U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD J. BOWEN and U.S. POSTAL SERVICE,
POST OFFICE, Boston, MA

*Docket No. 98-457; Submitted on the Record;*
*Issued December 9, 1999*

DECISION and ORDER

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

The issue is whether appellant has established that he sustained a recurrence of disability on or after April 15, 1996 causally related to an accepted July 23, 1990 employment injury.

The Board has duly reviewed the case record and finds that appellant has failed to establish that he sustained a recurrence of disability causally related to his accepted July 23, 1990 employment injury.

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 of record establishes that he can perform the light-duty position, the employee has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disabling condition for which compensation is sought is causally related to the accepted employment injury and show that he cannot perform such light duty. As part of this burden the employee must show 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.[1] This burden additionally includes the necessity of furnishing medical evidence from a physician who on the basis of a complete factual and medical history concludes that the disabling condition is causally related to the employment injury and supports the conclusion with sound medical reasoning.[2] The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[3] In this regard, medical evidence of bridging symptoms between the

[1] *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[2] *Herman W. Thorton*, 39 ECAB 875, 887 (1988); *Henry L. Kent*, 34 ECAB 361, 366 (1982); *Steven J. Wagner*, 32 ECAB 1446 (1981).

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[4]

In the instant case, the Office of Workers' Compensation Programs accepted that appellant sustained a cervical spasm and herniated cervical disc at C5-6 following a July 23, 1990 employment injury. Appellant received continuation of pay during his absence from work from July 25 through September 7, 1990 and compensation for total disability from September 8 through November 4, 1990. Appellant returned to work on limited duty on November 5, 1990. He suffered a recurrence of disability on December 14, 1994, which was accepted as being causally related to the original injury. On December 4, 1995 the Office notified appellant that the duties of a full-time limited-duty mail clerk reflected appellant's work tolerance limitations. They further informed appellant that this position reflected his wage-earning capacity. Appellant returned to work on limited duty on May 3, 1995. On April 19, 1996 appellant alleged that he sustained a recurrence of disability on April 15, 1996 causally related to his July 23, 1990 employment injury. Appellant stopped work following the alleged recurrence on April 15, 1996.

By decision dated June 21, 1996, the Office denied appellant's claim on the grounds that the evidence did not establish a causal relationship between his accepted injury and the claimed condition or disability. By decisions dated September 17, 1996 and August 19, 1997, the Office, after conducting a merit review of appellant's reconsideration requests, denied modification of its prior decision.[5]

In support of his claim for recurrence of disability, appellant submitted treatment notes and a report from Dr. Mark C. Jaehnig, a chriopractor, from April 15, 1996 onward. Section 8101(2) of the Federal Employees' Compensation Act[6] provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated by x-ray to exist. As no subluxation of the spine has been established by x-ray to exist in this case, Dr. Jaehnig cannot be considered a physician for purposes of the Act and, therefore, his reports do not constitute the medical evidence necessary to establish appellant's claim.

An April 18, 1996 Form CA-20, attending physician's report, from Dr. Robert DiTullio, a Board-certified general surgeon, indicated that appellant was totally disabled from April 15, 1996 due to his original work injury and in a May 23, 1996 medical report, diagnosed status post herniated left C5-6 disc, remote and adhesive radiculitis of left shoulder and stated that "the aforementioned diagnoses [were] causally related to his work injury of July 23, 1990." However, Dr. DiTullio does not explain how, with reference to the specific facts of the case, appellant's 1990 accepted employment conditions caused any condition or disability

[4] *Leslie S. Pope*, 37 ECAB 798, 802 (1986); *cf. Richard McBride*, 37 ECAB 748, 753 (1986).

[5] It is noted that appellant initially appealed the September 17, 1996 Office decision, which the Board assigned Docket No. 97-766. As appellant later requested to withdraw the appeal, the Board issued an order dismissing appeal on April 30, 1997.

[6] 5 U.S.C. §§ 8101-8193, 8101(2).

approximately five years later. Medical reports not containing rationale on causal relation are entitled to little probative value and are insufficient to meet appellant's burden of proof.[7]

A July 8, 1996 statement by appellant described the circumstances leading up to his April 15, 1996 recurrence but failed to provide any bridging information regarding his condition between 1990 and his current recurrence. The Office had notified appellant of the necessity of obtaining bridging information regarding his condition from the time of the original injury through the date of the alleged recurrence.

A July 3, 1996 report from Dr. DiTullio noted that appellant had a "flare of cervical pain while at work" and diagnosed traumatic activation of C4-5 and C6-7 disc protrusions compressing spinal cord with radiculitis. He stated that appellant was totally disabled from April 15, 1996 and extending beyond July 1, 1996. Dr. DiTullio opined that the "aforementioned diagnosis [were] causally related to [his] work injury of April 15, 1996, which was an aggravation of his preexisting work injuries involving C4-5, C5-6 and C6-7 disc protrusions compressing the right side of the spinal cord with radiculitis." Dr. DiTullio's report, however, does not provide any bridging information regarding appellant's condition from 1990 and the current recurrence. Dr. DiTullio's medical rationale in relating appellant's current condition to his 1995 recurrence was that the "pain was identical to that in the past and examination was essentially unchanged from past examinations from the preceding injury. This was felt to be a flare of his preexisting C5-6 herniated disc with radiculitis." The medical record indicates that appellant has preexisting cervical spondylosis and degenerative disc disease (cervical). Inasmuch as Dr. DiTullio did not provide a discussion on the role appellant's preexisting conditions may have played in causing or aggravating appellant's condition, appellant has not met his burden of proof.[8]

In an undated statement, appellant explained that his position after his return to work in May 1995 was essentially the same as that on his return to work after his first period of disability. He described his treatment and reiterated that the circumstances of the claimed recurrence were the same as those of the first recurrence, where he had awaken with a "stiff neck."

In a November 29, 1996 letter to appellant's representative, Dr. DiTullio described appellant's complaints as of April 15, 1996, which commenced on April 11, 1996, and noted his examination findings for all of appellant's treatment dates, the last treatment being on August 25, 1996. "Traumatic aggravation with adhesive radiculitis of C5-6 herniated disc incurred on July 23, 1990" was the diagnosis provided. Dr. DiTullio stated that he felt the recurrence of symptoms of April 11, 1996 was a natural progression of the July 1990 work injury. He rationalized:

> "Despite the presence of degenerative disc changes with osteophytic spurring and stenosis, these x-ray findings were asymptomatic, with the exception of a

[7] *Arlonia B. Taylor*, 44 ECAB 591 (1993).

[8] *See Gary R. Fullbright*, 40 ECAB 737 (1989).

> recurrence on December 13, 1994 and the present occurrence on or about April 11, 1996. There is no history of a superimposed injury prior to the April 11, 1996 symptom recurrence. The arthritic changes in the cervical spine were not the cause of his recurrence, but were longstanding and were asymptomatic from July of 1990 until April of 1996, with the exception of the first recurrence which occurred in December of 1994."

Dr. DiTullio's report, however, is insufficient to meet appellant's burden to establish a recurrence claim or alternatively to modify the December 4, 1995 loss of wage-earning capacity determination. It is unclear from Dr. DiTullio's report whether he considered appellant's current condition of "traumatic aggravation with adhesive radiculitis of C5-6 herniated disc" to have occurred in 1990, the date of the original injury, or sometime afterward. The Board notes that in this case, the Office determined appellant's wage-earning capacity on December 4, 1995. Once loss of wage-earning capacity is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition the employee has been retrained or the original determination was in fact erroneous. The burden of proof is on the party seeking modification of the award.[9] Thus, if Dr. DiTullio was relating appellant's current condition to the original injury of 1990, he fails to provide an explanation of how appellant's work-related condition differed materially from the time the Office determined appellant's wage-earning capacity in December 1995 to the date of the alleged recurrence of April 15, 1996. Thus, his report would be insufficient to modify the Office's wage-earning capacity determination. Alternatively, if Dr. DiTullio was relating appellant's "traumatic aggravation" to a time after the 1990 work injury, there is no discussion provided as to the relationship it had to appellant's accepted employment condition. Similarly, it is not clear from Dr. DiTullio's rationale whether he is discussing a preexisting condition or a work-related condition, which was made symptomatic in 1994 and 1996. Although Dr. DiTullio states that appellant's arthritic changes in the cervical spine were not the cause of his recurrence, he fails to provide medical rationale or an explanation of why the arthritic changes are now symptomatic.

As the present case involves the situation where an employee returns to a limited-duty position after being disabled by an employment-related condition, he has the burden to establish a recurrence of total disability upon a subsequent work stoppage. For the reasons noted above, appellant has not met his burden of proof.

[9] *Don J. Mazuek*, 46 ECAB 447 (1995); *Odessa C. Moore*, 46 ECAB 681 (1995).

The decision of the Office of Workers' Compensation Programs dated August 19, 1997 is hereby affirmed.

Dated, Washington, D.C.
December 9, 1999

George E. Rivers
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member