Based on the June 10, 1998 report of Dr. Heyman the Office terminated appellant’s compensation benefits effective September 1, 1998, finding appellant had no disability or physical residuals due to the accepted injury and could return to his regular duties. Therefore, on May 13, 1999, appellant filed a claim for recurrence of disability as of October 23, 1998.

When an employee claims a recurrence of disability due to an accepted employment injury, he has the burden of proof to establish by the weight of reliable, substantial and probative evidence that the obtained recurrence is causally related to the accepted injury. As part of this burden, the employee must submit medical evidence, based on a complete and accurate factual history, showing the causal relationship between the recurrence of disability and the accepted injury.¹

Appellant submitted notes from Dr. Silver indicating appellant was being treated for left knee and right wrist injuries he sustained in a work-related accident. He reported that when appellant returned to work in June 1998 his condition worsened. Dr. Silver indicated that appellant remained symptomatic and could not return to employment until January 29, 2000. However, he did not state a specific date of a recurrence of disability nor did he note a particular change in the nature of appellant’s physical condition, arising from the employment injury,

¹ See *Armando Colon*, 41 ECAB 563 (1990).

which prevented appellant from performing his light-duty position. These notes are vague regarding the time of the onset of the claimed recurrence of disability and are unrationalized regarding how the 1997 employment injury would have caused a particular period of disability beginning in October 1998.² For example, Dr. Silver did not explain the pathophysiological processes by which the accepted conditions would have caused disability beginning October 23, 1998. Further, Dr. Silver did not discuss the findings of Dr. Heyman, who reported an examination with no abnormal physical indications of residuals or disability as of June 10, 1998.

Dr. Wiener's report of June 15, 1999, provides a history of the doctor's course of treatment starting June 11, 1999 and opined that appellant's condition's were work related and disabling. He noted appellant complained of pain and stiffness in the right wrist and left knee and low back; however, he did not provide an explanation as to when the recurrence of disability began or any medical rationale in support of his opinion on causal relationship. Additionally, the doctor diagnosed appellant with low back derangement; however, there is no "bridging evidence" which would relate the low back condition to the accepted employment injury. Dr. Wiener did not explain, the accepted left leg, right first toe, right wrist and left foot contusions, caused disability but rather introduced a new diagnosis "derangement of the low back." The Office never accepted that appellant sustained a low back condition as a result of his September 18, 1997 work injury.³ The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁴

Dr. Menezes' December 22, 1999 report indicated that appellant was being treated for injuries to his lumbar spine, right wrist and left knee that he sustained in a work-related accident. He indicated appellant remained symptomatic with limitation of movement and experienced difficulty in walking. However, Dr. Menezes did not indicate a specific date of a recurrence of disability nor did he note a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from performing his light-duty position. Further, Dr. Menezes did not provide "bridging evidence" which would relate the low back or other conditions to the accepted employment injury.⁵ Therefore, this report is insufficient to meet appellant's burden of proof.

Dr. Frias' report of August 19, 1999 noted appellant's complaints of lower back pain and bilateral knee pain, which started on December 20, 1997 when appellant fell at work. He diagnosed appellant with lumbosacral strain; post-traumatic lumbosacral myofascial pain syndrome and left L3 radiculopathy manifesting with right knee arthropathy and cervical myofascial pain syndrome. Likewise, Dr. De Jesus in her report of October 14, 1999 indicated

² See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

³ See *Arthur N. Meyers*, 23 ECAB 111, 113 (1971) (where the Board found a physician's opinion to be of diminished probative value where the physician's opinion in support of causal relationship was based on a history of injury that was not corroborated by the contemporaneous medical history contained in the case record).

⁴ See *Theron J. Barham*, *supra* note 2.

⁵ See *Arthur N. Meyers*, *supra* note 3.

appellant still remained symptomatic and diagnosed a lumbar sprain, left knee sprain and right wrist sprain. However, neither doctor indicated a specific date of a recurrence of disability nor did they note a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from performing his light-duty position. Further, neither Dr. Frias nor Dr. De Jesus provided "bridging evidence" which would relate the low back and the right knee conditions to the accepted employment injury.⁶ Thus, these reports are also insufficient to meet appellant's burden of proof.

Appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit him from performing the light-duty position he assumed after he returned to work.

The decision of the Office of Workers' Compensation Programs dated March 8, 2000 is hereby affirmed.⁷

Dated, Washington, DC
July 11, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *Id.*

⁷ With appellant's request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).