

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY E. KNOPP and U.S. POSTAL SERVICE,
POST OFFICE, LaGrange, Ga.

*Docket No. 98-1964; Submitted on the Record;
Issued February 12, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's March 25, 1998 request for reconsideration, and if so, (2) whether the employment incident of February 6, 1991 caused a permanent aggravation of appellant's preexisting degenerative disease of the lumbosacral spine.

On the prior appeal of this case,¹ the Board found that the Office improperly terminated appellant's compensation benefits for the accepted condition of lumbosacral strain. The Board also found, however, that the Office properly denied compensation for a permanent aggravation of appellant's preexisting degenerative disease of the lumbosacral spine. The Board explained that the opinion of Dr. J.C. Serrato, Jr., a Board-certified orthopedic surgeon, was of little probative value on the issue of permanent aggravation, particularly in light of the absence of an early, more detailed and specific diagnostic workup. The facts of this case are set forth in the Board's prior decision and are hereby incorporated by reference.

Appellant submitted additional medical evidence to support a permanent aggravation of the degenerative disease of his lumbosacral spine. In a March 19, 1997 report, Dr. Serrato noted: "It is very obvious that the examining personnel that makes the decisions specifically mentioned in this report from Washington on January 8, 1997, [*i.e.*, the Board's decision], are not up to date or

¹ Docket No. 95-400 (issued January 8, 1997).

cognizant of the circumstances of traumatized degenerative disc becoming symptomatic by reason of an injury of the type sustained by this patient at the time of his accident.”² Dr. Serrato then described in some detail how a degenerative disc process could evolve because of occupational stress and remain asymptomatic until such time as an incident occurs that creates an imbalance of the chemistry of the disc itself. This imbalance, he explained, gradually progresses after an acute injury and eventually becomes symptomatic due to the production of proteoglycans. Dr. Serrato stated that the normal process of recuperation takes approximately five years, by which time the production of proteoglycans ceases and the patient becomes asymptomatic. He continued:

“So, what we have here is a transient aggravation of preexisting condition which has a duration of approximately five years. The only after effects that are left after this process are those related primarily and basically to the surgery which was performed on this patient to remove a degenerated disc which was aggravated by trauma. The fact is that the scar tissue which forms around the nerves of the spine following surgery are pain and discomfort producing and at times subjectively neurologically involve the patient.”

In a merit decision dated June 16, 1997, the Office denied modification of its prior decision. The Office found that Dr. Serrato provided no rationalized opinion how, with reference to the mechanism of injury, the 1991 work injury caused a permanent aggravation of degenerative disc disease of the lumbosacral spine or any other back condition. The Office found that Dr. Serrato provided no objective findings in support of his opinion showing that at the time of the 1991 employment injury the claimant sustained the condition claimed. The Office also found that Dr. Serrato provided no clear explanation of how appellant’s particular type of injury, a soft-tissue injury, would cause a permanent aggravation of a preexisting back condition.

On March 25, 1998 appellant requested reconsideration. In support thereof, he submitted a September 17, 1997 report from Dr. Serrato, who addressed at least two of the deficiencies the Office identified. Dr. Serrato explained that his diagnosis was supported by a clinical analysis of appellant and not by any specific objective findings. “The only way we could prove objectively that this man did have an aggravation of his degenerative process of the discs of the spine,” he stated, “would be actually going to the discs themselves with surgical intervention or direct biopsy to those discs and providing then the chemistry to be analyzed to produce the findings which would be evidence of a change in chemistry and production of proteoglycans.” Dr. Serrato emphasized that a number of conditions treated in medicine are treated primarily on the basis of

² As a lay adjudicator, the Board must rely on the medical explanations provided by the physicians in the case. For this reason, it is the responsibility of the physician to support his or her opinion with sufficient detail and with convincing medical rationale. The Board has held that it is not necessary that the evidence be so conclusive as to suggest causal connection beyond all possible doubt in the mind of a medical scientist. The evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical. *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein at note 1.

subjectivity and based on the clinical aspect of the cases. In response to the Office's question of soft-tissue injury, he explained that the ligaments and the disc itself are classified as soft tissues. Dr. Serrato concluded as follows:

"I think this patient was unquestionably injured on the job; I think his condition that was preexisting and silent was made active by the changes on the processes of metabolism of the discs and those processes cannot ever be changed or reversed and they will continue to move forwards. On that basis we claim that the aggravation of the preexisting condition is based on a trauma which took place during the accident on the job. It is fortunate that this patient is able to perform and work in spite of his subjectivity and problems which he has at the present time. Hopefully he will continue to maintain this position. I think a great injustice is being performed to this individual who is a fine person, a good worker, and I sincerely hope that the very well versed and qualified examiner from Jacksonville would reassess the circumstances of this case or in its place an appeal board of the higher level and of a better knowledge of circumstances of medicine."

In a nonmerit decision dated May 14, 1998, the Office found that Dr. Serrato's September 17, 1997 report was cumulative and not sufficient to warrant a review of appellant's claim.

The Board finds that the Office improperly denied appellant's March 25, 1998 request for reconsideration.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a point of law, or (2) advancing a point of law or a fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.³

The Board finds that Dr. Serrato's September 17, 1997 report is relevant and pertinent evidence not previously considered by the Office. Although the Office considered this report cumulative, it clearly addresses the very issues raised by the Office in its merit decision of June 16, 1997. In that decision, the Office pointed to the following deficiencies in Dr. Serrato's previous reports: He provided no objective findings in support of his opinion showing that at the time of the 1991 employment injury the claimant sustained the condition claimed; he also provided no clear explanation of how appellant's particular type of injury, a soft-tissue injury, would cause a permanent aggravation of a preexisting back condition. Dr. Serrato addressed these concerns directly in his supplemental report of September 17, 1997. This was not cumulative evidence but an attempt to cure the very deficiencies identified by the Office. For this reason, the Board finds that appellant may obtain a merit review of the claim under the third criterion above.

³ 20 C.F.R. § 10.138(b)(1).

The May 14, 1998 decision of the Office of Workers' Compensation Programs is reversed and the case remanded for such further development as may be warranted and for an appropriate final merit decision.

Dated, Washington, D.C.
February 12, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member