

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DUANE R. THOMAS and U.S. POSTAL SERVICE,
POST OFFICE, Akron, Ohio

*Docket No. 97-1490; Submitted on the Record;
Issued February 2, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a recurrence of disability on or after May 22, 1992 causally related to his August 22, 1988 employment injury.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, a mail carrier, sustained a cervical strain on August 22, 1988 as a result of a motor vehicle accident. The record indicates that appellant lost one day of work following this injury and appellant has testified that he lost "virtually no time" from work following this injury.

The record indicates that prior to the employment injury, appellant had sought chiropractic treatment for neck pain, right arm and back pain from the Powell Chiropractic Clinic on October 5, 1987. Following the August 22, 1988 injury, appellant continued to seek medical treatment for neck pain until February 25, 1989, at which time Dr. Alok Bhagat, Board-certified in neurology, evaluated appellant and examined x-rays and noted that the studies were normal, but that appellant should undergo an electromyogram (EMG), magnetic resonance imaging (MRI) scan and nerve studies to rule out a herniated disc. The Office authorized the diagnostic testing recommended by Dr. Bhagat. On May 2, 1989 Dr. Bhagat reported that appellant had declined further testing. Appellant again sought medical care in February 1992 for tingling in his left arm.

On June 17, 1992 appellant filed a notice of recurrence of disability alleging that on February 24, 1992 he had sustained a recurrence of his August 22, 1988 injury and that he had stopped work on May 22, 1992. The Office denied appellant's claim by compensation order dated August 5, 1992 and denied modification of the August 5, 1992 decision, after merit review, on February 19, 1997.

The Board finds that appellant has not established that he sustained a recurrence of disability causally related to his accepted employment injury.

Following his alleged 1992 recurrence of disability, appellant was seen at Union Hospital for shoulder pain. Appellant denied any reinjury. Appellant again sought chiropractic treatment at the Powell Chiropractic Clinic and sought medical treatment from Dr. Emmanuel Casiano, a Board-certified orthopedic surgeon, commencing May 26, 1992. As the reports from Powell Chiropractic Clinic did not indicate that appellant was being treated for a spinal subluxation, diagnosed by x-ray, these reports do not constitute competent medical evidence.¹

The only medical evidence of record which attempts to substantiate a causal relationship between appellant's 1992 alleged recurrence of disability and his 1988 employment injury are reports submitted from Dr. Casiano. In a report dated July 28, 1992, he stated that appellant slipped on concrete at his home and fell on his right side on May 19, 1992 and was seen in the emergency room at Union Hospital. Dr. Casiano noted his June 9, 1992 diagnoses of acute sprain of the cervical spine, osteoarthritis and degenerative disc disease. He concluded that appellant had a preexisting osteoarthritis that was aggravated by the car accident of August 1988 and by the fall he had on May 19, 1992. Dr. Casiano concluded that appellant was totally disabled due to his injury of May 19, 1992. He submitted subsequent reports wherein he conversely opined that appellant was disabled due to his 1988 injury. In a report dated July 14, 1993, Dr. Casiano first opined that appellant became disabled on May 22, 1992, and while on this period of disability, he slipped and fell at this home on May 26, 1992. He concluded "total disability was due directly to the car accident and began before his slip and fall at home ... I feel that his total disability is related directly to the cervical strain, which is the recognized condition of his claim." In a report dated March 16, 1996, Dr. Casiano opined that appellant had degenerative disc disease and osteoarthritis which had accelerated beyond that expected of someone his age. He stated that the cause of this acceleration was the extreme force involved in his accident of August 22, 1988. Dr. Casiano concluded that appellant's August 22, 1988 injury accelerated the degenerative disc disease and osteoarthritis of appellant's cervical spine, causing permanent disability.

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

While Dr. Casiano is generally supportive of appellant's claim of recurrence, his opinions in support of causal relationship lack probative medical value. He has not explained why appellant's August 22, 1988 injury was the cause of the acceleration of appellant's degenerative

¹ 5 U.S.C. § 8101(2) provides that the term "physician" includes only physicians who have an M.D. or O.D. degree, surgeons podiatrists, dentists, clinical psychologists, optometrists, and chiropractors within the scope of their practice as denied by state law. The Board has previously held that a report from a chiropractor who is not a "physician" pursuant to the Act are of no probative medical value regarding the issues of causal relationship and disability. *Sheila A. Johnson*, 46 ECAB 323 (1994).

² *Dennis J. Lasanen*, 43 ECAB 549 (1992).

disc disease and osteoarthritis, given that appellant had previously sought treatment for neck and shoulder pain in 1987, and also given that the August 22, 1988 injury did not cause appellant any significant period of disability and did not require medical treatment beyond February 1989. Dr. Casiano also has not explained why he initially opined that appellant's disability in 1992 was caused by appellant's May 1992 fall at home and then subsequently opined that in fact appellant's 1988 injury was the cause of his disability commencing in May 1992. The Board also notes that Dr. Casiano has stated that appellant was already disabled from work at the time of his May 1992 injury, however, this is not supported by the factual evidence of record.

As Dr. Casiano has not provided a well-rationalized medical opinion supporting causal relationship which is based upon a proper factual background, the Office properly denied appellant's notice of recurrence of disability.

The decision of the Office of Worker's Compensation Programs dated February 19, 1997 is hereby affirmed.

Dated, Washington, D.C.
February 2, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member