

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHESTER G. RENAU and U.S. POSTAL SERVICE,
POST OFFICE, Toledo, Ohio

*Docket No. 97-1237; Submitted on the Record;
Issued February 8, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that his medical condition on and after December 10, 1992 is related to accepted October 17, 1990 injuries of acute lumbosacral strain, metatarsalgia and mild plantar fasciitis, or other factors of his federal employment.

This is the second appeal before the Board in this case. By decision and order issued July 12, 1996,¹ the Board adopted the findings and conclusions of the Office's hearing representative's decision dated April 11, 1994 and finalized April 12, 1994. The Board found that the Office properly terminated appellant's medical benefits as of December 10, 1992 on the grounds that his work-related condition had ceased, based on the December 10, 1992 report of Dr. Robert Cooke, a Board-certified orthopedic surgeon and second opinion physician. The Board further found that the Office properly denied appellant's claim for a March 17, 1993 recurrence of disability, on the grounds that he submitted insufficient rationalized medical evidence establishing a causal relationship between the claimed recurrence of disability and the accepted October 17, 1990 injuries of acute lumbosacral strain, metatarsalgia and mild plantar fasciitis. The law and facts of the case as set forth in the Board's July 12, 1996 decision and order is incorporated by reference.

On October 17, 1994 appellant, then a 43-year-old modified letter carrier, filed a notice of occupational disease, claiming that he sustained chronic pain syndrome in the performance of duty

¹ Docket No. 94-1766

on or before October 23, 1991.² Appellant asserted that his October 27, 1990 back injury caused his chronic pain condition.³ In support of his claim, appellant submitted September 19, 1991, January 24 and February 14, 1992 reports from Dr. Shang Y. Rhee, an attending physiatrist. These reports note appellant's symptoms of low back ache, paraspinal tenderness in the lumbar region and diagnose "[c]hronic pain syndrome secondary to myofascial strain of the lumbosacral paraspinal muscles." They do not directly address appellant's medical condition for the period December 10, 1992 and continuing.⁴

In a January 19, 1995 letter, the Office advised appellant that Dr. Rhee's reports were insufficient to establish his claim. The Office explained the type of additional medical and factual evidence need to establish his occupational disease claim, including a rationalized medical report from his attending physician describing how and why the claimed condition was related to the October 27, 1990 injuries.

In a February 24, 1995 file memorandum, the Office noted that under Claim No. A9-349145, appellant's October 27, 1990 injury was accepted as a lower back strain, and "an outpatient pain management program was authorized on August 26, 1991." The Office therefore concluded that October 17, 1994 occupational disease claim, filed as A9-398017, appeared to be a duplication, as appellant was "filing for continued medical treatment due to a condition that has been attributed to the October 27, 1990 injury." The Office therefore recommended that appellant's October 17, 1994 claim be deleted and the supporting evidence placed into the existing case file "on the basis that it is consequential to the injury of October 27, 1990 and is not a new occupational disease."

In a September 20, 1996 letter, appellant requested reconsideration of the Board's July 12, 1996 decision and order and submitted additional evidence: an April 14, 1994 report from Dr. Arthur C. Sippo, a contractor to the employing establishment and Board-certified in occupational medicine; August 4, 1993⁵ to March 30, 1994 chart notes from Dr. Van B. Boggus, an attending orthopedic surgeon; a February 8, 1994 surgical pathology report.

In his chart notes, Dr. Boggus noted a history of the October 27, 1990 injury, described as "axial and twisting injuries to his lumbar spine as he jammed his left leg into a curb,"

² In a February 8, 1995 letter, appellant asserted that he had no intervening injuries after October 27, 1990. Appellant accepted a light-duty position as a modified mail carrier on August 3, 1992.

³ In February 1995, appellant submitted July 23, 1991, May 28, 1992, June 1, 1992 reports, from Drs. Shang Y. Rhee and Yoon M. Kim, attending physiatrists, diagnosing chronic pain syndrome due to the October 27, 1990 injuries. Appellant also submitted a November 15, 1991 pain management center discharge report from Dr. Rhee, previously of record. The reports were before the Office at the time it issued its April 6, 1993 decision terminating appellant's medical benefits effective October 10, 1992. These reports therefore do not constitute new evidence sufficient to warrant modification of the prior decision.

⁴ Appellant also submitted a September 23, 1991 physical therapy evaluation mentioning the October 27, 1990 injury, but this report does not appear to have been signed by a physician and therefore does not constitute medical evidence. *Merton J. Sills*, 39 ECAB 572 (1988).

⁵ The August 4, 1993 chart note was previously of record, and therefore does not constitute evidence not previously considered by the Office sufficient to warrant modification of the prior decision.

producing a ‘cracking’ sensation in his spine as he fell forward landing on the outstretched surface of both hands.” Dr. Boggus noted appellant’s continuing lumbar and sciatic pain, prescribed a back brace and medications and ordered diagnostic testing in notes from October 4, 1993 to January 4, 1994. In a February 8, 1994 report, Dr. Boggus diagnosed a herniated nucleus pulposus at L5-S1 and noted performing an L5-S1 microdiscectomy that day. In notes from February 17 to March 30, 1994, Dr. Boggus noted appellant’s post-surgical progress.

In the February 8, 1994 surgical pathology report, Dr. Robert W. Schmidt, a pathologist performing testing for Dr. Boggus, identified the surgical specimen as fragments of an L5-S1 vertebral disc.

In the April 14, 1994 report, Dr. Sippo noted examining appellant after a February 8, 1994 lumbar discectomy to determine whether he was fit to return to duty. Dr. Sippo noted findings on examination. Dr. Sippo concluded that appellant was not yet fit to return to duty as a letter carrier and had not attained maximum medical improvement and recommended a gradual return to work program. He noted restrictions against operating a motor vehicle, extensive reaching, lifting over 10 pounds, bending, pushing and pulling. Dr. Sippo did not address any causal relationship between the lumbar discectomy and the October 27, 1990 injuries.⁶

By decision dated December 10, 1996, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision. The Office found that the reports of Dr. Boggus, Dr. Sippo and the pathology report contained no medical rationale explaining a pathophysiologic link between the accepted October 27, 1990 injuries and the claimed chronic pain syndrome.

The Board finds that appellant has not met his burden of proof in establishing that his medical condition on and after December 10, 1992 is related to accepted October 17, 1990 injuries of acute lumbosacral strain, metatarsalgia and mild plantar fasciitis, or other factors of his federal employment.

At the time of the prior appeal, the Office properly determined that appellant’s work-related condition had ceased as of December 10, 1992, based on the December 10, 1992 report of Dr. Cooke, a Board-certified orthopedic surgeon and second opinion physician, who provided detailed findings on examination explaining why appellant was no longer disabled for work, and that the accepted October 10, 1990 lumbar strain had resolved. The burden thereafter shifted to appellant to establish a continuing medical condition.

To establish that a disease or condition was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁷ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁸ and (3) medical evidence establishing that the employment factors identified by the

⁶ Appellant also submitted September 1994 physical therapy notes.

⁷ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁸ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979). The Office, as part of its adjudicatory function, must

claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁹ The medical opinion must be one of reasonable medical certainty,¹⁰ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹ In this case, appellant has submitted insufficient rationalized medical evidence to establish a causal relationship between his condition on and after December 10, 1992 and the accepted injuries.

In his chart notes, Dr. Boggus noted a history of the October 27, 1990 injury, noted appellant's continuing lumbar and sciatic pain, and performed a February 8, 1994 L5-S1 microdiscectomy that day. However, Dr. Boggus did not provide medical rationale setting forth how the October 27, 1990 injury would cause a herniated lumbar disc, or any other medical condition. Similarly, in his April 1994 report, Dr. Sippo found that appellant was not fit to return to full duty after a February 8, 1994 lumbar discectomy, but did not attribute any element of appellant's condition to the October 27, 1990 injuries. Also, Dr. Rhee's reports do not contain sufficient medical rationale explaining how and why the accepted October 27, 1990 low back strain would cause the diagnosed chronic pain syndrome or any other medical condition on and after December 10, 1992 and do not specifically address the time period at issue. Without supporting medical rationale setting forth the pathophysiologic mechanisms whereby the accepted injuries or other employment factors would cause appellant's claimed chronic pain syndrome, these reports are of limited probative value in establishing the alleged causal relationship and are insufficient to warrant modification of the prior decision.¹²

Consequently, appellant has not met his burden of proof, as he failed to submit sufficient rationalized medical evidence establishing a causal relationship between the accepted October 27, 1990 injuries and his medical condition on and after December 10, 1992.

make findings of fact and a determination as to whether the implicated working conditions constitute employment factors prior to submitting the case record to a medical expert; *see John A. Snowberger*, 34 ECAB 1262, 1271 (1983); *Rocco Izzo*, 5 ECAB 161, 164 (1952).

⁹ *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

¹⁰ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹¹ *See William E. Enright*, 31 ECAB 426, 430 (1980).

¹² *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

The decision of the Office of Workers' Compensation Programs dated December 10, 1996 is hereby affirmed.

Dated, Washington, D.C.
February 8, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member