

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARTIN A. ANGIULLI and NATIONAL CREDIT UNION
ADMINISTRATION, Vandergrift, Pa.

*Docket No. 97-1664; Submitted on the Record;
Issued February 25, 1999*

DECISION and ORDER

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

The issues are: (1) whether appellant has met his burden of proof to establish that his degenerative disc disease was caused by the accepted December 6, 1994 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's claim for compensation on account of traumatic injury or occupational disease for the period December 6, 1994 through March 22, 1995 on the grounds that the evidence of record was insufficient to establish any disability subsequent to December 6, 1994.

On January 19, 1994 appellant, then a credit union examiner, filed a claim for an occupational disease (Form CA-2) assigned number A25-466604 alleging that he sustained a back injury on December 6, 1994 when he lifted a computer.¹ Appellant stopped work on that date.

On March 23, 1995 appellant filed a claim for compensation on account of traumatic injury or occupational disease (Form CA-7) for the period December 6, 1994 through March 22, 1995.

By letter dated October 18, 1995, the Office accepted appellant's claim for a lumbar strain.

By decision dated December 20, 1995, the Office found the evidence of record insufficient to establish that appellant's degenerative disc disease was caused by the December 6, 1994 employment injury. The Office further found the evidence of record insufficient to establish that appellant's employment-related lumbar sprain caused any disability subsequent to December 6, 1994.

¹ Previously, appellant filed a claim for a March 1993 back injury assigned claim number A25-0429109 which was denied by the Office on October 20, 1993.

In a January 3, 1996 letter, appellant requested an oral hearing before an Office representative. In an August 14, 1996 letter, appellant's counsel requested withdrawal of appellant's request for an oral hearing noting that he would be moving for reconsideration because additional evidence needed to be submitted on appellant's behalf. In an August 16, 1996 response letter, the Office granted appellant's counsel's request. By letter of the same date, appellant's counsel indicated his intention to request reconsideration of the Office's decision.

By decision dated September 10, 1996, the Office denied appellant's request for reconsideration without a merit review on the grounds that appellant neither raised substantive legal questions nor submitted new and relevant evidence.

In a September 27, 1996 letter, appellant, through his counsel, requested reconsideration of the Office's decision. Appellant's counsel advised the Office that it misunderstood his August 14, 1996 letter, in that he was not requesting reconsideration of the Office's decision at that time.

By decision dated January 30, 1997, the Office denied appellant's request for modification based on a merit review.

The Board finds that appellant has failed to meet his burden of proof to establish that his degenerative disc disease was caused by the accepted December 6, 1994 employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was filed within the applicable time limitation of the Act.³ The claimant also has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁴

In this case, appellant has failed to submit rationalized medical evidence establishing that his degenerative disc disease was caused by the December 6, 1994 employment injury. In support of his claim, appellant submitted disability certificates dated December 9, 16 and 30, 1994 by Dr. Edward V. Swierczewski, a family practitioner, revealing a history of the December 6, 1994 employment injury and a diagnosis of severe lumbar sprain and strain. Dr. Swierczewski's disability certificates are insufficient to establish appellant's burden inasmuch as they failed to address whether appellant had degenerative disc disease caused by the December 6, 1994 employment injury.

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

In further support of his claim, appellant submitted a January 3, 1995 magnetic resonance imaging (MRI) scan report of the lumbar spine from Dr. Kalyanmay Ghoshhajra, a Board-certified radiologist, indicating that he had generalized disc degeneration with narrowing of disc spaces from L2-S1. Dr. Ghoshhajra's report also indicated the presence of mild diffuse bulging desiccated disc at L5-S1, which was in contact with both spinal nerve roots and no focal herniation at this level. In addition, Dr. Ghoshhajra's report indicated the presence of a small central to left-sided focal herniation of the disc at L2-3 with minimal compression of the thecal sac. Dr. Ghoshhajra's report revealed a small or central protrusion or bulging disc at L3-4 without any compression of the thecal sac. A March 22, 1995 rehabilitation prescription of Dr. Harry Sirounian, an orthopedic surgeon, revealed a diagnosis of degenerative disc disease. Dr. Ghoshhajra's report and Dr. Sirounian's rehabilitation prescription are insufficient to establish appellant's burden because they failed to address whether appellant's degenerative disc disease was caused by the December 6, 1994 employment injury.

Appellant also submitted Dr. Sirounian's March 22, 1995 attending physician's report (Form CA-20) revealing a history of the December 6, 1994 employment injury, and a diagnosis of chronic low back pain, pain in both legs and degenerative disc disease. Dr. Sirounian indicated that appellant's condition was caused or aggravated by an employment activity by placing a checkmark in the box marked "yes." Dr. Sirounian stated that appellant's disease was caused by lifting a computer. The Board has held that an opinion on causal relationship, which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁵ Inasmuch as Dr. Sirounian failed to provide any medical rationale explaining how or why appellant's degenerative disc disease was caused by the December 6, 1994 employment injury, his report is insufficient to establish appellant's burden.

Dr. Sirounian's April 23, 1995 medical report, indicated that appellant had some early stage degenerative problems in his back due to his extensive flexion over the years, that his MRI showed three or four bulging discs and one herniated nucleus pulposus disc and that there appeared to be a mild element of a lumbar strain also due to the soft tissue involvement. Dr. Sirounian's report failed to address whether appellant's back conditions were caused or aggravated by the December 6, 1994 employment injury.

Dr. Swierczewski's June 6, 1995 letter, to appellant revealed that appellant's lumbar sprain and strain was work related. Dr. Swierczewski stated that "I can not state, whatsoever, in any degree of medical certainty that your lumbar spine degenerative disc disease was a result of your performance of your employment duties."

The record reveals Dr. Sirounian submitted an August 4, 1995 letter, to the employing establishment revealing that appellant was being treated for degenerative lumbar disc disease, that an MRI revealed a bulging disc at L2-3 and L5-S1 and that appellant was able to work with restrictions. The record further reveals an October 17, 1995 letter, from Dr. Lazaros Nicholas Sotos, a Board-certified orthopedic surgeon, to the employing establishment. In this letter,

⁵ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

Dr. Sotos stated that appellant had lumbar disc syndrome with radiculopathy. He noted appellant's medical treatment and physical restrictions and concluded that appellant was unable to return to work due to features of his employment, which included driving and any significant sitting. Dr. Sotos' medical treatment notes covering the period September 20, 1995 through August 8, 1996 addressed appellant's back condition. Specifically, Dr. Sotos' treatment notes revealed a history of the December 6, 1994, employment injury and that appellant had lumbar disc syndrome. Dr. Sotos' treatment notes further revealed that on January 17, 1996, appellant slipped on the ice and fell on his back in an airport parking area. Dr. Sotos diagnosed a lumbar contusion. Dr. Sirounian's letter, and Dr. Sotos' letter and treatment notes failed to address a causal relationship between appellant's back condition and the December 6, 1994 employment injury. Further, Dr. Sotos' treatment notes indicated that appellant sustained an intervening injury.

In addition, the record contains Dr. Sotos' July 29, 1996 deposition. In his deposition, Dr. Sotos provided a history of the December 6, 1994 employment injury and appellant's medical treatment. Dr. Sotos testified that he disagreed with the opinion that appellant was disabled as of December 6, 1994 and thereafter as a result of degenerative changes in his lumbar spine as demonstrated by MRI film. Dr. Sotos explained:

“[H]ere was a finding that was dated, in other words, by history, did not have these problems prior to December 6, 1994 as far as we know and yet as of that date he has had a problem that was not there previously.

“The MRI in most individuals in his age bracket will show degenerative changes more often than not so the presence of degenerative changes doesn't mean that he had a problem with his back, so I had to reconstruct it by the history.”

Dr. Sotos testified that he did not have an opinion or know what caused appellant's degenerative disc disease.

Because appellant has failed to submit rationalized medical evidence establishing that his degenerative disc disease was caused by the December 6, 1994 employment injury, he has failed to meet his burden of proof.

The Board further finds that the Office properly denied appellant's claim for compensation on account of traumatic injury or occupational disease for the period December 6, 1994 through March 22, 1995, on the grounds that the evidence of record was insufficient to establish any disability subsequent to December 6, 1994.

Dr. Swierczewski's December 9, 16 and 30, 1994 disability certificates failed to explain how or why appellant's severe lumbar sprain and strain caused appellant to be disabled from work.

Dr. Sirounian's March 22, 1995 Form CA-20 indicating that appellant was totally disabled during the period December 6, 1994 through March 22, 1995, failed to provide any medical rationale explaining how or why appellant's disability was caused by the December 6, 1994 employment injury.

Dr. Sirounian's August 4, 1995 letter, revealing that appellant was able to return to work in the next three to four weeks with physical restrictions and Dr. Sotos' January 11, 1996 letter indicating that appellant was physically able to return to duty as of January 15, 1996 failed to address a causal relationship between the claimed period of disability and appellant's December 6, 1994 employment injury. Similarly, Dr. Sotos' October 17, 1995 letter to the employing establishment providing that appellant could not return to work and that the date of appellant's return to duty was undetermined failed to address whether there was a causal relationship between the claimed period of disability and appellant's December 6, 1994 employment injury.

In his July 29, 1996 deposition, Dr. Sotos stated that after a review of the records of the previous physicians, appellant was disabled from performing his work as a federal employee until he was released to light duty in November 1995. Dr. Sotos further stated that appellant was disabled as of December 6, 1994, due to the way he lifted the computer from the floor. Dr. Sotos stated that appellant's back injury prevented him from returning to work for over 13 months. Dr. Sotos was advised of appellant's work duties which required him to drive 10 to 50 miles to perform audits and that he had indicated that appellant was restricted to light and sedentary work, no prolonged sitting, driving short distances, frequent breaks and no lifting more than 20 pounds. Dr. Sotos stated that there was no difference between appellant performing his regular job duties and riding to Cincinnati, Ohio, where appellant's family was starting a restaurant business and was 300 miles each way from Pittsburgh, Pennsylvania. Dr. Sotos' deposition does not satisfy appellant's burden because it failed to provide sufficient medical rationale explaining how or why appellant's disability during the claimed period was caused by the December 6, 1994 employment injury.

Inasmuch as appellant has failed to provide sufficient medical evidence establishing that his disability after December 6, 1994 was causally related to the December 6, 1994 employment injury, the Office properly denied appellant's Form CA-7 for the period December 6, 1994 through March 22, 1995.

The January 30, 1997 and September 10, 1996 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
February 25, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member