

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES E. HAMPTON and U.S. POSTAL SERVICE,
POST OFFICE, Columbus, OH

*Docket No. 98-1055; Submitted on the Record;
Issued November 2, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established that he sustained a recurrence of disability causally related to his employment injury of October 13, 1991.

On October 13, 1991 appellant, then a 57-year-old postal mail handler, was struck in the back by a hamper loaded with magazines while in the performance of duty. The Office of Workers' Compensation Programs accepted the claim for contusion and lower back strain.

In a attending physician's report (Form CA-20) dated October 24, 1991, Dr. James A. Sides, a Board-certified orthopedic surgeon, noted that appellant was struck in the back on October 13, 1991 and diagnosed lumbar strain with radiculopathy. He indicated that appellant had a prior industrial lower back injury. He prescribed pain medication, exercises and authorized appellant for light duty on October 24, 1991 with restrictions.

In a treatment note dated April 9, 1992, Dr. Sides indicated that he wanted to obtain "another MRI [magnetic resonance imaging] and see if there [was] any change from [appellant's] previous one because of his new industrial injury that occurred on October 13, 1991."¹

By letter dated April 30, 1992, Dr. Sides requested authorization to obtain an MRI. He stated that since appellant's symptoms had not abated he wanted to make sure appellant was not

¹ In a treatment note dated October 24, 1991, Dr. Sides diagnosed "reexacerbation, lumbar herniated nucleus pulposus and lumber strain" suggesting that appellant had a lower back injury which preceded the accepted October 13, 1991 work injury.

suffering from a progression of his low back degeneration as a result of the October 13, 1991 injury.²

An MRI dated May 12, 1992 revealed mild bulging at L4-5 and L5-S1, but no evidence of disc herniation.

In a treatment note dated May 28, 1992, Dr. Sides noted that appellant was experiencing spasm on the left side of his lower back “where he never had it before.” He doctor recommended stretching and strengthening exercises.

In a March 17, 1993 attending physician’s report, Dr. Sides noted that appellant reinjured his low back when he picked up a box at work. The date of injury listed on the CA-20 form was October 13, 1991. Dr. Sides indicated that appellant was totally disabled from March 13 to March 25, 1993. He approved appellant for light duty on March 26, 1993.

Appellant filed a CA-7 form for compensation alleging wage loss for the period of March 13 to March 25, 1993.

In an April 13, 1993 report, Dr. Sides opined that appellant’s disability on March 13, 1993 was a reaggravation of the October 13, 1991 injury and was not a new condition or new injury.

In treatment notes dating from February 15, 1993 to February 5, 1996, Dr. Sides noted that appellant complained of increasing LT sacroiliac pain, S/I joint pain and muscle spasm for which he prescribed intermittent cortisone injections, anti-inflammatory medication, L/S back brace and continuing observation.

In an attending physician’s report dated February 1, 1994, Dr. Sides reported that appellant sustained a muscle spasm over his sacroiliac joint when he lifted a box at work on March 13, 1993. He diagnosed lumbar HNP and lumbar radiculopathy. Dr. Sides listed the date of injury as October 13, 1991. He concluded that appellant was totally disabled from March 15 to March 25, 1993.

In an attending physician’s report dated February 7, 1996, Dr. Sides reported that appellant’s x-rays showed no change and diagnosed “lumbar HNP.” He noted that appellant received a trigger point injection and was totally disabled from February 5 to February 8, 1996.

In an April 5, 1996 letter, the Office noted that appellant had requested information on how to obtain continuing medical benefits after his retirement. The Office noted that appellant’s

² The record contains a November 3, 1988 report from Dr. Sides which noted that appellant had a prior history of lower back injury as a result of being thrown against the side of a tractor trailer on November 6, 1984, at which time appellant was diagnosed with lumbar arthropathy. According to Dr. Sides, when he first began treating appellant on June 24, 1988 an MRI revealed degenerative changes of the L3-4 and L4-5 discs with no real herniation. He diagnosed that appellant suffered from “lumbar arthropathy with right sided lumbar radiculopathy, secondary to the impingement of the nerve root at the degenerative levels.” He noted, however, that appellant was still capable of working light duty with weight lifting restrictions. Dr. Sides concluded that appellant’s back condition was directly related to the November 6, 1984 injury.

October 13, 1991 claim was accepted for contusion/strain of the lower back and indicated that a claim of recurrence effective March 13, 1993 had also been accepted. The Office informed appellant that in order to “reopen” his file he was required to submit medical evidence detailing his treatment since March 1993. Appellant was also directed to submit a reasoned medical opinion from his physician discussing the medical relationship between his diagnosed condition and his prior work injury, which also took into consideration appellant’s preexisting degenerative lumbar changes.

Appellant submitted a June 3, 1996 report from Dr. Sides which stated that he had been treating appellant for continuing low back pain and leg pain since 1992. He indicated that appellant had developed degenerative changes in his lumbar spine as a result of the October 13, 1991 injury. Dr. Sides noted that appellant reinjured his back in 1993, but opined that “this was a reinjury of his previous condition and was not a new problem.” He concluded that given the degenerative nature of appellant’s back condition, appellant required continuing medical care throughout his lifetime.

On August 19, 1996 appellant filed a claim alleging a recurrence of disability on March 13, 1993.

In a February 6, 1996 report, Dr. Sides noted that appellant was seen for lumbar radiculopathy. He proposed that appellant be followed for his back condition at least every six months, probably for the duration of his lifetime.

In a decision dated November 14, 1996, the Office denied the claim for compensation on the grounds that the claimed recurrence of disability was not causally related to the accepted employment injury of October 13, 1991.

By letter dated December 4, 1997, appellant requested a hearing.

Appellant thereafter submitted a September 22, 1997 report from Dr. Sides, who indicated that x-rays obtained on that date showed progressive degenerative joint disease and noted that appellant was “now getting pain not only in the right leg but starting down the left leg.” He opined that appellant’s chances of developing progressive arthritis was quite high as a result of the October 13, 1991 work injury.

In a decision dated January 14, 1998, an Office hearing representative affirmed the Office’s November 14, 1996 decision. The Office hearing representative specifically noted that the Office should not have accepted the March 13, 1993 claim for recurrence of disability. He also found the medical evidence insufficient to establish that appellant’s continuing back condition on or after August 19, 1996 was causally related to the October 13, 1996 work injury.³

³ The hearing representative’s decision differs from the Office’s November 14, 1996 decision in that the Office originally determined that appellant was not entitled to continuing compensation on or after April 14, 1996 while the Office hearing representative found that appellant was not entitled to continuing compensation on or after August 19, 1996, the date he filed his claim for recurrence of disability. Appellant appears to have retired at the end of April 1996.

The Board finds that appellant failed to establish that he sustained a recurrence of disability causally related to his October 13, 1991 employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence of recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁴

The employee's burden also 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.⁵ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on an employee's unsupported belief of causal relationship.⁶

In the instant case, the Office accepted that appellant sustained a low back contusion and sprain as a result of a work injury on October 13, 1991. Appellant returned to light duty on October 24, 1991 and continued to work under medical restrictions until he filed a CA-7 seeking wage loss for an apparent recurrence of disability on March 13, 1993. The Office accepted the recurrence of disability and appellant returned to his light-duty position. On August 19, 1996 appellant filed a claim alleging a recurrence of disability. Appellant listed the date of recurrence of disability as March 13, 1993. The record suggests that appellant filed the CA-2 form in order to ensure that he would receive continuing medical benefits after his retirement in April 1996.

In reviewing this case, the Office hearing representative properly noted that the Office should not have previously accepted that appellant sustained a recurrence of disability on March 13, 1993 because the factual evidence indicates that appellant sustained a new injury on that date as a result of lifting boxes. In a report dated March 17, 1993, Dr. Sides noted that appellant reinjured his back on March 13, 1993 after lifting boxes and diagnosed a lumbar disc herniation ("HSD"). Although the Office accepted that the herniated disc was a recurrence of disability related to the original October 13, 1991 injury, that finding is not supported by the medical evidence, record, specifically an MRI report dated May 13, 1992, taken after the October 13, 1991 work injury, which showed no evidence of herniation. Since appellant had no evidence of a herniated disc at the time of his original work injury on October 13, 1991 and the Office had only accepted the claim for a lumbar strain, the Office erred by not finding that appellant sustained a new injury on March 13, 1993 which resulted in a herniated disc.

⁴ See *Cynthia M. Judd*, 42 ECAB 246 (1990); *Stuart K. Stanton*, 40 ECAB 859 (1989); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ See *Nicolea Brusco*, 33 ECAB 1138 (1982).

⁶ *Ausberto Guzman*, 25 ECAB 362 (1974).

With respect to appellant's August 19, 1996 claim for recurrence of disability, the Board concludes that the medical evidence is insufficient to establish that appellant's ongoing degenerative back condition is causally related to the October 13, 1991 work injury. Although Dr. Sides opined that appellant's degenerative back condition resulted from the October 13, 1991 work injury in his reports dated June 3, 1996 and September 27, 1997, the physician's opinion is not well reasoned. The Board specifically notes that Dr. Sides does not address appellant's prior history of degenerative changes. Dr. Sides reported prior to October 13, 1991 work injury that appellant had degenerative changes confirmed by an MRI as early as June 24, 1988. He had also attributed those early degenerative changes to a back injury sustained by appellant on November 6, 1984. Because Dr. Sides has never adequately explained the relationship between appellant's preexisting degenerative condition, the November 6, 19984 back injury and the October 13, 1991 work injury, his opinion is insufficient to carry appellant's burden of proof. Inasmuch as the record is devoid of a rationalized medical opinion attributing appellant's ongoing back condition to the October 13, 1991 work injury, the Office properly denied appellant's recurrence of disability claim seeking ongoing medical benefits on or after August 19, 1996.

The decision of the Office of Workers' Compensation Programs dated January 14, 1998 is hereby affirmed.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member