

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSE A. RODRIGUEZ and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Bedford, Mass.

*Docket No. 96-1627; Submitted on the Record;
Issued April 13, 1998*

DECISION and ORDER

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

The issue is whether appellant has established a recurrence of disability commencing on or after December 27, 1993, causally related to his August 15, 1992 employment injury.

In the present case, appellant filed a claim alleging that he sustained a low back injury on August 15, 1992 when he was lifting a heavy bag in the performance of duty.¹ Appellant returned to a full-time, light-duty position on April 24, 1993. The record indicates that appellant did not work on December 27, 1993, then began working four hours per day as of December 28, 1993, and stopped working on April 7, 1994. He filed claims for continuing compensation (Form CA-8) for the hours of wage loss. In a decision dated May 18, 1994, the Office denied the claim for disability commencing December 28, 1993. By decision dated September 29, 1995, the Office denied appellant's September 27, 1994 request for a hearing on the grounds that it was untimely filed and appellant could submit additional evidence through a request for reconsideration.² Appellant requested reconsideration of his claim and submitted additional evidence. By decision dated January 29, 1996, the Office denied modification of the May 18, 1994 decision.

The Board has reviewed the record and finds that appellant has not established a recurrence of disability commencing December 27, 1993.

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 establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of disability. As part of this burden of

¹ The record indicates that the Office of Workers' Compensation Programs accepted that appellant had sustained a lumbar strain in the performance of duty on June 22, 1991.

² Appellant did not request review of this decision.

proof, the employee must show either 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.³

In the present case, Dr. Victor A. Conforti, an orthopedic surgeon, indicated in a December 27, 1993 treatment note that appellant was still having difficulty with his back. Dr. Conforti stated that appellant “will not return to any type of lifting, bending, stooping, climbing, kneeling, on a permanent basis. Presently, he [is] lifting and bending, working in a laundry, and I [have] discouraged that. He [has] asked me to put him on part-time work.” The Board notes that, with respect to the light-duty job, appellant has not alleged that there was a change in the light-duty job at the time of the alleged recurrence of disability. As noted above, a recurrence of disability can be established by showing a change in the nature and extent of the light-duty job requirements, but there is no probative evidence of such a change here.

Dr. Conforti’s treatment note does not discuss causal relationship between appellant’s partial disability and the accepted employment injury. It is therefore not sufficient to establish a recurrence of disability as of December 27, 1993. The remainder of the medical evidence is similarly deficient in failing to provide a reasoned opinion that appellant’s disability on or after December 27, 1993 was causally related to his federal employment. In a report dated April 1, 1994, Dr. Conforti stated that appellant “has been under my care for injuries which he suffered to his back on August 15, 1992,” without providing further explanation as to causal relationship with employment. Dr. Conforti did not discuss disability commencing December 27, 1993. In a form report (Form CA-20) dated April 5, 1994, Dr. Conforti diagnosed a herniated disc and checked a box “yes” that the condition was causally related to employment. This is of little probative value on the issue of causal relationship without further explanation,⁴ and there is no discussion of a partial disability commencing in December 1993. In a report dated June 21, 1994, Dr. Conforti states that appellant had been treated for back injuries suffered while lifting at work on August 15, 1992, but again he does not provide any supporting rationale, nor does he discuss a period of disability.

In a report dated March 22, 1995, Dr. William P. McCann, a neurosurgeon, provided a history and results on examination,⁵ diagnosing a herniated nucleus pulposus at L4-5 with lumbar radiculopathy. Dr. McCann does not, however, provide an opinion as to causal relationship between any disability on or after December 27, 1993 and appellant’s employment injuries.

The Board accordingly finds that the medical evidence does not contain a reasoned opinion, based on an complete background, that establishes disability on or after December 27, 1993 as causally related to appellant’s August 15, 1992 employment injury or to any prior employment injury. It is, as noted above, appellant’s burden to establish his claim, and the Board finds that he has not met his burden of proof in this case.

³ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

⁵ The history notes a 1991 employment injury, but does not discuss the August 15, 1992 injury.

The decision of the Office of Workers' Compensation Programs dated January 29, 1996 is affirmed.

Dated, Washington, D.C.
April 13, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member