

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT E. GODBEY and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, Tex.

*Docket No. 97-1324; Submitted on the Record;
Issued June 16, 1999*

DECISION and ORDER

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

The issue is whether appellant has established that he sustained a recurrence of disability on or after October 4, 1994, causally related to his June 22, 1985 chronic soft tissue thoracolumbar muscular strain injury.

On November 28, 1985 appellant, then a 35-year-old letter carrier, filed an occupational disease claim alleging that he developed lumbar strain and other back problems in the performance of his duties. The Office of Workers' Compensation Programs accepted that appellant sustained chronic thoracolumbar strain. Appellant returned to limited-duty work on June 7, 1987, and to full duty by July 28, 1987.

Appellant continued working without documented problems until August 10, 1995 when he filed a claim for a recurrence of disability, alleging that as of October 4, 1994 he was again experiencing problems which he attributed to his 1985 lumbosacral muscular strain injury. Appellant claimed that he was in constant pain and was taking numerous pain medications, and that on August 7, 1995 he lifted a container of magazines and twisted his back.

In support of appellant's claim he submitted a September 5, 1995 magnetic resonance imaging (MRI) scan report demonstrating degenerative changes of the lumbar spine, and a September 18, 1995 computerized tomography (CT) scan report also demonstrating degenerative changes.

A November 15, 1995 report from Dr. Huntly G. Chapman, a Board-certified orthopedic surgeon, noted appellant's complaints of back and sciatic pain which began 10 years ago, and indicated that appellant had four abnormal discs with pain reproduction, associated bilateral facet arthritis and leaky discs. Dr. Chapman diagnosed hypothyroidism, sciatica, herniated disc, degenerative disc disease, internal disc disruption, back sprain and depression.

By decision dated December 18, 1995, the Office denied appellant's claim finding that the medical evidence of record did not establish that his condition in October 1994 and subsequent was causally related to his June 1985 injury.

Appellant requested an oral hearing, and submitted a January 4, 1996 report from Dr. Robert V. DeMartini, a Board-certified internist, which stated that he saw appellant on August 8, 1995. Dr. DeMartini reported that "[Appellant] had on August 7, 1995 a recurrence of low back pain injury that occurred in June of 1985 while working on the job." Dr. DeMartini opined that, after speaking with appellant, he felt appellant's current condition was a direct result of a reexacerbation of his injury in 1985 which lead up to increased use of narcotic pain medication, anti-inflammatories and bed rest.

At the hearing held on September 26, 1996, Dr. DeMartini testified that he saw appellant in August 1995 for "complaints of an aggravation of his low back pain." Dr. DeMartini testified that he believed the injury to appellant on August 7, 1995 was directly related to the June 1985 injury, that appellant was suffering from sciatica of the left lower extremity, four degenerative discs in his lower back, and severe facet arthritis, with his pain coming from the disc problems. Dr. DeMartini opined: "The injury that [appellant] described to me in August 1995 I felt was directly related to his injury in June 1985," that appellant "described a situation in which he was involved in what [is] termed a twisting, lifting injury, where it [is] an unstable situation, putting undue stress on his already injured back. And the description of that, and he [sic] complaints at the time, made me very concerned about reinjury, and not a new injury." In response to a question as to why he believed that the condition found in 1995 was related to the strain from 10 years earlier, Dr. DeMartini stated that "the injury that [appellant] describes in August 1995 is very similar to his initial description -- and we went over it, in August 1995 -- about the type of injury he sustained." He added that from the time he began seeing appellant in 1991, appellant had had continuous pain.

Appellant's representative stated that the date, October 4, 1994 was used as the date of recurrence because appellant had pain on that date while he was with the state fair. Regarding the circumstances of August 7, 1995, appellant stated that on that morning he cased letters in a new configuration, and bent to pick up a container of magazines, "[A]nd that [is] when the trouble started. Having to bend over and pick that case up, and turn it around, put it [down] -- I was unstable." The hearing representative explained the Office regulations concerning a new injury versus a recurrence to appellant and his representative, and they insisted that there was no new injury.

Also submitted to the record was a January 8, 1996 report from Dr. Chapman which stated that he was basing his opinion on a review of the records, that the medical records presented to him bore out appellant's history and, therefore, that they "show[ed] at least to [him] in reasonable medical probability a causal relationship of [appellant's] current problems with his injury as described in 1985." Dr. Chapman noted that appellant had multiple level degenerative disc disease and pain reproduced on discography, he diagnosed internal disc disruption and disc degeneration, and he opined that appellant's injury as described originally in 1985 related to his current condition of 1996. Dr. Chapman also opined that appellant's current condition by history was a direct result of lifting, twisting, turning and stooping at work which he felt aggravated

appellant's preexisting condition, and opined that appellant suffered injuries to his lumbar discs in 1985 and these injuries had been aggravated by the twisting injury in 1995.

By decision dated December 6, 1996, the hearing representative affirmed the prior denial of appellant's recurrence claim finding that none of the medical evidence submitted contained a rationalized medical opinion showing a causal relationship between appellant's current disabling condition and the accepted employment injury.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability on or after October 4, 1994, causally related to his June 22, 1985 chronic soft tissue thoracolumbar muscular strain injury.

An individual who claims a recurrence of disability due to an accepted employment injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.¹ Causal relationship is a medical issue and can be established only by medical evidence.²

In the instant case, appellant sustained a chronic thoracolumbar soft tissue muscular strain injury in 1985. He missed some time from work and received only conservative medical treatment for his condition. The record indicates that appellant returned to full duties in July 1987 after making a full recovery from the accepted condition. The medical evidence of record indicates that appellant only periodically sought medical evaluation and treatment for his back through 1989, and provides no evidence that he received treatment for a back condition between 1991 and 1995. No where in the record is there a rationalized medical opinion relating appellant's condition, identified variously as asymmetry of the L5 nerve root on the left, degenerative disc disease and degenerative spinal changes, sciatica, internal disc disruption, disc space narrowing, disc herniation, and severe facet arthritis, in 1994 or 1995 to his 1985 accepted thoracolumbar soft tissue muscle strain injury.

Dr. DeMartini repeatedly referred to a new injury in August 1995, and arrived at his causal relationship opinions without the benefit of reviewing appellant's medical records from 1985 through 1991, which demonstrated a complete resolution of his muscular strain symptoms and a return to full duty. Further, his statement on causal relationship of the 1995 condition to the 1985 muscular strain injury was conclusory, was unrationalized, failed to identify or discuss bridging symptoms, and was admittedly based only upon discussions with appellant from which he determined that appellant's 1995 symptoms were similar to the 1985 symptoms. The Board has frequently explained that medical reports consisting solely of conclusory statements without

¹ *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

² *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

supporting rationale are of little probative value,³ that medical reports not containing substantive rationale on causal relation are entitled to little probative value and are generally insufficient to meet appellant's burden of proof,⁴ that evidence of bridging symptoms is necessary in establishing a recurrence of disability claim,⁵ that to be probative, rationalized medical evidence must be based upon a complete factual and medical background,⁶ and that an appellant's opinion that his current condition was a recurrence of an earlier injury based upon the similarity of symptoms is of no probative value.⁷ As Dr. DeMartini's reports and testimony suffer from all of these deficiencies, they are of greatly reduced probative value and are therefore insufficient to establish appellant's recurrence claim.

The reports of Dr. Chapman also suffer from these deficiencies, as he diagnosed multiple conditions unrelated to appellant's accepted thoracolumbar muscular strain injury and conclusorily stated that he believed there was a causal relationship between appellant's current problems and his 1985 injury. Dr. Chapman evidences no knowledge that in 1987 appellant had a complete resolution of symptoms and returned to full-duty work, he provides no bridging symptomatology or history of intervening treatment or development of the other nonaccepted medical conditions, and he offers no comprehensive medical rationale for his causal relationship conclusion. Consequently, Dr. Chapman's reports are also of reduced probative value and are insufficient to establish appellant's recurrence claim.

As no further probative rationalized medical evidence has been submitted to support that appellant sustained a recurrence of disability on or after October 4, 1994, he has failed to establish his claim.

On appeal appellant, through his representative, argues (1) that the hearing representative made conflicting statements in her written decision, (2) that the written and oral evidence from Drs. Chapman and DeMartini demonstrated causal relation with the 1985 soft tissue muscle strain injury, and (3) that the hearing representative's decision should be reversed because she allowed the employing establishment to submit statements to the record after the "time period had expired," which were defamatory and harmful to appellant's case.

The Board notes, however, that the inconsistency to which appellant's representative cites is not an inconsistency at all, but two separate statements regarding two different reports. The hearing representative, in direct reference to Dr. Chapman's November 15, 1995 examination of and report on appellant, correctly stated that the report did not include any opinion on causal relation with appellant's 1985 injury. The Board finds, after reviewing the report, that this is a correct analysis. The report discusses osteodegenerative vertebral problems

³ See *William C. Thomas*, 45 ECAB 591 (1994).

⁴ See *Lourdes Davila*, 45 ECAB 139 (1993); *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

⁵ *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Shirloyn J. Holmes*, 39 ECAB 938 (1988).

⁶ See *Ern Reynolds*, 45 ECAB 690 (1994).

⁷ See e.g., *Barbara J. Williams*, 40 ECAB 649 (1989) (Lay individuals are not competent to render a medical opinion or conclusion).

and disc pathologies, but does not explain how these are in any way related to a 1985 soft tissue muscular strain condition. Thereafter, the hearing representative, in reference to Dr. Chapman's January 8, 1996 report, stated that he opined that appellant's current problems were related to his 1985 injury, based on a review of the records. The Board finds that this is in no way inconsistent with the hearing representative's earlier comments as she was merely reporting what Dr. Chapman stated in his January 8, 1996 report. Consequently, the Board finds that the representative's first argument has no merit.

With regard to the representative's second argument, the Board notes that neither Dr. Chapman's statement that he believed there was a causal relationship between appellant's 1985 injury and his current problems, nor Dr. DeMartini's written statement that, after speaking to appellant, he felt that his current condition was a direct result of a reexacerbation of his 1985 injury, include any medical rationale supporting or explaining how and why, mechanically and physiologically, this was the case. The Board also notes that Dr. DeMartini's "Yes" testimony in response to appellant's representative's question about whether the August 1995 injury was directly related to the 1985 injury, also fails to include any medical rationale supporting this opinion or explaining how and why this was the case. The Board finds that these above-mentioned statements are conclusory at best, and totally lacking in probative and convincing medical rationale. The Board reiterates that statements that are conclusory and lacking in medical rationale, are of diminished probative value, and are, therefore, insufficient to establish an appellant's claim.⁸ Further, the Board has also held that the response "yes" to a question of whether or not there was a causal relationship, has little probative value where there is no accompanying explanation or rationale supporting the opinion on causal relationship between the diagnosed condition and the original employment-related injury.⁹ As an individual who claims a recurrence of disability due to an accepted employment injury has the burden of establishing by the weight of the substantial, reliable, and probative medical evidence, and as the weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion,¹⁰ appellant has not met this burden because none of the evidence submitted includes substantial and probative medical rationale containing convincing medical analyses explaining the pathophysiology of how this occurred and why the physician believed that appellant's present osteodegenerative back problems, arthritis and sciatic pain, were causally related to a soft tissue thoracolumbar muscular strain injury 10 years earlier, and the hearing representative properly denied his claim.

With regard to appellant's representative's third argument, the Board notes that the relevant issue in this case is medical in nature, such that the employing establishment's submission of further factual evidence following the hearing, the parameters of which lie within

⁸ See *Leon Harris Ford*, 31 ECAB 514 (1980); *Neil Oliver*, 31 ECAB 400 (1980); *Leontine F. Lucas*, 30 ECAB 925 (1979).

⁹ See *Betty J. Parker*, 46 ECAB 920 (1995); *Ruth S. Johnson*, 46 ECAB 237 (1994); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

¹⁰ *James Mack*, 43 ECAB 321 (1991); *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988); *Melvina Jackson*, 38 ECAB 443 (1987).

the hearing representative's discretion, was not germane to the issue being resolved. The Board further notes that from his November 15, 1996 correspondence, it is clear that the representative was provided copies of this evidence. Consequently, the representative's argument that these statements were defamatory, were part of a conspiracy, were unsworn and were unnotarized "heresay," are irrelevant to the outcome and resolution of this case, and hence are moot.

Accordingly, the decision of the Office of Workers' Compensation Programs dated December 6, 1996 is hereby affirmed.

Dated, Washington, D.C.
June 16, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member