

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD PETRIE and U.S. POSTAL SERVICE,
POST OFFICE, Westwego, La.

*Docket No. 95-2098; Submitted on the Record;
Issued January 23, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained recurrences of disability from September 22 to October 14, 1992 and from November 4, 1992 to June 21, 1993 causally related to his October 5, 1982 and July 11, 1986 employment injuries; and (2) whether appellant's disability and need for medical care related to these employment injuries ended by July 25, 1993.

The Board finds that the case is not in posture for a decision.

There was a conflict of medical opinion between appellant's attending physician, Dr. Earl J. Rozas, a Board-certified orthopedic surgeon and the physician to whom the Office of Workers' Compensation Programs referred appellant, Dr. Richard L. Meyer, Jr., a Board-certified orthopedic surgeon. Dr. Rozas stated in a December 7, 1992 report that appellant had not recovered from his employment injury to his back. Dr. Rozas attributed appellant's recurrences of disability from September 22 to October 14, 1992 and from November 4, 1992 to June 21, 1993 to flareups in his back condition, as well as to a cardiac condition contributing to the later period of total disability. In a report dated July 5, 1993, Dr. Rozas opined that appellant's "degenerative disc disease that is seen at L5-S1 and L4-5 are a direct result of the injury he sustained in 1986" and that "the back injury of 1986 was a precipitating and aggravating traumatic event that has flared up his rheumatoid disease to such a proportion that he is unable to return to his preinjury status." In a report dated January 29, 1993, Dr. Rozas explained how appellant's underlying rheumatoid arthritis and his 1982 and 1986 employment injuries were related:

"There is an obvious connection between his recurrent flareups and continued problems with his back with rheumatoid arthritis. It is medically clear that an injury sustained by a person with rheumatoid arthritis may cause a reaction and flareup far greater than what would be expected with the original injury and can expect continued flareups of the rheumatoid condition complicated by the initial injury of the back. ... It may be difficult for you to comprehend that there is a

close connection between injuries sustained to a patient with preexisting rheumatoid arthritis and the subsequent disabilities thereafter, but this is the way it is. The human body is not a cookbook that you can categorize in little pigeon hole slots and the whole person is affected and that is what is happening with [appellant] and this is what has rendered him in the position he is now in.”

In a report dated December 28, 1992, Dr. Meyer stated: “My impression is that this patient has chronic lower back pain, however, there are no objective findings by examination today to suggest any type of nerve root irritation or evidence of a herniated disc. I believe he is having some underlying symptoms related to the mild degree of degenerative disc disease and perhaps there is some contribution to his pain from the underlying rheumatoid arthritis.” In this report Dr. Meyer also stated, “There certainly is no evidence of a lumbosacral strain so I doubt there is any relationship to his present problem and the on-the-job injury of 1982 or 1986. ... Work limitations would be related to ongoing pain, perhaps due to the degenerative disc disease as well as the rheumatoid arthritis.” In response to an Office request for clarification of his statement, “There may be some connection between [appellant’s] rheumatoid arthritis and his on-the-job back injury, as it is most likely that any type of rheumatoid process affecting the lumbar spine will incapacitate him to some degree.” Dr. Meyer stated in a February 25, 1993 report: “I did not mean to infer that there is any relationship between the rheumatoid arthritis and his on-the-job back injury. I meant to state that the rheumatoid arthritis may affect his ability to do his work and may certainly incapacitate him some. This is directly related to the rheumatoid arthritis itself and has no relationship to the actual on-the-job injury.”

To resolve this conflict of medical opinion on whether appellant’s disability was causally related to his employment injuries, the Office, pursuant to section 8123(a) of the Federal Employees’ Compensation Act,¹ referred appellant, the case record and a statement of accepted facts to Dr. Stephen M. Wilson, a Board-certified orthopedic surgeon. In a report dated April 20, 1993, Dr. Wilson, after reviewing appellant’s history and describing findings on physical examination and prior diagnostic testing, concluded:

“This is a 44-year-old patient who sustained a soft tissue injury to his back on July 11, 1986. On my physical examination on April 20, 1993, I can find nothing to make me relate this patient’s problem to his injury in 1986. I certainly feel like he has had sufficient time for his injury to heal. He will continue to have some problems with his lower extremities and his lower back due to the fact that he has been diagnosed with diabetes and rheumatoid arthritis. However, I certainly cannot relate his problem to his injury on July 11, 1986.

¹ 5 U.S.C. § 8123(a) states in pertinent part, “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”

“If correctly motivated, I feel this patient can now return to any type of activity that he desires. Since he has been diagnosed as having rheumatoid arthritis, I would advise him to return to some type of work where he does not have to lift over 50 pounds or more than 30 pounds on a regular basis.”

* * *

“I have read the duties of distribution clerk and since it states that he would have to lift up to 70 pounds, I feel this may be a little too strenuous. However, it would be too strenuous because of his rheumatoid arthritis and is not related to his injury on July 11, 1986.”

Dr. Wilson also stated that there was no objective evidence of a lumbosacral strain and concluded, “I can find no connection between [appellant’s] diagnosis of rheumatoid arthritis and his on-the-job injuries. I have given [appellant] some restrictions, however, these restrictions are not related to his on-the-job injuries.”

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.²

The Board finds, however, that the report of Dr. Wilson is not sufficiently rationalized on the issue of the possible causal relation between appellant’s rheumatoid arthritis and his employment injury to be afforded special weight. Dr. Wilson sufficiently explained why he believed that appellant’s lumbosacral sprain, the condition accepted by the Office, had resolved, noting that there was no objective evidence of this condition on examination.³ Dr. Wilson, however, did not provide any explanation for his conclusion that appellant’s rheumatoid arthritis was not related to his employment injuries.

Whether appellant’s employment injuries precipitated and aggravated his underlying rheumatoid arthritis resulting in disabling flareups and continuing partially disabling residuals. At the time of appellant’s claimed September 22 and November 4, 1992 recurrences of disability, he was working limited duty four hours a day. He returned to this part-time limited duty on October 14, 1992 and June 21, 1993 as posited by Dr. Rozas is at the heart of the conflict of medical opinion to be resolved by Dr. Wilson. The case will be remanded for the Office to obtain a supplemental report from Dr. Wilson providing medical rationale for his conclusion that appellant’s rheumatoid arthritis was not related to his employment injuries, to include a discussion of aggravation and precipitation. Dr. Wilson should also be asked to address Dr. Rozas’ opinion that appellant’s degenerative disc disease was caused or aggravated by his employment injuries.

² *James P. Roberts*, 31 ECAB 1010 (1980).

³ Even Dr. Rozas acknowledged, in a May 4, 1994 report, that appellant’s lumbosacral strain had resolved.

The decision of the Office of Workers' Compensation Programs dated April 12, 1995 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
January 23, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member