

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY MODAFFERI and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Denver, Colo.

*Docket No. 96-1353; Submitted on the Record;
Issued February 9, 1999*

DECISION and ORDER

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

The issue is whether appellant's September 20, 1991 employment injury resulted in disability for work beginning October 1, 1991.

The Office of Workers' Compensation Programs accepted that appellant's September 20, 1991 employment injury, incurred by lifting a box, resulted in a lumbar strain. After a nonscheduled day on September 21, 1991, appellant worked from September 22 through 30, 1991, with the exception of nonscheduled days on September 23 and 28, 1991. During this period, he performed limited duty, consisting of traying mail with a limitation against lifting over 10 pounds. This limited duty continued to be available to appellant until he was terminated at the end of his temporary appointment on December 3, 1991, but he stopped work on October 1, 1991 and did not return. On September 13, 1993 appellant filed a claim for disability for work beginning September 20, 1991. On December 5, 1995 he filed a claim for a recurrence of disability beginning October 1, 1991.

By decision dated March 8, 1996, the Office found that the evidence failed to demonstrate a causal relationship between appellant's September 20, 1991 employment injury and his claimed disability beginning October 1, 1991.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.¹ Appellant also has the burden of proving that he is disabled for work as a result of an employment injury. This burden includes

¹ *Froilan Negron Marrero*, 33 ECAB 796 (1982).

the necessity of submitting medical opinion evidence, based on a proper factual and medical background, establishing such disability and its relationship to his employment.²

The Board finds that appellant has not established that his September 20, 1991 employment injury resulted in disability for work beginning October 1, 1991.

In reports dated September 24 and 25, 1991, Dr. Robert R. Greenheck, a specialist in occupational medicine, who first examined appellant on September 23, 1991, diagnosed an acute back strain with mild sciatica and indicated appellant could return to limited duty with no lifting. In reports dated September 26 and 30, 1991, Dr. Greenheck indicated appellant could perform limited duty with lifting up to 10 pounds. As noted above, this is the limitation under which appellant was working at the time he stopped work on October 1, 1991.

In a report dated October 2, 1991, Dr. Mark F. Mills, a Board-certified orthopedic surgeon, stated that appellant had “subjective symptoms of low back pain. Objective findings are minimal.” Dr. Mills then stated, “[Appellant] does not feel that he is able to work over the next two weeks while therapy is evaluating him and was given an off-work slip for this time.” This report is not sufficient to establish that appellant was disabled for work beginning October 1, 1991, as Dr. Mills’ statement on disability consists merely of a repetition of appellant’s complaint that he hurt too much to work, which, without objective signs of disability, does not constitute a basis for payment of compensation.³ On October 2, 1991 appellant was examined by Dr. Barry L. Lindenbaum, a Board-certified orthopedic surgeon, who stated that he “appears to have symptoms compatible with an L4-5 herniated disc.” In a report dated October 8, 1991, Dr. Lindenbaum noted that appellant “claims he is in terrible pain, but yet moves about rather well.” Neither of Dr. Lindenbaum’s reports indicates that appellant was disabled for work.

On October 9, 1991 appellant was examined by Dr. Lawrence Varner, an osteopath, who stated that he was not sure he had full participation in the clinical examination. Dr. Varner stated that a magnetic resonance imaging scan which was done on October 3, 1991, showed “small L4-5 left bulging nucleus pulposus,” and that the “objective findings are minimal for herniated lumbar disc.” Dr. John Myers, a Board-certified neurologist, stated that an electromyogram and nerve conduction studies done on November 15, 1991 did “not show evidence of a significant nature to indicate proximal radiculopathy, neuropathy or isolated plexopathy.” In a report dated November 19, 1991, Dr. Varner stated that appellant “can certainly perform limited duty of traying mail.” In a report dated November 21, 1991, Dr. Myers stated, “the patient points out he cannot pick up even two pounds with his left hand because his low back will ache incredibly and produce pain into his left leg.” Dr. Myers concluded that appellant “has a combination of lumbar strain and significant depression,” and recommended he see a psychiatrist. These reports do not establish that appellant was disabled for the light duty he was performing on October 1, 1991. Dr. Myers’ report does not express the physician’s opinion on appellant’s ability to lift but instead only reports what appellant felt his limitation was.

² *Paul Fiedor*, 32 ECAB 1364 (1981).

³ *John L. Clark*, 32 ECAB 1618 (1981).

Dr. George E. Jerro, an internist, and Dr. Emil C. Zuckermann, a Board-certified neurologist, lent some support for appellant's claim for continuing disability. Both these physicians, however, first examined appellant over four months after his September 20, 1991 employment injury and neither provided any rationale for their limited support of causal relation.⁴ Moreover, both these physicians set forth a history of a head injury on September 20, 1991, which is not supported by the evidence of record.⁵ Dr. Steven Dworetsky, a Board-certified psychiatrist, stated in a March 11, 1992 report that appellant's psychiatric condition was directly caused by his job injury, but the doctor did not provide any rationale for this opinion, nor did he provide a history of the job injury to which his reports refers. In a report dated December 22, 1992, Dr. Mannuccio Mannucci, a Board-certified psychiatrist, stated that appellant's psychiatric condition was causally related to his September 1991 employment injury, but Dr. Mannucci's other reports refer to appellant's September 19, 1991 injury, a contusion to the head, rather than to the September 20, 1991 low back injury which is the subject of the present appeal.

Dr. Tito Musacchio, a Board-certified surgeon, who first examined appellant on January 25, 1993, stated in an April 20, 1994 report that appellant's "present condition is causally related to his injury dated September 21, 1991," and in a November 27, 1995 report stated that "the pain and disability that the patient is experiencing is directly associated with his injury occurring on September 21, 1991." These reports are not sufficient to meet appellant's burden of proof because they are based on an inaccurate history⁶ that appellant collapsed after his lifting episode at work,⁷ and because they contain no rationale to support causal relation. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.⁸ While Dr. Musacchio did state that "the patient prior to this accident had no symptoms referable to his back but since the incident of September 21, 1991, his back symptoms developed," the Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to establish causal relation.⁹ Appellant has not met his burden of proof to establish that his disability beginning October 1, 1991 is causally related to his October 1, 1991 employment injury.

⁴ Dr. Jerro checked a box on a form, and Dr. Zuckermann stated that, if appellant's history was accurate, his accident was a definite triggering factor in his emotional condition.

⁵ The Office did find that appellant sustained a contusion of the head in a September 19, 1991 employment injury, but the September 19, 1991 injury is not the subject of the present appeal.

⁶ The reference to the injury having occurred on September 21, 1991 rather than September 20, 1991 is inconsequential.

⁷ Dr. Musacchio's initial report contains an even more inaccurate history that appellant lost consciousness shortly following the employment lifting incident.

⁸ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

⁹ *Thomas D. Petrylak*, 39 ECAB 276 (1987).

The decision of the Office of Workers' Compensation Programs dated March 8, 1996 is affirmed.

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

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member