

On March 11, 1990 appellant, then a 39-year-old tractor trailer operator, sustained a back injury in the performance of duty: “I was driving the [employing establishment] tractor trailer in route to airport. At Jerrold St. making a left turn a privately owned vehicle struck my tractor causing my injury.” He stopped work on March 14, 1990. The Office accepted his claim for cervical, dorsal and lumbosacral sprains and paid compensation for temporary total disability.

On May 29, 1990 Dr. L.S. Kimbrough, appellant's internist, reported that the cervical, dorsal and lumbosacral sprains were resolving. Appellant returned to full-time regular duty on June 16, 1990. On June 28, 1990 Dr. Kimbrough was of the opinion that appellant would continue to improve and not be left with any residual pain or permanent injuries. He noted, however, that appellant had an underlying pathology, notably disc space narrowing at C5-6 with associated uncovertebral joint hypertrophy: "This produces a moderate impingement upon the C5-6 neural foramina bilaterally."

On January 22, 1991 Dr. Kimbrough reported that appellant suffered an injury on December 20, 1990 that totally disabled him for work. He diagnosed acute cervical and lumbosacral sprain and anticipated no permanent effects.¹

On April 22, 1998 appellant presented with back pain and stiffness for two days: "Woke up one day with above symptoms." He told Dr. Lara Salamacha, an orthopedic surgeon, that following his three months of disability in 1990, he was able to perform his regular duties until June 1999, when he had a sudden onset of bilateral lower extremity weakness and back pain: "He states that he was standing at home at the refrigerator when he was unable to bear weight." On September 4, 1999 appellant presented with back pain for one and a half weeks: "Bent over to get something out of the refrigerator. His back 'went out' again." On November 10, 1999 he was diagnosed with probable discogenic groin pain through nerve impingement.

On February 15, 2001 Dr. Ronald F. Johnson, a psychiatrist, offered a principal diagnosis of prolonged adjustment disorder with depressed mood. He reported that appellant felt rejected by his employer and that his loss of income and loss of self-sufficiency was very stressful.

Appellant took disability retirement effective November 2, 2001.

On March 7, 2002 Dr. Richard A. Crazen, an internist, reported that appellant had a history of disabling low back syndrome with the onset of low back pain in 1990 after being involved in a motor vehicle accident. He stated that appellant had persistent, chronic low back pain since that time, was extensively evaluated "and it has been felt that he has had experienced extensive nerve root damage in his back and because of these symptoms has been unable to continue on even a reduced work schedule." Dr. Crazen concluded that appellant was totally and permanently disabled due to ongoing chronic low back pain as a result of a prior motor vehicle accident. He added that appellant also had diffuse body pain and intractable depression and carried a diagnosis of fibromyalgia.

On November 3, 2005 Dr. Benjamin M. Picetti, an ophthalmologist, noted that appellant's diagnoses included degenerative disc disease with peripheral nerve damage causing moderate to severe pain, as well as erectile dysfunction and testicular cysts. But most troubling, he reported, was appellant's mental state, including deep depressive episodes leading to reclusive behavior, occasional panic attacks and a marked deterioration in his judgment in making relatively simple everyday decisions and financial matters.

¹ The Office File No. 130938905. The Office accepted this claim for lumbosacral strain.

On November 28, 2005 appellant filed a claim alleging that his chronic depression was secondary to the pain and injuries he sustained in his March 11, 1990 motor vehicle accident.

On February 15, 2006 Dr. Picetti, an ophthalmologist, reported that he had treated appellant since 1996, after Dr. Kimbrough retired. He described appellant's March 11, 1990 employment injury and reported that appellant's chronic debilitating back and groin pain and depressive symptoms were related to his March 11, 1990 injury. Dr. Picetti stated:

"Unfortunately, the painful back symptoms did not subside and, indeed, worsened. He developed groin pain which persists and is related to peripheral nerve damage from the damaged vertebrae. [Appellant] had been an employee of the [employing establishment] since March 1984 with a good record. He was anxious to continue working in the capacity of tractor-trailer operator. However, the pain was not controlled with physiotherapy and analgesics could not be given in sufficient quantities to control the pain because of his work as a driver. His symptoms were aggravated while driving and several consulting physicians stated [that] he should no longer drive. Those reports should be in your file. [Appellant] was devastated, not only because of his symptoms, but because he wanted to continue working until his normal retirement age. I found it necessary to write his supervisor on many occasions when his pain was too severe to work. A trial of 'light duty' was attempted, but failed."

* * *

"The back and groin pain is persistent and severely limits [appellant's] physical activities. The pain symptoms are a result of his March 11, 1990 injury. In addition, because of distress from pain and inability to work and support himself with the meager pension and Social Security benefits, he has become severely depressed, reclusive and, at times, exhibits panic attacks, which I have, at time, witnessed. These symptoms would not occur except for the 1990 injury. Despite the passage of time, his present condition is a result of the auto accident in 1990. Medications are of little benefit as he has low tolerance for most analgesics and psychotropic drugs. I have had opportunity to follow him for nearly ten years and I have never seen any evidence of malingering."

On April 12, 2006 Dr. Milton L. Rosenberg, a urologist, reported that he saw appellant in 1990 because of an automobile accident causing injury to his lumbar spine and creating urologic problems. He stated that appellant continued to have severe pain in his back and groin areas due to neuritis secondary to his injury. Dr. Rosenberg added: "He also suffers from other related problems including mental depression (seeks a psychiatrist), weak legs as well as pain in other parts of his body." He stated that appellant was totally disabled.

In decisions dated April 28, 2006, the Office denied a recurrence of the March 11, 1990 injury and appellant's claim of a consequential emotional condition. The Office found that appellant failed to establish that he continued with residuals of his March 11, 1990 injury and explained that the Office could not accept a condition as consequential when the condition arose after the original injury was no longer compensable.

Appellant requested an oral hearing before an Office hearing representative, which was held on November 15, 2006. Following the hearing, he submitted the January 2, 2007 report of Dr. A. Giovannini, an orthopedic surgeon, who reported that there was a direct causal relationship between the March 11, 1990 employment injury and subsequent return to work and appellant's current complaints. He made this statement with reasonable medical probability "in view of the onset of these complaints at the time of the definite and specific traumatic incident of March 11, 1990 and the gradual increase in level of pain subsequently until pain forced him to discontinue work in December 1999." Dr. Giovannini diagnosed lumbar disc herniation right L2-3 or L3-4 and left L5-S1 lumbar sprain, chronic, recurring severe with radiculopathy; and degenerative and traumatic joint and disc disease, lumbar spine. He reported that, absent industrial exposure, no part of appellant's current disability would exist:

"Although even without current MRI [magnetic resonance imaging] it can be stated with reasonable medical probability that [appellant] is affected by significant degenerative arthritis and degenerative disc disease before the work injury of March 11, 1990, no part of the present disability is due to degenerative disc disease/degenerative arthritis. This can be stated with reasonable medical probability because the majority of individuals with degenerative disc disease are asymptomatic. It would therefore be pure speculation to state that the degenerative disc disease present in this instance would have become symptomatic barring the work injury of March 11, 1990."

Dr. Giovannini attributed 50 percent of appellant's disability to the March 11, 1990 employment injury and 50 percent to cumulative and repetitive daily work effort after March 11, 1990. He went on to explain the physiological effects of driving a motor vehicle.

On January 18, 2007 Dr. Fred Rozendal, a licensed clinical psychologist, provided a principal diagnosis of major depression with psychotic features. He offered a connection to the accepted employment injury, as follows:

"As to the question of whether the deterioration in his state of mind is associated with his accident in 1990, it is clear that he is a well-intentioned individual who takes personal responsibility extremely seriously. He feels worthless since he is not working, barely surviving financially and thus he has removed himself from the dating market because he feels he has nothing to offer to a woman. Given the disparity between his strong sense of responsibility and poor ability to function, it's not surprising that he is deeply depressed. The accident has been a major contributor in my impression to this state, leaving him with a sense of emasculation. It was quite sad to see how he struggled with feelings of worthlessness when he could not perform tasks that I administered and when he spoke of avoiding seeing his mother and sister (to whom he feels close) because of not wanting to worry them."

In a decision dated February 6, 2007, the Office hearing representative affirmed the denial of appellant's claim. She noted that, after appellant returned to work on June 16, 1990, the Office closed the claim due to inactivity in 1992, meaning that he had no billing activity for two years. The hearing representative also noted that treatment notes from Dr. Picetti beginning

on December 16, 1995 and continuing for the next four years made no mention that he was treating appellant for a low back condition. This created a nine-year window in which appellant provided no medical documentation bridging his low back treatment. The hearing representative found the medical evidence insufficient to establish that appellant sustained a consequential psychological condition causally related to his employment injury on March 11, 1990.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.² A claimant seeking benefits under the Act has the burden of proof to establish the essential elements of his claim by the weight of the evidence,³ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁴

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁵

It is an accepted principle of workers' compensation law 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 attributable to the employee's own intentional conduct.⁶

ANALYSIS

Appellant's claim is that his current chronic depression is secondary to the pain and injuries he sustained in his March 11, 1990 motor vehicle accident. He has submitted a number of medical opinions to support this claim, but none provides an accurate history of his medical progress, particularly in 1990. On May 29, 1990 Dr. Kimbrough, the treating internist, reported that the injury was resolving and on June 16, 1990 appellant returned to full-time unrestricted duty. Twelve days later he opined that appellant would continue to improve and not be left with any residual pain or permanent injuries. This is the last medical report directly related to the March 11, 1990 employment injury. Following Dr. Kimbrough's January 22, 1991 report concerning a December 20, 1990 injury, there is no evidence that appellant had any significant

² 5 U.S.C. § 8102(a).

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁶ *John R. Knox*, 42 ECAB 193 (1990); *Lee A. Holle*, 7 ECAB 448 (1955).

low back complaints or medical treatment until April 1998, when he simply woke up with symptoms. In June 1999 appellant had a sudden onset of bilateral lower extremity weakness and back pain while standing at home at the refrigerator. In August 1999 his back gave out on him again, this time while bent over to get something out of the refrigerator.

The most recent medical opinions that appellant submitted provide a different history. They show a claimant who did not improve after the March 11, 1990 accident. They show a claimant with persistent, chronic low back pain since that time, a patient whose condition worsened until degenerative disc disease, extensive nerve damage and groin pain ultimately made it impossible for him to continue in his job. Dr. Giovanni, the orthopedic surgeon, offered his opinion with reasonable medical probability in view of the onset of complaints at the time of the March 11, 1990 incident “and the gradual increase in level of pain subsequently until pain forced him to discontinue work in December 1999.” However, the record does not support this account of appellant’s medical history.

Medical conclusions based on inaccurate or incomplete histories are of diminished probative value.⁷ The medical opinion evidence fails to account for Dr. Kimbrough’s contemporaneous reports, including the observation that appellant had an underlying disc pathology producing moderate impingement or for his release to full-time unrestricted duty in June 1990. Appellant stated to Dr. Salamacha that he was able to perform his regular duties until June 1999 and the record does not reveal any significant low back complaints until 1998 or 1999. The Board finds that appellant has not met his burden of proof. It may be that his depression is related to the series of events that began in June 1999, when he experienced a sudden onset of low back pain while at home and that ended in November 2001 with his disability retirement. But there is no probative medical evidence to establish that his psychiatric condition had anything to do with what happened on March 11, 1990. The Board will therefore affirm the denial of appellant’s claim that his chronic depression is secondary to the pain and injuries he sustained on that date.

CONCLUSION

The Board finds that appellant has not met his burden to establish that his diagnosed psychiatric condition is causally related to his March 11, 1990 employment injury.

⁷ See *James A. Wyrick*, 31 ECAB 1805 (1980) (physician’s report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board