U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDDIE P. BROWN and U.S. POSTAL SERVICE,
POST OFFICE, Baltimore, Md.

Docket No. 96-1927; Submitted on the Record;
Issued November 6, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on July 10, 1993 causally related to his August 22, 1987 employment injury.

On August 22, 1987 appellant, then a 29-year-old mailhandler, sustained an employment-related right inguinal hernia for which he underwent surgical repair in September 1987. The hernia recurred and he again underwent surgical repair in December 1988. He returned to light duty, and in June and September 1989 underwent therapeutic/diagnostic nerve blocks. Following a further recurrence of the hernia, surgery was again scheduled for July 1990. Appellant, however, declined to undergo the procedure. During this entire period, he missed work on an intermittent basis, stopped work on July 13, 1990, and returned to permanent limited duty five hours per day on November 27, 1990, with restrictions on physical activity. After further development, on March 28, 1991 the Office of Workers' Compensation Programs determined that appellant's wages in his limited-duty position fairly and reasonably represented his wage-earning capacity and he began receiving partial disability compensation based on his loss of wage-earning capacity.

By decision dated July 3, 1991, appellant was granted a schedule award for a 37 percent permanent loss of use of the right lower extremity, to run for 106.56 weeks from June 2, 1991 to June 16, 1993. He stopped work on July 10, 1993 and did not return. On June 2, 1995 appellant filed a claim for disability from July 10, 1993 forward. By decision dated July 26, 1994, the Office denied that appellant sustained a recurrence of disability on the grounds that the medical evidence failed to establish a causal relationship between the claimed condition and the employment injury. Medical benefits were also terminated. Appellant requested reconsideration, and by decision dated December 8, 1994, the Office vacated the prior decision, finding that the medical evidence had not been developed properly at the time of the July 26, 1994 decision. The Office again denied that appellant sustained a recurrence of disability, crediting the opinion of Dr. Paul D. Meyer, a Board-certified neurosurgeon who had provided a second opinion for the Office and opined that appellant could perform his light-duty position.

Following appellant's request, a hearing was held on June 19, 1995 at which time appellant testified that during the period November 1990 to July 1993 he spent more time off work than working and that on July 10, 1993 his treating physician, Dr. Conway, advised him that he could no longer work. Appellant retired from the employing establishment, effective September 11, 1995. By decision dated September 27, 1995, an Office hearing representative affirmed the prior decision. Appellant again requested reconsideration and submitted additional medical evidence. By decision dated April 15, 1996, the Office denied modification of the prior decision, again finding the medical evidence insufficient. The instant appeal follows.[1]

The relevant medical evidence[2] consists of reports from Dr. James V. Conway, a general practitioner, who began treating appellant in August 1987. In a November 17, 1990 report, Dr. Conway provided restrictions to appellant's physical activity, and in a July 10, 1993 report, advised that appellant was totally disabled. Following referral by the Office for a second opinion evaluation, by report dated September 9, 1993, Dr. Paul D. Meyer, a Board-certified neurosurgeon, noted findings on examination of the inguinal area and pinpointed tenderness just below the anterior superior iliac spine reminiscent of meralgiaparesthetica with hyperalgesia in the anterolateral thigh on the right leg. He advised that sectioning the lateral femoral cutaneous nerve and ilioinguinal and genitofemoral nerves might give appellant the best chance of long term relief, noting that this was "not a guaranteed procedure."

In a November 20, 1993 report, Dr. Conway advised that scar formation from appellant's surgeries resulted in nerve entrapment which had become progressively more severe, resulting in permanent disability on July 10, 1993. In a July 18, 1994 report, he advised that appellant's chronic pain was aggravated by ambulation and physical exertion in general. In a supplemental report dated December 1, 1994, Dr. Meyer indicated that appellant could work in the limited-duty position whose description had been provided by the Office. Dr. Conway continued to reiterate that appellant could not work and had been totally disabled since July 10, 1993. By report dated July 8, 1995, he indicated that he had been treating appellant twice weekly since August 1987 for inguinal nerve entrapment which caused pain and swelling with activity. In a July 11, 1995 report, Dr. Conway stated:

> "My opinion is that the inguinal hernia sustained by [appellant] in August of 1987 was the result of heavy lifting on his job as a mail handler while employed at the [employing establishment]. Repair of the inguinal hernia resulted in formation of excessive scar tissue which in turn resulted in entrapment of the right inguinal nerve with chronic, severe and totally disabling pain. [Appellant's] injury, which caused him to become totally and permanently disabled, was a direct result of the injury sustained on August 22, 1987. This is not a new or recurrent injury.

[1] The record indicates that appellant continues on the periodic roll, receiving compensation benefits for three hours per day.

[2] The record also contains reports dated December 6, 1990 and January 22, 1992 in which Dr. James N. Campbell, a Board-certified neurosurgeon, made findings on examination and advised that appellant would benefit from resection of ilioinguinal and genitofemoral nerves and neurolysis of the lateral femorocutaneous nerves.

> "I released [appellant] to return to work on a trial basis in 1990 and [he] was still missing time from work due to constant swelling of the inguinal region. [Appellant] is taking powerful analgesic medicals for pain. Other than medication, this condition is only relieved by rest and is aggravated by ambulation and physical exertion in general.
>
> "The physical findings are induration and tenderness over the right inguinal incisional scar for which I have continued to treat [him] biweekly since August of 1987 when the injury first occurred. Since July 10, 1993, [he] has been permanently and totally disabled and unable to perform any type of gainful employment.
>
> "In summary, [appellant] is not fit for duty of any kind, light or otherwise, and should remain off his feet as much as possible to prevent further aggravation of this condition."

In an undated report, Dr. Conway advised that appellant could not return to modified duty because swelling and pain occurred in the inguinal region which required him to lie down for three to four hours until relief was obtained. Dr. Conway stated, "The severity of the pain and swelling is related to the length of time on his feet and the amount of activity which he performs[;] almost any kind of ambulatory activity exceeding two hours in length will require a recuperative period lying down for several hours duration."

The Board finds that this case is not in posture for decision due to a conflict in the medical opinion evidence.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, 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]

Causal relationship is a medical issue,[4] and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed

[3] *Gus N. Rodes*, 46 ECAB 518 (1995); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

condition and the specific employment factors identified by the claimant.[5] Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[6]

Section 8123 of the Federal Employees' Compensation Act provides that 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.[7]

In the present case, appellant's treating physician, Dr. Conway repeatedly opined that appellant was disabled from any type of gainful employment due to his groin condition. However, the Office referral physician, Dr. Meyer, offered a second opinion that appellant could work in a limited-duty capacity with restrictions. The Board finds that the reports of Drs. Conway and Meyer are of approximately equal value, and are in conflict on the issue of whether appellant had a recurrence of total disability due to his employment injury. The case shall therefore be remanded for referral to an appropriate Board-certified specialist, accompanied by a statement of accepted facts and the complete case record, for a rationalized medical opinion addressing this issue. After such further development deemed necessary, the Office shall issue a *de novo* decision.[8]

[5] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (182).

[7] 5 U.S.C. § 8123; *see Shirley L. Steib*, 46 ECAB 309 (1994).

[8] The Board notes that the record contains evidence that appellant missed significant periods of work during the period 1990 through 1993.

The decisions of the Office of Workers' Compensation Programs dated April 15, 1996 and September 26, 1995 are hereby set aside and the case is remanded for further development consistent with this decision.

Dated, Washington, D.C.
November 6, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member