

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD J. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Little Rock, AK

*Docket No. 98-55; Submitted on the Record;
Issued December 7, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability causally related to his January 9, 1995 employment-related back injury.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability causally related to his January 9, 1995 employment-related back injury.

On January 9, 1995 appellant, then a 41-year-old general clerk, filed a traumatic injury claim (Form CA-1) alleging on that date he felt something pull in his back while pushing a hamper filled with mail. Appellant stopped work on January 10, 1995.

On March 22, 1995 the Office of Workers' Compensation Programs accepted appellant's claim for a herniated disc at T12.

Subsequent to his January 9, 1995 employment injury, appellant returned to a limited-duty clerk position for eight hours per day with restrictions on November 2, 1995. By decision dated January 29, 1996, the Office found that the position of general clerk fairly and reasonably represented appellant's wage-earning capacity.

On April 7, 1996 appellant filed a claim (Form CA-2a) alleging that he sustained a recurrence of disability on January 15, 1996. Appellant stopped work on January 15, 1996.

In letters dated March 29 and June 17, 1996, the Office advised appellant to submit factual and medical evidence supportive of his recurrence claim.

In a July 23, 1996 decision, the Office found the evidence of record insufficient to establish that the claimed medical condition was causally related to the January 9, 1995 employment-related back injury. In an October 21, 1996 letter, appellant, through his representative, requested reconsideration of the Office's decision.

By decision dated December 5, 1996, the Office denied appellant's request for modification based on a merit review of the claim. In a March 24, 1997 letter, appellant, through his representative, requested reconsideration of the Office's decision.

In a June 25, 1997 decision, the Office denied appellant's request for reconsideration without a merit review on the grounds that the evidence submitted was found to be of a repetitious nature and thus, insufficient to warrant review of the prior decision.

An employee returning to light duty or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of substantial, reliable and probative evidence and to show that he or she cannot perform the light duty.¹ As part of his burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.²

In the present case, appellant has neither shown a change in the nature and extent of his injury-related condition or a change in the nature and extent of the light-duty requirements. The record shows that following the January 9, 1995 employment-related herniated disc at T12, appellant returned to work on November 2, 1995 in a light-duty capacity with certain work restrictions. The record does not establish, nor does appellant allege, that the claimed recurrence of total disability was caused by a change in the nature or extent of the light-duty job requirements.

In support of his recurrence claim, appellant submitted an April 15, 1996 medical report of Dr. Richard A. Owings, a Board-certified psychiatrist and neurologist, indicating that he was initially seen on March 26, 1996 due to depression. Dr. Owings stated that appellant was experiencing difficulty coping with stress at work, as well as chronic back pain. He further stated that appellant had decided to retire and had applied for disability benefits due to his back pain, depression and difficulty coping with stress. Dr. Owings then stated that appellant gave a plausible history of depression and was cooperating with treatment. Dr. Owings concluded that this was an appropriate decision by appellant under the circumstances. Dr. Owings' May 31, 1996 medical report reiterated appellant's treatment for depression due to difficulty coping with chronic back pain and issues related to work and appellant's decision to retire on disability. Dr. Owings stated that appellant had not received paychecks that were supposed to have been forwarded to him since filing a claim. He further stated that this stress impacted appellant psychologically and contributed to a drop in self-esteem, general feelings of worthlessness and demoralization which had caused conflict within his family. In both medical reports, Dr. Owings failed to explain how or why appellant's depression was caused by his employment-related back condition. Therefore, his reports are insufficient to establish appellant's burden.

In further support of his recurrence claim, appellant submitted an April 16 and a June 18, 1996 duty status report (Form CA-17) signed by an individual from the office of Dr. Harold B.

¹ *Terry R. Hedman*, 38 ECA 222, 227 (1986).

² *Id.*

Betton, a Board-certified family practitioner and appellant's treating physician, revealing his physical restrictions, a diagnosis of lumbar disc at D2 and cervical D2 and back pain. The reports also revealed that appellant was unable to perform his regular work duties. The record does not indicate that the person who signed the reports is a physician. Therefore, these reports do not constitute competent medical opinion evidence in that any medical evidence which the Office relies upon to resolve an issue must be signed by a qualified physician.³

Appellant also submitted Dr. Betton's May 16, 1996 Form CA-17 providing appellant's physical restrictions and a diagnosis of depression. Because Dr. Betton's medical report failed to address whether appellant's condition was caused by his January 9, 1995 employment-related back injury, it is insufficient to establish appellant's burden.

Additionally, appellant submitted Dr. Betton's July 11, 1996 medical report, revealing that he suffered from lumbar disc disease with cervical and thoracic spine abnormalities, disc herniations and osteophyte formations and a ligamentous sprain. Dr. Betton opined that appellant was totally disabled due to these conditions and recommended that appellant pursue a medical retirement on these grounds. Dr. Betton's medical report is insufficient to establish appellant's burden because it failed to explain how or why appellant's conditions were caused by the January 9, 1995 employment injury.

Similarly, in an undated medical report, prepared in response to appellant's representative's August 5, 1996 letter requesting that he answer specific questions regarding appellant's condition. Dr. Betton failed to explain how or why appellant's current condition was caused by the January 9, 1995 employment injury. Specifically, Dr. Betton provided a history of appellant's January 9, 1995 employment injury and medical treatment concerning his employment injury and depression. Dr. Betton opined that appellant's ongoing complaints were causally related to his January 9, 1995 employment injury. He further opined that appellant was physically unable to work due to chronic pain leading to profound depression. Inasmuch as Dr. Betton failed to explain how or why appellant's condition was caused by the January 9, 1995 employment injury, his report is insufficient to establish appellant's burden.

Further, Dr. Betton's March 18, 1997 medical report revealed a diagnosis of multiple lumbar and cervical spine disc level disease based on a magnetic resonance imaging (MRI) test. Dr. Betton stated that there was no objective way to measure worsening save for repeating the MRI scan and demonstrate degeneration of the disc. He further stated that the natural history of this disease notes that degeneration is a part of the process. Dr. Betton concluded that appellant was totally disabled from work. As in his above medical reports, Dr. Betton failed to explain how or why appellant's current disability was caused by the January 9, 1995 employment injury. Thus, his medical report is insufficient to establish appellant's burden.

Appellant submitted an undated medical report from Dr. Kevin J. Collins, a physiatrist, revealing that he sustained a back condition based on the history of an October 12, 1996 motor vehicle accident. Dr. Collins' report did not address whether appellant's current back condition

³ *James A. Long*, 40 ECAB 541 (1989).

was caused by his January 9, 1995 employment-related back condition. Therefore, it is insufficient to establish appellant's burden.

Because there is no rationalized medical evidence of record establishing that appellant sustained a recurrence of disability on or after January 15, 1996 that was causally related to his January 9, 1995 employment injury, the Board finds that appellant has failed to satisfy his burden of proof.

The June 25, 1997 and December 5, 1996 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
December 7, 1999

George E. Rivers
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member